Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fifth Chamber)

31 May 2018 *

(Common foreign and security policy — Restrictive measures adopted against Syria — Freezing of funds — Misuse of powers — Principle of sound administration — Principle of the force of res judicata — Infringement of Article 266 TFEU — Manifest error of assessment — Fundamental rights — Proportionality — Principle of non-discrimination)

In Case T-461/16,

Khaled Kaddour, residing in Damascus (Syria), represented by V. Davies and V. Wilkinson, Solicitors, and by R. Blakeley, Barrister,

applicant,

v

Council of the European Union, represented initially by J. Bauerschmidt and G. Étienne, and subsequently by J. Bauerschmidt and by S. Kyriakopoulou, acting as Agents,

defendant,

ACTION pursuant to Article 263 TFEU seeking the annulment of Council Decision (CFSP) 2016/850 of 27 May 2016 amending Decision (CFSP) 2013/255 concerning restrictive measures against Syria (OJ 2016 L 141, p. 125) and of Council Implementing Regulation (EU) 2016/840 of 27 May 2016 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2016 L 141, p. 30), in so far as those measures apply to the applicant,

THE GENERAL COURT (Fifth Chamber),

composed of D. Gratsias, President, I. Labucka and I. Ulloa Rubio (Rapporteur), Judges,

Registrar: M. Marescaux, Administrator,

having regard to the written part of the procedure and further to the hearing on 16 November 2017,

gives the following

* Language of the case: English.

Judgment

Background to the dispute

1 The applicant, Khaled Kaddour, is a Syrian businessman who carries on commercial operations in, inter alia, the tobacco and automotive sectors.

2 Strongly condemning the violent repression of peaceful demonstrations in Syria and appealing to the Syrian authorities to refrain from resorting to force, 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). 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(1) of that decision, the Council, acting upon a proposal by a Member State or the High Representative of the Union for Foreign Affairs and Security Policy, may amend that annex. The applicant's name was not on that list.

4 Since some of the restrictive measures against the Syrian Arab Republic fall within the scope of the FEU Treaty, the Council adopted Regulation (EU) No 442/2011 of 9 May 2011 concerning restrictive measures in view of the situation in Syria (OJ 2011 L 121, p. 1). That regulation is essentially identical to Decision 2011/273, but provides for the possibility of releasing frozen funds. The list of persons, entities and bodies recognised as being responsible for the repression in question or as being associated with those responsible, set out in Annex II to that regulation, is identical to the list appearing in the annex to Decision 2011/273. The applicant's name was therefore not on that list. Under Article 14(1) and (4) of Regulation No 442/2011, where the Council decides to subject a natural or legal person or an entity or body to the restrictive measures referred to, it is to amend Annex II accordingly and is also to review the list in that annex at regular intervals and at least every 12 months.

On the initial inclusion of the applicant's name on the lists of persons subject to the restrictive measures

5 By Implementing Decision 2011/367/CFSP of 23 June 2011 implementing Decision 2011/273 (OJ 2011 L 164, p. 14), the Council amended Decision 2011/273 in order, in particular, to apply the restrictive measures at issue to other persons and entities. The applicant's name appeared in line 6 of the table in Part A of the annex concerning the persons to whom that implementing decision applied, together with the date of inclusion of his name on the list in question, namely 23 June 2011, and the following reasons:

'Business associate of Maher Al-Assad; provides funding to the regime.'

6 On the same day, the Council, acting on the basis of Article 215(2) TFEU and Decision 2011/273, adopted Implementing Regulation (EU) No 611/2011 implementing Regulation No 442/2011 (OJ 2011 L 164, p. 1). The applicant's name appeared in line 6 of the table in the annex to that implementing regulation together with the same details and reasons as those set out in the annex to Implementing Decision 2011/367.

7 By Decision 2011/782/CFSP of 1 December 2011 concerning restrictive measures against Syria and repealing Decision 2011/273 (OJ 2011 L 319, p. 56), the Council considered it necessary to impose additional restrictive measures in view of the gravity of the situation in Syria. For the sake of clarity, the measures imposed by Decision 2011/273 and the additional measures were incorporated into a single legal instrument. Article 18 of Decision 2011/782 lays down restrictions on admission to the European Union and Article 19 thereof provides for the freezing of the funds and economic resources of the persons and entities listed in Annex I thereto. The applicant's name appeared in line 29 of the table in Annex I concerning the persons to whom that decision applied, together with the same details and reasons as those set out in the annex to Implementing Decision 2011/367.

8 On 26 December 2011, the applicant brought an action before the Court seeking the annulment of Decisions 2011/273 and 2011/782 and Regulation No 442/2011, as implemented or amended up to the day on which the action was brought, in so far as those measures concerned the applicant. That action was registered at the Court Registry as Case T-654/11.

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 No 442/2011 (OJ 2012 L 16, p. 1). The applicant's name appeared in line 29 of the table in Annex II to the latter regulation, together with the same details and reasons as those set out in the annex to Implementing Decision 2011/367.

10 By 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), the restrictive measures at issue were incorporated into a single legal instrument. The applicant's name appeared in line 28 of the table in Annex I to Decision 2012/739, together with the same details and reasons as those listed in the annex to Implementing Decision 2011/367.

11 Council Implementing Decision 2013/185/CFSP of 22 April 2013 implementing Decision 2012/739 (OJ 2013 L 111, p. 77) was intended to update the list, as set out in Annex I to Decision 2012/739, of the persons and entities subject to restrictive measures. The applicant's name appeared in line 28 of the table in Annex I, together with the same details and reasons as those set out in the annex to Implementing Decision 2011/367.

12 Council Implementing Regulation (EU) No 363/2013 of 22 April 2013 implementing Regulation No 36/2012 (OJ 2013 L 111, p. 1) contained the same details and reasons as those set out in the annex to Implementing Decision 2011/367.

13 On 31 May 2013, the Council adopted Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2013 L 147, p. 14). The applicant's name appeared in line 28 of the table in Annex I to that decision, together with the same details and reasons as those set out in the annex to Implementing Decision 2011/367.

14 By statements modifying the form of order sought, lodged at the Court Registry on 22 and 28 June, 23 and 31 July 2012, and 7 January and 24 June 2013, the applicant sought the annulment of, inter alia, Regulation No 36/2012, Decision 2012/739, Implementing Decision 2013/185, Implementing Regulation No 363/2013 and Decision 2013/255, in so far as those measures concerned him.

15 By judgment of 13 November 2014, *Kaddour* v *Council* (T-654/11, not published, '*Kaddour I*', EU:T:2014:947), the Court upheld the plea that the Council had made a manifest error of assessment by including the applicant's name on the lists of persons subject to the restrictive measures. In essence, the Court found that the Council's file did not contain any evidence capable of supporting the claims that the applicant maintained a professional link with Mr Maher Al-Assad or provided financial support to the Syrian regime. By partially upholding the applicant's action, the Court thereby

annulled Regulation No 36/2012, Implementing Regulation No 363/2013 and Decision 2013/255 in so far as they concerned the applicant, with effect from 23 January 2015. The action was declared inadmissible as regards the other acts against which it was directed.

16 The Council did not bring an appeal against the judgment of 13 November 2014, *Kaddour I* (T-654/11, not published, EU:T:2014:947).

On the re-inclusion and retention of the applicant's name on the lists of persons subject to the restrictive measures

17 On 26 January 2015, the Council adopted Implementing Decision 2015/117/CFSP implementing Decision 2013/255 (OJ 2015 L 20, p. 85). On the same day, it adopted Implementing Regulation (EU) No 2015/108 implementing Regulation No 36/2012 (OJ 2015 L 20, p. 2). By those measures, the applicant's name was re-entered on the lists in question.

18 In particular, the applicant's name was re-entered in line 28 of the table containing the lists in question under the heading 'A. Persons' on the basis of the following reasons:

'Prominent Syrian businessman, close to Maher Al-Assad, a key figure of the Syrian regime. Khaled Kaddour benefits from and provides support to the Syrian regime and is associated with persons benefiting from and supporting the regime.'

