Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber, Extended Composition)

8 March 2023 *

(Common foreign and security policy – Restrictive measures adopted against Syria – Freezing of funds – Errors of assessment – Retroactivity – Legitimate expectations – Legal certainty – Force of *res judicata*)

In Case T-426/21,

Nizar Assaad, residing in Beirut (Lebanon), represented by M. Lester KC, G. Martin and C. Enderby Smith, Solicitors,

applicant,

v

Council of the European Union, represented by T. Haas and M. Bishop, acting as Agents,

defendant,

THE GENERAL COURT (Fourth Chamber, Extended Composition),

composed, at the time of the deliberations, of S. Gervasoni, L. Madise, P. Nihoul, R. Frendo and J. Martín y Pérez de Nanclares (Rapporteur), Judges,

Registrar: I. Kurme, Administrator,

having regard to the written part of the procedure,

further to the hearing on 22 September 2022,

gives the following

Judgment

1 By his action under Article 263 TFEU, the applicant, Mr Nizar Assaad, seeks annulment of Council Implementing Decision (CFSP) 2021/751 of 6 May 2021 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2021 L 160, p. 115), Council Implementing Regulation (EU) 2021/743 of 6 May 2021 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2021 L 160,

* Language of the case: English.

p. 1), Council Decision (CFSP) 2022/849 of 30 May 2022 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2022 L 148, p. 52), and Council Implementing Regulation (EU) 2022/840 of 30 May 2022 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2022 L 148, p. 8), in so far as those measures concern the applicant.

I. Background to the dispute and events subsequent to the bringing of the action

2 The applicant is a businessperson who holds Syrian, Lebanese and Canadian nationalities.

3 Strongly condemning the violent repression of peaceful protest in Syria and calling on the Syrian authorities to exercise restraint instead of force, the Council of the European Union adopted, under Article 29 TEU, Decision 2011/273/CFSP of 9 May 2011 concerning restrictive measures against Syria (OJ 2011 L 121, p. 11). In view of the seriousness of the situation, the Council imposed an arms embargo, a ban on exports of material which might be used for internal repression, restrictions on admission to the European Union and the freezing of funds and economic resources of certain persons and entities responsible for the violent repression against the Syrian civilian population.

4 The names of the persons responsible for the violent repression against the Syrian civilian population and of the persons, natural or legal, and entities associated with them are listed in the Annex to Decision 2011/273. According to 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 included in that annex when that decision was adopted.

5 Since some of the restrictive measures against the Syrian Arab Republic fall within the scope of the FEU Treaty, the Council adopted, on the basis of Article 215(2) TFEU, 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). The content of that regulation is largely identical to that of Decision 2011/273 but provides for the release of frozen funds in certain circumstances. The list of persons, entities and bodies identified as being either responsible for the repression in question or associated with those responsible, set out in Annex II to that regulation, is identical to the list in the annex to Decision 2011/273. Under Article 14(1) and (4) of Regulation No 442/2011, where the Council decides to subject a natural or legal person, entity or body to the restrictive measures referred to, it is to amend Annex II accordingly and, furthermore, to review the list in that annex at regular intervals and at least every 12 months.

6 By Council Implementing Decision 2011/515/CFSP of 23 August 2011 implementing Decision 2011/273 (OJ 2011 L 218, p. 20) and Council Implementing Regulation (EU) No 843/2011 of 23 August 2011 implementing Regulation No 442/2011 (OJ 2011 L 218, p. 1) ('the 2011 measures'), the name of Mr Nizar Al-Assaad was added in line 3 of the list in Annex I, Section A (Persons) of Decision 2011/273 and in line 3 of the list in Annex II of Regulation No 442/2011 ('the 2011 lists').

7 First, no identifying information relating to Mr Nizar Al-Assaad had been given in the 2011 lists. Second, the reasons for listing were as follows:

'Very close to key government officials. Financing Shabiha in the region of Latakia.'