19 On 27 March 2015, the applicant brought an action before the Court seeking annulment of Implementing Decision 2015/117 and Implementing Regulation 2015/108 in so far as those measures concerned him. That action was registered at the Court Registry as Case T-155/15.

20 On 12 October 2015, the Council adopted Decision (CFSP) 2015/1836 amending Decision 2013/255 (OJ 2015 L 266, p. 75). On the same day, it adopted Regulation (EU) No 2015/1828 amending Regulation No 36/2012 (OJ 2015 L 266, p. 1). Those measures immediately provided for restrictions on the entry into, or transit through, the territories of the Member States and the freezing of funds of 'leading businesspersons operating in Syria' and of 'members of the Assad or Makhlouf families', unless there '[was] sufficient information that th[ose] persons [were] not, or [were] no longer, associated with the regime'.

21 By letter of 18 March 2016, addressed to the applicant's counsel in Case T-155/15, the Council informed the applicant of its intention to amend the reasons for the inclusion of his name on the lists in question after having reviewed that inclusion. The Council set a time limit within which the applicant could submit any observations.

22 By letter of 13 April 2016, the applicant's counsel in Case T-155/15 objected to the retaining of the applicant's name on the lists in question.

23 On 27 May 2016, the Council adopted Decision (CFSP) 2016/850 amending Decision 2013/255 (OJ 2016 L 141, p. 125). On the same day, it adopted Implementing Regulation (EU) No 2016/840 implementing Regulation No 36/2012 (OJ 2016 L 141, p. 30). By those measures (taken together, 'the contested measures'), the applicant's name was retained on the lists in question.

24 In particular, the applicant's name was retained in line 28 of the table containing the lists in question under the heading 'A. Persons' of the annex, together with the following reasons:

'Leading businessperson operating in Syria, with interests and/or activities in the telecommunications, oil and plastic industry sectors and close business relations with Maher Al-Assad. He benefits from and provides support to the Syrian regime, through his business activities. Associate of Maher Al-Assad, including through his business activities.'

25 By letter of 30 May 2016, the Council informed the applicant's counsel in Case T-155/15, then pending, of the new reasons for the applicant's inclusion on the lists in question and provided them with a file containing evidence in support of the applicant's listing.

26 By letter of 6 July 2016, the applicant's new counsel informed the Council that they were now representing the applicant and asked the Council to remove the applicant's name from the lists in question.

27 By letter of 26 July 2016, addressed to the applicant's new counsel, the Council replied to their letter of 6 July 2016 and sent them a copy of the contested measures together with the documents on which those measures were based.

28 By judgment of 26 October 2016, *Kaddour* v *Council* (T-155/15, not published, '*Kaddour II*', EU:T:2016:628), the Court dismissed the action brought by the applicant against Implementing Decision 2015/117 and Implementing Regulation No 2015/108 in so far as those measures concerned him. It held that the re-entering of his name on the lists in question was justified by the fact that the Council had presented a body of precise and consistent evidence capable of demonstrating that the applicant still had links with certain key figures of the Syrian regime such as Mr Maher Al-Assad, in accordance with Article 28(1) of Decision 2013/255 and Article 15(1)(a) of Regulation No 36/2012.

29 The applicant did not bring an appeal against the judgment of 26 October 2016, *Kaddour II* (T-155/15, not published, EU:T:2014:628).

Procedure and forms of order sought

30 The applicant brought the present action by application lodged at the Court Registry on 19 August 2016.

31 On 28 November 2016, the Council lodged its defence at the Court Registry.

32 The applicant claims that the Court should:

– annul the contested measures;

– order the Council to pay the costs.

33 The Council contends that the Court should:

– dismiss the action in its entirety;

– in the alternative, should the Court annul the restrictive measures adopted against the applicant, order that the effects of Decision 2016/850 be maintained as regards the applicant until the annulment of Implementing Regulation 2016/840 takes effect;

– order the applicant to pay the costs.

Law

34 As a preliminary matter, it should be made clear that Decision 2016/850 was adopted under Article 29 TEU which confers on the Council the power to adopt decisions defining the approach of the Union to a particular matter of a geographical or thematic nature (see, to that effect, judgment of 13 September 2013, *Anbouba* v *Council*, T-592/11, not published, EU:T:2013:427, paragraph 41).

35 It was also under Article 29 TEU that the Council adopted Decision 2015/1836, by which the fact of being a leading businessperson operating in Syria is a criterion for the application of the restrictive measures.

36 According to recital 6 of Decision 2015/1836:

'The Council has assessed that because of the close control exercised over the economy by the Syrian regime, an inner cadre of leading businesspersons operating in Syria is only able to maintain its status by enjoying a close association with, and the support of, the regime, and by having influence within it. The Council considers that it should provide for restrictive measures to impose restrictions on admission and to freeze all funds and economic resources belonging to, owned, held or controlled by those leading businesspersons operating in Syria, as identified by the Council and listed in Annex I, in order to prevent them from providing material or financial support to the regime and, through their influence, to increase pressure on the regime itself to change its policies of repression.'

37 Similarly, Articles 27 and 28(2) of Decision 2013/255, as amended by Decision 2015/1836, provide for restrictions on the entry into, or transit through, the territories of the Member States and the freezing of the funds of 'leading businesspersons operating in Syria'. In addition, Articles 27 and 28(2) of the decision provide that those persons 'shall not be included or retained on the list of persons and entities in Annex I if there is sufficient information that they are not, or are no longer, associated with the regime or do not exercise influence over it or do not pose a real risk of circumvention'.

38 In support of his action, the applicant relies, in essence, on five pleas in law. The first plea alleges misuse of powers and breach of the principles of sound administration, *res judicata*, legal certainty and the right to an effective remedy. The second plea alleges infringement of Article 266 TFEU. The third plea alleges a manifest error of assessment of the evidence. The fourth plea alleges breach of fundamental rights concerning respect for reputation and the peaceful enjoyment of property and breach of the principle of proportionality. The fifth alleges breach of the principle of non-discrimination.

The first plea, alleging misuse of powers and breach of the principles of sound administration, res judicata*, legal security and the right to an effective remedy*

39 The first plea in law is divided into three parts. First, the applicant claims that, by maintaining the contested measures against him, the Council has misused its powers. Second, he submits that the Council has breached the principle of sound administration enshrined by Article 41 of the Charter of Fundamental Rights of the European Union since it has not, to date, removed his name from the lists in question. Third, he maintains that the Council has infringed his right to an effective remedy and the principle of *res judicata* by re-entering his name on those lists after the Court had annulled his initial listing.

The first part, alleging a misuse of powers

40 The applicant claims that the Council has 'manifestly misused its powers' by re-entering his name on the lists in question, thereby circumventing the judgment of 13 November 2014, *Kaddour I* (T-654/11, not published, EU:T:2014:947). According to the applicant, the Council should have appealed against that judgment instead of re-entering his name on those lists on the basis of materially identical reasons to those which the Court had declared unfounded. He also claims that the Council retained his name on those lists on the basis of the criteria of association with and support for the Syrian regime which had already been invalidated by the Court. Furthermore, he maintains that the Council's new allegations were also based on facts, evidence or circumstances, which the Court had regarded as insufficient and were already available to the Council at the time of the initial inclusion of the applicant's name on those lists.

41 The Council disputes the applicant's arguments.

42 According to the case-law, a measure is vitiated by misuse of powers only if it appears on the basis of objective, relevant and consistent evidence to have been taken with the exclusive or main purpose of achieving an end other than that stated or of evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case (see judgment of 14 October 2009, *Bank Melli Iran* v *Council*, T-390/08, EU:T:2009:401, paragraph 50 and the case-law cited). In this case, the applicant has not adduced evidence capable of proving that, in adopting the contested measures, the Council pursued any end other than that of stopping the Syrian regime's violent repression of the civilian population in Syria by freezing the funds of persons benefiting from and supporting the regime, in accordance with the procedure laid down for that purpose by the TFEU and by Regulation No 36/2012.

43 In the first place, the Court rejects the applicant's argument that the Council manifestly misused its powers by maintaining the contested measures against him for almost five years, despite the fact that the initial entering of his name on the lists in question had been annulled in the judgment of 13 November 2014, *Kaddour I* (T-654/11, not published, EU:T:2014:947). It is apparent from paragraph 93 of that judgment that the Council, in the context of a fresh examination, may include the applicant's names on those lists on the basis of reasons substantiated to the requisite legal standard.

44 In addition, the Court notes that under Article 32(1) and (3) of Regulation No 36/2012, where the Council decides to subject a natural or legal person or an entity or body to the restrictive measures referred to, it must amend Annexes II and IIb of that regulation accordingly and also, if substantial new evidence is presented, it must review its decision and inform the natural person concerned thereof. Furthermore, the Council is required to examine the lists contained in those annexes at regular intervals and at least once every 12 months, in accordance with Article 32(4) of the regulation. It follows from the foregoing that the Council has a duty to re-examine the lists in question and, if substantial new evidence is presented, as is the case here, is entitled to amend the reasons for the listing or re-enter the applicant's name on those lists. Accordingly, since the contested measures are the result of the review which the Council is required to carry out of the measures taken against the applicant, the Council must be regarded as having acted in accordance with the powers bestowed on it.

45 In the second place, as far as concerns the applicant's contention that the Council's reasoning in justifying the inclusion of the applicant's name on the lists in question is almost identical to the reasoning on which the measures annulled by the judgment of 13 November 2014, *Kaddour I* (T-654/11, not published, EU:T:2014:947) was based, the Court rejects that argument as unfounded. As is clear from paragraph 64 of the *Kaddour II* judgment of 26 October 2016 (T-155/15, not

published, EU:T:2016:628), a decision to re-enter a name on those lists adopted for the same reasons as those stated when the applicant's name was first listed may suffice to justify his relisting, provided that the evidence adduced by the Council supports those reasons to the requisite legal standard.

46 Moreover, the Court notes that, contrary to what the applicant claims, the statement of reasons for the contested measures is quite distinct from that put forward by the Council in connection with the measures annulled by the judgment of 13 November 2014, *Kaddour I* (T-654/11, not published, EU:T:2014:947). The applicant's name was initially entered on the lists annexed to Decision 2011/273 and Regulation No 442/2011 on the basis of his association with Mr Maher Al-Assad and of his financial support to the Syrian regime (criterion of providing financial support). However, the retention of the applicant's name on the lists in question is based, on the one hand, on his status as a leading businessman (criterion of being a leading businessperson operating in Syria) and, on the other, on his close business relations with Mr Maher Al-Assad (criterion of association with the regime). It follows that, according to the view adopted in the contested measures, he benefits from and provides support to that regime through his business activities (criterion of association with and benefit from the regime).

47 In the third place, the Court finds that the applicant's argument according to which the Council's new allegations are based on facts, evidence or circumstances which the Court had regarded as insufficient in the judgment of 13 November 2014, *Kaddour I* (T-654/11, not published, EU:T:2014:947) relates to the substance of the statement of reasons alleged against the applicant. That argument must, therefore, be rejected as ineffective in respect of the present plea.

48 In the light of the foregoing considerations, the first part of the first plea must be rejected.

The second part, alleging breach of the principle of sound administration

49 The applicant claims that, by re-entering and retaining his name on the lists in question, the Council breached the principle of sound administration enshrined in Article 41 of the Charter of Fundamental Rights. According to the applicant, his case was not dealt with impartially, fairly, or within a reasonable time. In this regard, he maintains, in essence, that his name has been listed for more than five years and that the Council, by not formulating all its allegations in the initial listing, has extended the duration for reviewing his listing in breach of his right to have his affairs handled within a reasonable time and of the duty of sound administration.

50 The Council disputes the applicant's arguments.

51 As a preliminary point, the Court notes that Article 41 of the Charter of Fundamental Rights provides as follows:

'1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

2. This right includes:

(a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;

(b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;

(c) the obligation of the administration to give reasons for its decisions.

…’

52 In addition, according to the case-law, in the context of the adoption of restrictive measures, the Council is under an obligation to observe the principle of sound administration, which, according to settled case-law, entails the obligation for the competent institution to examine carefully and impartially all the relevant aspects of the individual case (see judgment of 30 June 2016, *Al Matri* v *Council*, T-545/13, not published, EU:T:2016:376, paragraph 58 and the case-law cited).

53 In the present case, it is appropriate to note at the outset that the applicant’s arguments solely challenge the fact that his name is still included on the lists in question, without disputing the fact that he had been heard before those measures were taken against him, was able to access his administrative file, or the fact that the contested measures are sufficiently justified under Article 41(2) of the Charter of Fundamental Rights.

54 First of all, as far as concerns the applicant’s submission that the Council, by re-entering and retaining his name on the lists in question, breached the principle of sound administration, it is clear from paragraphs 43 and 44 above that the Council was entitled to re-enter and retain the applicant’s name on those lists, after having reviewed those lists. The first of the applicant’s arguments must therefore be rejected.

55 Next, as regards the applicant’s allegations that the Council failed to handle his case impartially, fairly and within a reasonable time, the Court finds that the fact, referred to by the applicant, that the applicant’s name has appeared on the lists in question over a long period cannot, in itself, suggest that his case was not handled impartially, fairly or reasonably by the Council when it adopted the contested measures. Furthermore, it should be noted that the contested measures were adopted under Article 29 TEU which empowers the Council to adopt decisions defining the approach of the European Union to a particular matter of a geographical or thematic nature (see, to that effect, judgment of 13 September 2013, *Anbouba* v *Council*, T-592/11, not published, EU:T:2013:427, paragraph 41). The mere fact that the applicant’s name appears on the lists in question cannot suffice to call into question the impartiality of the Council.

56 In any event, the fact remains that the applicant has adduced no specific evidence in support of his allegations, as a result of which they must be rejected.

57 Lastly, as regards the applicant’s argument that the Council was not entitled to justify its decision to re-enter the applicant’s name on the lists in question on the basis of reasons on which it could have relied when that name was initially entered on those lists, it should be noted that, in the light of the grounds for the annulment of the decision first including his name on those lists in the judgment of 13 November 2014, *Kaddour I* (T-654/11, not published, EU:T:2014:947), nothing precluded the Council from relisting the applicant’s name on the basis of the same reasons, provided that the relisting was based on different evidence from that which the Court had considered to be insufficient in justifying the application of the contested measures to the applicant. This argument must therefore be rejected.

58 It follows from the foregoing that the second part of the first plea in law must be rejected.

The third part, alleging infringement of the right to an effective remedy and breach of the principles of res judicata and of legal certainty

59 First, the applicant alleges that the Council has infringed his right to an effective remedy by re-entering his name on the lists in question after the Court had annulled the initial entry of his name on those lists. According to the applicant, that relisting would render his application, which gave rise to the judgment of 13 November 2014, *Kaddour I* (T-654/11, not published, EU:T:2014:947), 'practically worthless'.

60 Second, the applicant claims that the Council has breached the principles of *res judicata* and legal certainty by re-entering his name on the lists in question after the Court had annulled the initial inclusion of his name of those lists.

61 The Council disputes the applicant's arguments.

62 The Court notes, in the first place, that the principle of effective judicial protection is a general principle of EU law stemming from the constitutional traditions common to the Member States, which has been enshrined in Articles 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), and in Article 47 of the Charter of Fundamental Rights (judgment of 21 March 2012, *Fulmen* v *Council*, T-439/10 and T-440/10, EU:T:2012:142, paragraph 87).

63 First of all, it should be noted that the applicant's arguments in respect of the Council's re-entering his name on the lists in question after the annulment of the initial listing of his name have already been rejected in paragraphs 43 and 44 above.

64 Next, as regards the applicant's argument that the application in the case which gave rise to the judgment of 13 November 2014, *Kaddour I* (T-654/11, not published, EU:T:2014:947) has been rendered 'practically worthless', the Court considers that the decision to re-enter and retain the applicant's name on the lists in question does not compromise the effectiveness of the action which gave rise to that judgment. That judgment resulted in the removal, retroactively, of that name from those lists. However, as is apparent from paragraph 93 of that judgment, the Council, in the context of a fresh examination, was entitled to re-enter that name on those lists on the basis of reasons substantiated to the requisite legal standard.