8 By letter of 16 September 2011, the applicant's representatives addressed a letter to the Council in which they claimed that the applicant's name, which they thought was included in line 3 of the 2011 lists, had been transcribed incorrectly. They maintained that the applicant's name was 'Nizar Assaad' and not 'Nizar Al-Assaad'. On that occasion, they stated that the applicant's Arabic name was أسعد, which is different from that of President Bashar Al-Assad, namely الأسد. Lastly, they requested access to the Council's file and the delisting of the applicant's name from the 2011 lists. By letter of 13 October 2011, they again wrote to the Council asking it to take a position on their letter of 16 September 2011.

9 On 19 October 2011, the applicant brought an action before the Court seeking, inter alia, annulment of the 2011 measures in so far as those measures concerned him. That action was entered in the Register of the General Court as Case T-550/11.

10 By letter of 27 October 2011, the applicant's representatives wrote to the Council again. By letter of 28 October 2011, the Council replied to them, stating that the applicant was not the person referred to by the 2011 lists and that that person was President Bashar Al-Assad's cousin.

11 By letter of 3 November 2011, the applicant's representatives asked the Council to correct the data identifying the person referred to in line 3 of the 2011 lists and to send a letter to the Court explaining, in essence, the correct position with regard to the applicant.

12 On 14 November 2011, the Council adopted Decision 2011/735/CFSP amending Decision 2011/273 (OJ 2011 L 296, p. 53) and Regulation (EU) No 1150/2011 amending Regulation No 442/2011 (OJ 2011 L 296, p. 1) ('the measures of November 2011'), by which the entries relating to the name and identifying information of the person whose name was included in line 3 of the 2011 lists were amended to add, respectively, his Arabic name, that is, نزار الأسد, and the following information: 'Cousin of Bashar Al-Assad; previously head of the company "Nizar Oilfield Supplies"'. Moreover, the name in Latin characters was given as 'Nizar Al-Assad'.

13 By letter of 15 November 2011, the Council informed the applicant's representatives of the adoption of the measures referred to in paragraph 12 above and specified that the applicant was not designated by the 2011 measures.

14 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, in view of the gravity of the situation in Syria, to impose additional restrictive measures. For the sake of clarity, the measures imposed by Decision 2011/273 were grouped together with the additional measures into a single legal instrument. Decision 2011/782 provides, in Article 18 thereof, for restrictions on the persons whose names are listed in Annex I from being admitted to the territory of the European Union and, in Article 19, for the funds and economic resources of the persons and entities whose names are listed in Annexes I and II to be frozen.

15 On 21 December 2011, the Council submitted to the Court a plea of inadmissibility, pursuant to Article 114(4) and (7) of the Rules of Procedure of the General Court of 2 May 1991, as amended on 19 June 2013, on the ground that the applicant had no legal interest in bringing proceedings.

16 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 (OJ 2012 L 16, p. 1).

17 By order of 24 May 2012, *Assaad* v *Council* (T-550/11, not published, EU:T:2012:266), the Court dismissed the applicant's application as inadmissible since, as he was not the person referred to in the 2011 lists, he had no legal interest in bringing proceedings.

18 Decision 2011/782 was replaced by Council Decision 2012/739/CFSP of 29 November 2012 concerning restrictive measures against Syria (OJ 2012 L 330, p. 21).

19 On 22 April 2013, the Council adopted Implementing Decision 2013/185/CFSP implementing Decision 2012/739 (OJ 2013 L 111, p. 77) and Implementing Regulation (EU) No 363/2013 implementing Regulation No 36/2012 (OJ 2013 L 111, p. 1). Those measures amended the references to the name of the person referred to in line 3 of the 2011 lists and his identifying information. That entry was now in entry 36 of the list in Annex I, Section A (Persons) to Decision 2012/739 and in entry 36 of the list in Annex II, Section A (Persons) to Regulation No 36/2012 (together, 'the 2013 lists').