65 Lastly, the fact remains that the applicant has made use of his right to bring the present action against the contested measures before the EU judicature under the second paragraph of Article 275 TFEU, read in conjunction with the fourth and sixth paragraphs of Article 263 TFEU. The applicant is therefore unable to rely on a breach of his right to an effective remedy.

66 It follows from the foregoing that the applicant's arguments relating to breach of the right to an effective remedy must be rejected.

67 In the second place, it should be noted that, according to settled case-law, a judgment annulling a measure delivered by the Courts of the European Union has the force of *res judicata* with absolute effect as soon as it becomes final. *Res judicata* covers not only the operative part of a judgment annulling a measure but also the grounds which led to the judgment and constitute its essential basis in so far as they are necessary to determine the exact meaning of what is stated in the operative part (judgment of 3 October 2000, *Industrie des poudres sphériques* v *Council*, C-458/98 P, EU:C:2000:531, paragraph 81; see also, to that effect, judgment of 1 July 2009, *ThyssenKrupp Stainless* v *Commission*, T-24/07, EU:T:2009:236, paragraphs 113 and 140). Where, following a judgment upholding an application for annulment, the author of the annulled measure adopts a new measure, he must have regard not only to the operative part of the judgment but also to the grounds which led to the operative part and constitute its essential basis, thereby ensuring that the new measure is not affected

by the same irregularities as those identified in the judgment annulling the original measure (see, to that effect, judgments of 5 September 2014, *Éditions Odile Jacob* v *Commission*, T-471/11, EU:T:2014:739, paragraph 56, and of 6 March 2003, *Interporc* v *Commission*, C-41/00 P, EU:C:2003:125, paragraphs 29 and 30 and the case-law cited).

68 However, the principle of *res judicata* in respect of a judgment extends only to the matters of fact and law actually or necessarily settled (judgment of 19 February 1991, *Italy* v *Commission*, C-281/89, EU:C:1991:59, paragraph 14). Thus, Article 266 TFEU requires the institution, a measure of which has been declared void, only to take the necessary steps to comply with the judgment which annulled that measure. In addition, the institution which adopted the measure may rely, in its new decision, on grounds other than those on which it based its initial decision (see, to that effect, judgment of 6 March 2003, *Interporc* v *Commission*, C-41/00 P, EU:C:2003:125, paragraphs 30 to 32).

69 In the present case, the applicant claims that the Council has breached the principles of *res judicata* and legal certainty by re-entering his name on the lists in question after the Court had annulled the initial inclusion of his name of those lists. However, suffice it to recall that the fact that the Court ruled in the judgment of 13 November 2014, *Kaddour I* (T-654/11, not published, EU:T:2014:947) that the Council had failed to substantiate, to the requisite legal standard, the criteria on the basis of which the initial listing was adopted has no bearing on the validity of the subsequent decisions re-entering and retaining that name on those lists which are based on different criteria and evidence. Contrary to what the applicant claims, in justifying those decisions, the Council relies in the contested measures on a different basis, namely that of being a leading businessperson operating in Syria and association with the Syrian regime.

70 Furthermore, as regards the applicant's claims of breach of the principle of legal certainty, it should be noted that, according to settled case-law, that principle requires that EU legislation must be certain and its application foreseeable by those subject to it (see judgments of 22 June 2006, *Belgium and Forum 187* v *Commission*, C-182/03 and C-217/03, EU:C:2006:416, paragraph 69, and of 14 October 2010, *Nuova Agricast and Cofra* v *Commission*, C-67/09 P, EU:C:2010:607, paragraph 77).

71 In the present case, it must again be pointed out that, following the judgment of 13 November 2014, *Kaddour I* (T-654/11, not published, EU:T:2014:947), the Council was entitled to decide to re-enter the applicant's name on the lists at issue. The Council may, under Article 266 TFEU, correct the irregularities identified in a judgment upholding annulment, following a fresh examination, by adopting a new listing decision on the basis of reasons which are supported to the requisite legal standard. Moreover, the Court maintained the effects of the decision and regulation by which the applicant was initially included in the lists in question until the expiry of the period for bringing an appeal in order to enable the Council to correct in good time the irregularities identified in the judgment in question and to prevent the effectiveness of any fund-freezing measures that might, in the future, be adopted in relation to the applicant from being undermined (judgment of 13 November 2014, *Kaddour I*, T-654/11, not published, EU:T:2014:947, paragraphs 92 and 93).

72 Although the Council did not bring an appeal against the judgment of 13 November 2014, *Kaddour I* (T-654/11, not published, EU:T:2014:947), and it did not take the opportunity afforded by the Court of relisting the applicant within the period for bringing an appeal, which expired on 23 January 2015, those circumstances cannot have caused the applicant to entertain the expectation that he would not be re-listed. First, the fact that no appeal was brought against the judgment could not in any way be interpreted as the Council declining to re-list the applicant, since the Court had expressly stated that it was for the Council to decide on what measures to adopt to comply with that judgment, which might consist in a relisting on the basis of reasons supported to the requisite legal standard. Second, maintaining the effects of the initial listing until the expiry of the period for bringing an appeal was solely intended to prevent the applicant transferring his assets outside the European Union before the Council would be able to correct the irregularities identified in that judgment. However, no obligation

was imposed on the Council to re-list the applicant within that period, a period which may, in certain circumstances, prove to be insufficient for the Council to carry out checks and to correct such irregularities, in particular where, as in the present case, this requires gathering additional evidence.

73 Accordingly, it cannot be claimed that the Council was in breach of the principles of *res judicata* and legal certainty.

74 In the light of the foregoing considerations, the third part of the first plea and the first plea as a whole must be rejected.

The second plea, alleging infringement of Article 266 TFEU

75 The applicant maintains that, under Article 266 TFEU, the Council should have corrected the errors identified by the Court in the judgment of 13 November 2014, *Kaddour I* (T-654/11, not published, EU:T:2014:947), or removed the applicant's name from the lists in question. However, according to the applicant, the Council circumvented that judgment by relisting him on the basis of the same legal criteria, reasons and evidence as that used for the initial listing. He claims that the Council has failed to take the necessary steps pursuant to Article 266 TFEU to remedy the deficiencies found by the Court at the time of that initial listing.

76 The Council disputes the applicant's arguments.

77 Article 266 TFEU provides that an institution of which a measure has been declared void is to be required to take the necessary steps to comply with the judgment annulling that measure.

78 Following the partial annulment of Regulation No 36/2012, of Implementing Regulation No 363/2013 and of Decision 2013/255, it was for the Council to undertake, on the basis of Article 266 TFEU, a re-examination of the facts in order to assess whether that name should be re-listed on the basis of new reasons that are supported to the requisite legal standard (see, to that effect, judgment of 25 June 2015, *Iranian Offshore Engineering & Construction* v *Council*, T-95/14, EU:T:2015:433, paragraph 63 (not published) and the case-law cited).

79 It should be noted, first of all, that, in the judgment of 13 November 2014, *Kaddour I* (T-654/11, not published, EU:T:2014:947), the Court held that the Council had not proved that the applicant had a business relationship with Mr Maher Al-Assad or that he was providing financial support to the Syrian regime and, consequently, it annulled Regulation No 36/2012, Implementing Regulation No 363/2013 and Decision 2013/255, with effect from 23 January 2015 in so far as they concerned the applicant.

80 Next, the Court finds that the second plea is premissed on a misinterpretation of Article 266 TFEU. It must be noted, first, that the removal of the applicant's name from the lists in question is the result of a judgment upholding annulment, under which the annulled measures are retroactively erased from the legal order of the European Union. Second, as is apparent from the case-law cited in paragraph 78 above, Article 266 TFEU does not preclude the Council from re-entering the applicant's name on those lists for reasons other than those on which that name was originally listed.

81 Thus, following the judgment of 13 November 2014, *Kaddour I* (T-654/11, not published, EU:T:2014:947), the Council was entitled to decide to re-enter the applicant's name on the lists in question, as is apparent from paragraphs 72 and 73 above. It is appropriate to recall in that regard that the Court stated in paragraph 93 of that judgment that the Council could remedy the infringements found by a judgment upholding annulment by adopting new restrictive measures against the applicant. Moreover, the Court maintained the effects of the initial listing until the date of

expiry of the period for bringing an appeal in order to enable the Council to remedy in good time the irregularities established in that judgment and to avoid any harm to the effectiveness of any future fund-freezing measures that might be adopted against the applicant.

82 In the contested measures, which retain the applicant's name on the lists in question, the Council applied different criteria and also based its decision on different reasons. First, the summary of reasons for the relisting decision is based on the criterion of being associated with the Syrian regime and benefiting from and supporting it in virtue of Article 28(1) of Decision 2013/255 and Article 15(1) of Regulation No 36/2012 and on the criterion of being a leading businessperson operating in Syria, as referred to in Article 27(2) to Article 28(2)(a) of Decision 2013/255 and in Article 15(1a)(a) of Regulation No 36/2012. Second, since the reasons for which the decision to maintain the measures, namely being a 'leading businessperson operating in Syria, with interests and/or activities in the telecommunications, oil and plastic industry sectors and close business relations with Maher Al-Assad' do not appear in the Regulation No 36/2012, Implementing Regulation No 363/2013 and Decision 2013/255, despite the fact that they concerned the applicant, with effect from 23 January 2015, those reasons were not reviewed by the Court in the judgment of 13 November 2014, *Kaddour I* (T-654/11, not published, EU:T:2014:947).

83 In any event, it should be recalled, as is apparent from paragraph 93 of the judgment of 13 November 2014, *Kaddour I* (T-654/11, not published, EU:T:2014:947), that the Council, in the context of a fresh examination, may include the applicant's name on the lists in question on the basis of reasons substantiated to the requisite legal standard. Accordingly, a decision to retain the applicant's name on those lists adopted for the same reasons as those stated when the applicant was first listed may suffice to justify his relisting provided that the evidence adduced by the Council supports those reasons to the requisite legal standard.

84 The Court finds that the applicant's argument, according to which the Council's new allegations are based on facts, evidence or circumstances which the Court had regarded as insufficient in the judgment of 13 November 2014, *Kaddour I* (T-654/11, not published, EU:T:2014:947), relates more to the substance of the statement of reasons drawn up against the applicant and therefore to the substantive legality of the contested measure. In so far as it is raised in support of the second plea, that argument must therefore be rejected as ineffective.

85 The second plea in law must therefore be rejected.

The third plea, alleging a manifest error of assessment.

86 The applicant submits, first of all, that the Council has retained his name on the lists in question on the basis of the same allegations as those justifying the initial entry of his name on those lists, namely, the financial support he allegedly provides to the Syrian regime (see paragraph 5 above). Next, he claims that the Council has not adduced evidence capable of substantiating the reasons for retaining his name on the lists. Lastly, he denies that he is a leading businessperson operating in Syria.

87 The Council disputes the applicant's arguments.

88 According to settled case-law, the effectiveness of the judicial review guaranteed by Article 47 of the Charter of Fundamental Rights requires, in particular, that as part of the review of the legality of the reasons which are the basis of the decision to enter or to maintain the entry of a given person on the lists of persons subject to sanctions, the Courts of the European Union are to ensure that that decision is taken on a sufficiently solid factual basis. 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

the question whether those reasons, or, at the very least, one of those reasons, deemed sufficient in itself to support that decision, is substantiated (judgment of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 119).

89 It is the task of the competent EU 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, namely that those reasons are not well founded. It is necessary that the information or evidence produced by the authority in question should support the reasons relied on against the person concerned. 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 contested decision to list or maintain a listing (judgment of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraphs 121 to 123).

90 According to the case-law of the Court of Justice, an appraisal of the substance of the reasons for a listing must be carried out by examining the evidence not in isolation but in the context in which it fits (judgments of 21 April 2015, *Anbouba* v *Council*, C-630/13 P, EU:C:2015:247, paragraph 51, and of 21 April 2015, *Anbouba* v *Council*, C-605/13 P, EU:C:2015:248, paragraph 50).

91 Furthermore, in view of the situation in Syria, the Council discharges the burden of proof borne by it if it presents to the Courts of the European Union a sufficiently specific, precise and consistent body of evidence to establish that there is a sufficient link between the person subject to a measure freezing his funds and the regime (judgment of 21 April 2015, *Anbouba* v *Council*, C-630/13 P, EU:C:2015:247, paragraph 53).

92 In the present case, it should be noted that the retention of the applicant's name on the lists in question is based on two distinct reasons, namely, on the one hand, on his status as a leading businessman (criterion of being a leading businessperson operating in Syria) and, on the other, on his close business relations with Mr Maher Al-Assad (criterion of association with the regime). It follows that, according to the view adopted in the contested measures, the applicant benefits from and provides support to the Syrian regime through his business activities (criterion of association with and benefit from the regime).

93 Furthermore, the fact remains that, as has been noted in paragraphs 35 and 36 above, being a leading businessperson operating in Syria constitutes, in accordance with Article 27(2) and Article 28(2) of Decision 2013/255, as amended most recently by Decision 2015/1836, one of the legal criteria for the application of the restrictive measures, and hence for the inclusion of the applicant's name on the lists in question.

94 It is true that under Article 27(3) and Article 28(3) of Decision 2013/255, as applicable in the present case, the names of leading business men and women operating in Syria are not to be included or retained on the list in question if there is sufficient information that those persons are not, or are no longer, associated with the Syrian regime or do not exercise influence over it or do not pose a real risk of circumvention.

95 The applicant submits, in the first place, that the Council wrongly retained his name on the lists in question on the basis of the same reasons as those justifying the initial inclusion of his name on those lists, namely, his association with Mr Maher Al-Assad and the financial support he provides to the Syrian regime.

96 In the present case, it should be noted that, as is apparent from paragraphs 82 and 83 above, the reasons for retaining the applicant's name on the lists in question do not correspond to the reasons for the initial inclusion of that name on those lists. Reasons consisting of being a 'leading businessperson operating in Syria, with interests and/or activities in the telecommunications, oil and plastic industry sectors and close business relations with Maher Al-Assad' differ from those

underlying that initial listing. Thus, not only the criteria for inclusion on those lists, but also the reasons relied on by the Council against him have been amended between, on the one hand, the initial listing and, on the other, the relisting and the retention of the applicant's name on the lists in question.

97 In any event, it should be noted that a decision to retain the applicant's name on the lists in question adopted for the same reasons as those stated when the applicant was first listed may suffice to justify his relisting provided that the evidence adduced by the Council supports those reasons to the requisite legal standard (see, by analogy, judgment of 13 November 2014, *Kaddour I*, T-654/11, not published, EU:T:2014:947, paragraph 93).

98 It is therefore necessary to reject the applicant's argument that the Council wrongly retained the entry of the applicant's name on the lists in question for the same reasons as those justifying the initial entry of that name on those lists.

99 In the second place, the applicant maintains that the Council did not provide any new evidence capable of proving the substance of the reasons for the inclusion of his name on those lists, in particular, his association with Mr Maher Al-Assad and the support he provides to the Syrian regime.

100 As a preliminary point, it should be recalled that, in the judgment of 26 October 2016, *Kaddour II* (T-155/15, not published, EU:T:2016:628), the Court found that the re-entering of the applicant's name on the lists in question was justified since the Council had adduced a body of precise and consistent evidence capable of showing that the applicant still had links with certain key figures of the Syrian regime, such as Mr Maher Al-Assad.

101 Moreover, it should be noted in the present case that in order to justify retaining the applicant's name on the lists in question the Council provided the applicant's legal counsel with COREU document PESC/0049/16 — ST 9478/16 of 20 May 2016 bearing the reference 430/16 to 435/16 RELEX, which consists of several documents, containing publicly accessible information, which were, according to the Council, intended to clarify the general and person context in relation to the applicant. In particular, the COREU document of 20 May 2016 contains an explanation of the new reasons taken into account in respect of the applicant and the information provided in support of that reasoning. That information is comprised, in particular, of links to the websites of the Washington Institute, the Jamestown Foundation, WorldCrunch, *The New York Sun*, *Lebanon Wire*, *Middle East Transparent*, Research on terrorism, by Shabab Kurd, *Ya Libnan* and the Syrian Democratic Union Organisation which publish articles concerning the applicant. The documents bearing the reference 430/16 to 435/16 RELEX contain new press articles cited in the COREU document of 20 May 2016 and published on the websites of Shabab Kurd, *Ya Libnan*, Writingcompany, WorldCrunch and the Syrian Democratic Union Organisation and a credit report of a car and van haulage company, produced in December 2015 by Orbis.

102 The Court finds that, contrary to what the applicant claims, the documents in question contain information from distinct, open, public and varied sources different to those that the Court had identified in the judgment of 26 October 2016, *Kaddour II* (T-155/15, not published, EU:T:2016:628) as constituting a body of evidence capable of justifying the re-entry of the applicant's name on the lists in question. The only similarity between those documents and the material provided by the Council in support of that relisting is that that information corroborates the fact that the applicant was at the heart of the leading economic class in Syria due to management of the affairs of Mr Maher Al-Assad and his undeniable links with the Syrian regime, since he exercises a decisive influence, through his commercial and professional activities, on the inner circle of the leaders of that regime.

103 In particular, the following points should be noted:

– first, the document bearing the reference 433/16 RELEX, namely an article published on 27 March 2005 on the blog Writingcompany concerning the insolvency of a Lebanese bank refers to the applicant as 'the office manager for Lt. Col. Maher Al-Assad'. Similarly, the document bearing the reference 431/16 RELEX, namely an article published on 9 February 2013 on the website of *Ya Libnan*, contains the statement that 'Maher's office manager, Khaled Kaddour, was transferred at no cost a Beirut apartment valued at 2.5 million dollars … to put it under Maher's control';

– next, the document bearing the reference 432/16 RELEX, namely an article published on 26 November 2015 on the website of WorldCrunch, claims that 'the gang of Syrian oligarchs also includes Maher Al-Assad, the president's brother, and his servants Mohammed Hamsho, Samer Debs and Khaled Kaddour' and that 'in exchange for the State's contribution, these industrialists transfer back part of their [profits]';

– furthermore, the document bearing the reference 430/16 RELEX, namely an article published on 27 March 2012 on Shabab Kurd's website, refers to a list of members of 'Maher Al-Assad's private commercial group' describing the applicant as 'the right-hand man of Maher Al-Assad'. In that article, it is also stated that the applicant 'has a plastics factory and a company specialising in munitions procurement abroad';

– in addition, the document bearing the reference 434/16 RELEX, namely an article published on 3 June 2015 on the website of the Syrian Democratic Union Organisation, which is entitled '"The new Syrian mafia" Maher Al-Assad', claims that, 'Maher Al-Assad's corruption outside Syria operates through Mirza Nitham Eddin and her son-in-law, Khaled Nasser Kaddour, who are "the management board" for his business abroad';

– lastly, the document bearing the reference 435/16 RELEX contains a solvency report produced in December 2015 by Orbis concerning a car and van haulage company, belonging to Mr Ayman Jaber and formed in 2010, in which the applicant has a significant holding, namely 40% of the shares in that company.

104 Consequently, the Court finds that, contrary to what the applicant claims, the Council introduced, in the context of the present proceedings, new documents which are relevant for the purpose of substantiating the reasons for retaining the applicant's name on the lists in question.

105 In the third place, the applicant disputes the accuracy of the information contained in the documents at issue and submits that they are devoid of probative value.

106 In that regard, the Court notes, first of all, that the applicant disputes the accuracy of the information contained in the documents in question, but has not adduced any evidence to support that assertion beyond his own testimony annexed to the application.

107 Next, as regards the reliability of the information provided by the Council, the Court notes that, in accordance with settled case-law, the activity of the Court of Justice and of the General Court is governed by the principle of the unfettered assessment of the evidence, and it is only the reliability of the evidence before the Court which is decisive when it comes to the assessment of its value. In addition, in order to assess the probative value of a document, regard should be had to the credibility of the account it contains and, in particular, to the person from whom the document originates, the circumstances in which it came into being, the person to whom it was addressed and whether, on its face, the document appears to be sound and reliable (see, to that effect, judgment of 27 September 2012, *Shell Petroleum and Others* v *Commission*, T-343/06, EU:T:2012:478, paragraph 161 and the case-law cited).

108 It should be observed, as is apparent from paragraph 101 above, that each source of digital information, which is publicly available, provides different information and all of those sources agree, in essence, as to the description of the applicant as a person at the heart of the leading economic class in Syria, having regard to his commercial activities and management of the affairs of Mr Maher Al-Assad, thereby benefiting from the Syrian regime, in particular in the present context of a civil war. Furthermore, it should be noted that that material was published on different dates, even before the onset of the Syrian crisis in the case of certain articles, and that already at that time the applicant was regarded as being associated with Mr Maher Al-Assad.

109 Lastly, that material has not only corroborated the information considered by the Court in the judgment of 26 October 2016, *Kaddour II* (T-155/15, not published, EU:T:2016:628) as a body of specific, precise and consistent evidence capable of proving that the applicant still had links with certain key figures in the Syrian regime, such as Mr Maher Al-Assad, but also provided new, more up-to-date information capable of justifying retention of the applicant's name on the lists in question.

110 In particular, the document bearing the reference 430/16 RELEX, namely an article published on 27 March 2012 on Shabab Kurd's website, describes some of the applicant's commercial activities, inter alia, the fact that he owns 'a plastics factory and a company specialising in munitions procurement abroad'. Furthermore, the document bearing the reference 434/16 RELEX, namely an article published on 3 June 2015 on the website of the Syrian Democratic Union Organisation highlights the applicant's business and family relationship with Mirza Nitham Eddin, namely that the applicant is the brother-in-law of the latter, a relationship which the applicant himself has also recognised in the application. In addition, that article states that the applicant manages Mr Maher Al-Assad's business abroad. Furthermore, the document bearing the reference 435/16 RELEX, namely the solvency report produced in December 2015 by Orbis, highlights that the applicant has a substantial holding in a car and van haulage company belonging to Mr Jaber, a Syrian businessman whose name is also included on the lists in question, which was not called into question by the judgment of 26 October 2016, *Jaber* v *Council* (T-154/15, not published, EU:T:2016:629). In that regard, the applicant merely states, without denying his holding in that company or adducing any evidence to the contrary, that the company has never been active or entered into any commercial transactions. There is therefore no reason to call into question the reliability of that information.

111 It follows that the applicant's arguments calling into question the accuracy of the information contained in those documents and their reliability must be rejected as unfounded.

112 In the fourth place, on the basis of extracts from his own testimony annexed to the application, the applicant disputes the Council's claims relating to the reasons for retaining his name on the lists in question. The applicant also requests the Court 'to consider [his] evidence in full.'

113 In that regard, it should be borne in mind that, although specific points in the text of the application can be supported and completed by references to specific passages in the documents attached, a general reference to other documents, even those annexed to the application, cannot compensate for the lack of essential information in the application. It is not for the Court to seek and identify in the annexes the pleas and arguments on which the applicant may consider the action to be based, since the annexes have a purely evidential and instrumental function (see order of 19 May 2008, *TF1* v *Commission*, T-144/04, EU:T:2008:155, paragraph 29 and the case-law cited, and judgment of 25 October 2012, *Arbos* v *Commission*, T-161/06, not published, EU:T:2012:573, paragraph 23).

114 Consequently, the Court will examine only those extracts from the applicant's testimony which are explicitly mentioned and analysed in the application, since references to his testimony as a whole must be regarded as inadmissible.

115 As regards the extracts from his testimony which are mentioned and analysed in the application, the applicant claims, first of all, that he has no professional or commercial relationship with Mr Maher Al-Assad and that he has never supported or occupied any political post in the government. Next, he maintains that his 'former' wealth and commercial interests were not the result of any advantages or favours received from the Syrian regime but from his own entrepreneurial initiatives (in particular in the tobacco sector). Furthermore, he disputes the existence of any alleged activities in the telecommunications, oil and plastic industry sectors. Moreover, he maintains that he has never held a contract with a government body or received commission in regard to any type of business transaction. Lastly, he contends that he is currently an uninfluential businessman, since his commercial interests were destroyed at the beginning of the war. In support of his testimony, he has produced photocopies of photographs which are intended to show the destruction of his tobacco factory.

116 In that regard, the applicant provides only his testimony and poor quality black-and-white photocopies of photographs of what appears to be a destroyed building without adducing the slightest evidence capable of calling into question the Council's allegations and the material on which it relied in the present case. The applicant could have adduced articles of association, contracts or other documents evidencing his commercial or business activities or even an end to all operations. Moreover, it should be pointed out that this testimony from the applicant himself is only of little probative value.

117 Accordingly, the Court finds that the applicant has not adduced any evidence capable of calling into question the substance of the reasons for the continued inclusion of his name on the lists in question. On the contrary, he has acknowledged, in his pleadings, that he had been a leading businessman in Syria before the outbreak of the war.

118 Furthermore, as has been stated in paragraphs 101, 103, 109 and 110 above, the Council has adduced a series of documents from various sources capable of showing that the applicant was associated with the Syrian regime in place which justified retaining his name on the lists in question.

119 Indeed, it should be recalled that the Council provided to the applicant's legal counsel, in its letters of 30 May and 26 July 2016, a copy of the new documents and particulars (documents COREU of 20 May 2016 bearing the reference PESC/0049/16 — ST-9478/16 and the documents bearing the references 430/16 to 435/16 RELEX) for the continued inclusion of the applicant's name on the lists in question and amendment of the summary of reasons for that listing (see paragraphs 25 and 27 above). This new material contains, first, new evidence and new information concerning the applicant in respect of the evidence already regarded in the judgment of 26 October 2016, *Kaddour II* (T-155/15, not published, EU:T:2016:628) as sufficient to support the reasons relied on by the Council to justify the re-entering of that name on those lists (see paragraphs 101, 103 and 110 above), and, second, information which corroborates the evidence already presented by the Council at the time of that relisting.

120 The Council has also annexed to the defence further press articles from various sources. Those articles assert that the Syrian economic elite was largely composed of entrepreneurs chosen by Mr Bashar Al-Assad and his extended family circle and that this elite prospered by being awarded favours granted by the regime. It should therefore be observed that the Council was entitled to take that evidence into account, not to provide *ex post* reasons for the measures at issue, but as evidence capable of showing, in the light of the context in which those measures were adopted, that the statement of reasons for those measures was sufficient (see, to that effect, judgment of 15 November 2012, *Council* v *Bamba*, C-417/11 P, EU:C:2012:718, paragraph 62).

121 The Court therefore finds that these documents taken as a whole thus form a body of evidence within the meaning of the judgment of 21 April 2015, *Anbouba* v *Council* (C-630/13 P, EU:C:2015:247, paragraph 52), also capable of justifying retention of the applicant's name on the lists in question.

122 It follows from the foregoing that the Council has adduced a body of precise and consistent evidence, within the meaning of the case-law cited in paragraph 91 above, capable of showing that the applicant still had links with certain key figures of the Syrian regime, such as Mr Maher Al-Assad. It must therefore be concluded that the second reason for retaining the applicant's name on the lists in question was sufficiently substantiated.

123 Furthermore, according to the case-law, with regard to a decision adopting restrictive measures, having regard to the preventive nature of such measures, if the Courts of the European Union consider that, at the very least, one of the reasons mentioned 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 that decision (see judgment of 28 November 2013, *Council* v *Manufacturing Support & Procurement Kala Naft*, C-348/12 P, EU:C:2013:776, paragraph 72 and the case-law cited).

124 In the present case, since the second reason for retaining the applicant's name on the lists in question, namely his close business relationship with Mr Maher Al-Assad, has been legitimately substantiated by the Council and is a sufficient basis for inclusion according to the legal criterion laid down by Article 28(1) of Decision 2013/255 and Article 15(1)(a) of Regulation No 36/2012, it is not necessary to examine the substance of the first reason.

125 However, it may be pointed out for the sake of completeness that the Council has provided new evidence intended to show that the applicant was a leading businessman, in particular, evidence of his holding in a plastics factory and a company specialising in munitions procurement abroad and of his 40% shareholding in the capital of a motor vehicle haulage company with Mr Jaber, a leading businessman also included on the lists in question. In addition, in his testimony provided in an annex to the application, the applicant himself acknowledged having been a leading businessman in Syria before the outbreak of the war, but adduced no evidence to suggest that this was no longer the case.

126 As is clear from Article 27(3) and Article 28(3) of Decision 2013/255, the names of leading businesspersons will not be included or retained on the lists of persons appearing in Annex I to that decision if there is sufficient information that they are not, or are no longer, associated with the regime or do not exercise influence over it or do not pose a real risk of circumvention. In that regard, the Court finds that, apart from the applicant's testimony which, as has been stated in paragraph 116 above, cannot be regarded as sufficient evidence, it is not apparent from the case file that the applicant is no longer associated with the regime and therefore the Council did not make an error in including him on the lists in question in accordance with the criterion of being a 'leading businessman' laid down in those provisions.

127 Furthermore, it should be pointed out that the measures provided for in Article 27(2) and Article 28(2) of Decision 2013/255, as last amended by Decision 2015/1836 refer to 'leading businesspersons operating in Syria' and to 'persons associated with them, as listed in Annex I'. However, given that, on the one hand, as is apparent from the judgment of 26 October 2016, *Jaber* v *Council* (T-154/15, not published, EU:T:2016:629, paragraph 109), the Council had adduced sufficient evidence in order to establish that Mr Jaber had been rightly included on the lists in question and, on the other hand, as is apparent from the information provided by the Council, the applicant is associated with Mr Jaber, Mr Kaddour is likely to be associated with the regime within the meaning of Article 27(2) and Article 28(2) of Decision 2013/255. In addition, nothing in the case file is capable of calling that finding into question. On the contrary, as has already been stated, the applicant is associated with Mr Jaber in so far as they are both controlling shareholders each with 40% of the shares in a haulage company.

128 In the light of the foregoing considerations, the Court dismisses the third plea in law, alleging an error of assessment.

The fourth plea, alleging breach of fundamental rights and of the principle of proportionality

129 The applicant claims, in the first place, that the retaining of his name on the lists in question, following the annulment of the initial inclusion of that name on those lists, amounts to a breach of his rights to respect for reputation and to property, which are guaranteed, respectively, by Articles 7 and 17 of the Charter of Fundamental Rights and Articles 1 and 8 of the ECHR. He maintains, in the second place, that the measures taken against him are disproportionate, since, first, the Council has not been able to demonstrate the substance of the reasons laid against him, second, those measures will not affect the Syrian regime because he is not a member of the regime and is not in a position of influence and, third, he and his family have sustained real loss due to those measures.

130 The Council disputes the applicant's arguments.

131 In the first place, as regards the applicant's argument alleging infringement of the right to property, it must be noted that the right to property is one of the general principles of EU law and is enshrined in Article 17 of the Charter of Fundamental Rights (see judgment of 13 September 2013, *Makhlouf* v *Council*, T-383/11, EU:T:2013:431, paragraph 96 and the case-law cited).

132 However, according to settled case-law, the right to property under EU law does not enjoy absolute protection. Consequently, the exercise of that fundamental right may be restricted, provided that those restrictions in fact 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 right so guaranteed (see, to that effect, judgments of 15 November 2012, *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa*, C-539/10 P and C-550/10 P, EU:C:2012:711, paragraph 121, and of 25 June 2015, *Iranian Offshore Engineering & Construction* v *Council*, T-95/14, EU:T:2015:433, paragraph 59 (not published)).

133 It follows that, given the overriding importance of the protection of the civilian population in Syria, the restrictions on the applicant's right to property are not disproportionate (see, to that effect and by analogy, judgment of 13 September 2013, *Makhlouf* v *Council*, T-383/11, EU:T:2013:431, paragraph 106), a fortiori because Decision 2013/255 and Regulation No 36/2012 provide for certain exceptions that allow the persons and entities subject to the restrictive measures to meet essential expenditure.

134 Decision 2013/255 and Regulation No 36/2012 provide for the possibility of authorising the use of frozen funds in order to meet basic needs or to meet certain commitments and of granting specific authorisations permitting the release of funds, other financial assets or other economic resources and of revising periodically the entries in those lists in order to ensure that, where persons or entities no longer meet the necessary criteria for inclusion, those persons or entities are removed from the list in question (see, to that effect, judgment of 13 September 2013, *Makhlouf* v *Council*, T-383/11, EU:T:2013:431, paragraphs 102 and 105).

135 In that regard, it must be pointed out that the applicant has never raised the need for access to all or part of the frozen funds.

136 That argument must therefore be rejected.

137 In the second place, as regards the applicant's argument alleging breach of the right to reputation, it should be noted that that right is not an absolute right and that its exercise may be subject to restrictions justified by objectives of public interest pursued by the European Union. Thus, any restrictive economic or financial measure entails, *ex hypothesi*, consequences affecting the right to reputation of the person or entity subject to that measure, so causing harm to that person or entity. The importance of the aims pursued by the restrictive measures at issue is, however, such as to justify

negative consequences, even of a substantial nature, for the persons or entities concerned (see, to that effect, judgment of 25 March 2015, *Central Bank of Iran* v *Council*, T-563/12, EU:T:2015:187, paragraph 115).

138 Furthermore and in any event, it must be held, as indeed the Council has submitted, that the applicant has adduced no evidence capable of showing that the measures taken against him have harmed his reputation, as a result of which such claims must be rejected.

139 In the third place, as regards the applicant's argument alleging a breach of the principle of proportionality, it is settled case-law that the principle of proportionality is one of the general principles of EU law and requires that measures implemented through provisions of EU law be appropriate for attaining the legitimate objectives pursued by the legislation at issue and must not go beyond what is necessary to achieve those objectives (judgments of 15 November 2012, *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa*, C-539/10 P and C-550/10 P, EU:C:2012:711, paragraph 122; of 25 June 2015, *Iranian Offshore Engineering & Construction* v *Council*, T-95/14, EU:T:2015:433, paragraph 60 (not published); and of 14 March 2017, *Bank Tejarat* v *Council*, T-346/15, not published, EU:T:2017:164, paragraph 149).

140 It is certainly the case that the applicant's rights are to a certain extent curtailed by the restrictive measures adopted against him due to the fact that he cannot, in particular, dispose of any funds that may be situated within the territory of the European Union or transfer his funds to the European Union, except with special authorisation. Likewise, the measures imposed on the applicant may cause his associates and customers to regard him with a certain suspicion or mistrust.

141 However, it is apparent from the examination of the third plea that the Council was entitled to retain the applicant's name on the lists in question on the basis of his working relationship with prominent regime figures, including with Mr Maher Al-Assad. As a result, the applicant must be regarded as a leading businessperson operating in Syria.

142 The decision to retain the applicant's name on the lists in question, in so far as it is based on the criterion relating to the applicant's association with the Syrian regime through his close business relationship with Mr Maher Al-Assad and, therefore, through his support to that regime, is capable of attaining the objective of general interest pursued by the policy of the restrictive measures adopted by the Council, namely, putting an end to the repression of the civilian population in Syria, which has cost the lives of thousands of civilians. That objective forms part of a more general framework of endeavours linked to the maintenance of international peace and security, laid down in Article 21 TEU which refers to provisions of EU external action, and is, therefore, legitimate.

143 As regards the alleged disproportionality in retaining the applicant's name on the lists in question, it must be held, as is clear from paragraphs 133 and 134 above, that Article 28(6) of Decision 2013/255, as amended, provides for the possibility, first, of authorising the use of frozen funds to meet essential needs or to satisfy certain commitments and, second, of granting specific authorisation to unfreeze funds, other financial assets or other economic resources (see, by analogy, judgments of 3 September 2008, *Kadi and Al Barakaat International Foundation* v *Council and Commission*, C-402/05 P and C-415/05 P, EU:C:2008:461, paragraph 364, and of 15 November 2012, *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa*, C-539/10 P and C-550/10 P, EU:C:2012:711, paragraph 127).

144 Furthermore, account should be taken of the fact that retaining the applicant's name on the lists in question cannot be regarded as disproportionate because it is allegedly potentially unlimited in time. The retention of an entry on a list is revised periodically (at least yearly) in order to ensure that, where persons or entities no longer meet the necessary criteria for inclusion, those persons or entities are removed from those lists (see, by analogy, judgments of 3 September 2008, *Kadi and Al Barakaat*

International Foundation v *Council and Commission*, C-402/05 P and C-415/05 P, EU:C:2008:461, paragraph 365, and of 15 November 2012, *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa*, C-539/10 P and C-550/10 P, EU:C:2012:711, paragraph 129).

145 As regards the loss which the applicant claims to have sustained as a result of the continued inclusion of his name on the lists in question and, according to which, his businesses have been destroyed and his life and that of his family are in danger, it should be noted, first of all, that the applicant has not made a claim for damages in his statement of claim.

146 Next, in that regard and in any event, the Court finds that, in order to show that loss has been sustained, the applicant merely advanced his own testimony and poor quality black-and-white photocopies of photographs of what appears to be a destroyed building. The evidence provided by the applicant does not therefore suffice to show that such loss has been sustained.

147 Lastly, the importance of the aims pursued by the contested measures is such as to justify their possible — even substantial — negative consequences for the applicant without that affecting their legality (see, to that effect, judgment of 27 February 2014, *Ezz and Others* v *Council*, T-256/11, EU:T:2014:93, paragraph 191).

148 It follows that, given the overriding importance of the preservation of international peace and security, any restrictions on the applicant's right to property and reputation caused by the contested measures are justified by an objective of general interest and are not disproportionate to the aims pursued.

149 In the light of the foregoing considerations, the Court dismisses the fourth plea, alleging breach of fundamental rights and of the principle of proportionality.

The fifth plea, alleging breach of the principle of non-discrimination

150 The applicant claims that the Council has breached the principle of non-discrimination by treating his continued listing in the same way as those of Mr M. Hamcho and Mr Jaber. He maintains, in this regard, that that principle means that not only must like cases be treated alike but also that unlike cases must be treated differently. According to the applicant, although it is true that he instructed the same legal counsel as Mr M. Hamcho and Mr Jaber, the facts alleged against him and his professional situation are nevertheless completely different to those alleged against Mr M. Hamcho and Mr Jaber.

151 The Council disputes the applicant's arguments.

152 According to the case-law, the principle of equal treatment, which constitutes a fundamental principle of law, prohibits comparable situations from being treated differently or different situations from being treated in the same way, unless such difference in treatment is objectively justified (judgment of 14 October 2009, *Bank Melli Iran* v *Council*, T-390/08, EU:T:2009:401, paragraph 56).

153 In the present case, it should be noted, as was submitted by the Council in its defence, that the contested measures were imposed on the applicant following an individual assessment, based on solid evidence. The reasons and evidence on which the Council relied in order to retain the applicant's name on the lists in question differ, as the Council acknowledged, from the reasons and evidence on which that institution relied in retaining the inclusion of Mr Hamcho and Jaber's names on those lists. It is true that the names of these three persons were included on the lists because of their commercial activities since, although their activities are different, they are benefiting from the Syrian regime and support it (criterion of leading businesspersons operating in Syria). However, nothing suggests that the Council treated the applicant's situation in the same way as that of Mr Hamcho and Mr Jaber.

154 Accordingly, the present plea must be rejected as unfounded.

155 The Court therefore dismisses the fifth plea and, consequently, the action in its entirety.

Costs

156 Under Article 134(1) 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. Since the Council has applied for costs and the applicant has been unsuccessful, the latter must be ordered to bear his own costs and to pay those incurred by the Council.

On those grounds,

THE GENERAL COURT (Fifth Chamber),

hereby:

1. **Dismisses the action;**

2. **Orders Mr Khaled Kaddour to bear his own costs and to pay those incurred by the Council of the European Union.**

Gratsias Labucka Ulloa Rubio

Delivered in open court in Luxembourg on 31 May 2018.

E. Coulon
Registrar

S. Gratsias
President

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