20 First, as regards the name of the person concerned, the following was stated:'Nizar (رازن) Al-Assad (دعسألا) (a.k.a Al-Assaad, Al-Assad, Al-Asaad)'

21 Second, as regards the identifying information, it was stated that the person concerned was 'previously head of the Nizar Oilfield Supplies company'.

22 However, the reasons for listing remained identical to those of the 2011 measures.

23 By letter of 25 April 2013, the applicant's representatives requested that the Council remove the references to 'Assaad' and 'Al-Assaad' and the applicant's name in Arabic characters, which they said was misspelled, and that it also include a reference stating that the person whose name was included in the 2013 lists was Bashar Al-Assad's cousin.

24 On 4 May 2013, the Council published a corrigendum to the measures referred to in paragraph 19 above (OJ 2013 L 123, p. 28) by which the references to the name and identifying information of the person whose name was included in entry 36 of the 2013 lists were amended in order, first, to remove the names 'Al-Assaad', 'Al-Assad' and 'Al-Asaad', and also to replace the Arabic names contained therein with the Arabic name نزار الأسد and, second, to add the following information: 'Cousin of Bashar Al-Assad'.

25 Decision 2012/739 was replaced by Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria (OJ 2013 L 147, p. 14).

26 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) 2015/1828 amending Regulation No 36/2012 (OJ 2015 L 266, p. 1).

27 The wording of Articles 27 and 28 of Decision 2013/255 was amended by Decision 2015/1836. Those articles now provide for restrictions on the entry into, or transit through, the territory of the Member States and for the freezing of the funds of persons who are associated with the categories of person referred to in paragraph 2(a) to (g) of those articles, 'as listed in Annex I', unless 'there is sufficient information that [those persons] 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'.

28 Regulation 2015/1828 amended, inter alia, the wording of Article 15 of Regulation No 36/2012 in order to include the new listing criteria established by Decision 2015/1836 and introduced in Decision 2013/255.

29 On 28 May 2018, the Council adopted Decision (CFSP) 2018/778 amending Decision 2013/255 (OJ 2018 L 131, p. 16) and Implementing Regulation (EU) 2018/774 implementing Regulation No 36/2012 (OJ 2018 L 131, p. 1). Those measures amended the references relating to the name of the person referred to in entry 36 of the list in Annex I, Section A (Persons) to Decision 2013/255 and in entry 36 of the list in Annex II, Section A (Persons) to Regulation No 36/2012 (together, 'the lists at issue') as follows: 'Nizar (نزار) al-Asaad (الأسعد) (a.k.a Nizar Asaad)'. The identifying information and the reasons for listing were the same as those in the 2011 measures.

30 On 17 May 2019, the Council adopted Decision (CFSP) 2019/806 amending Decision 2013/255 (OJ 2019 L 132, p. 36) and Implementing Regulation (EU) 2019/798 implementing Regulation No 36/2012 (OJ 2019 L 132, p. 1) (together, 'the 2019 measures'). The 2019 measures amended the identifying information relating to the person referred to in entry 36 of the lists at issue and the reasons for listing his name.

31 First, regarding the identifying information, reference was now made only to the fact that the person concerned was male.

32 Second, the reasons for listing were amended as follows:

'Leading Syrian businessperson with close ties to the regime. Cousin of Bashar Al-Assad and associated with the Assad and Makhlouf families.

As such, has been participating in, benefiting from or otherwise supporting the Syrian regime.

Leading oil investor and previously head of the "Nizar Oilfield Supplies" company.'

33 On 11 September 2019, the Council published a corrigendum to the 2019 measures (OJ 2019 L 234, p. 31; 'the 2019 corrigendum'), by which it amended the references relating to the name of the person referred to in entry 36 of the lists at issue. These now referred to 'Nizar (نزار) Al-Assad (الأسد) (a.k.a Al-Asad; Assad; Asad)'.

34 On 28 May 2020, the Council adopted Decision (CFSP) 2020/719 amending Decision 2013/255 (OJ 2020 L 168, p. 66) and Implementing Regulation (EU) 2020/716 implementing Regulation No 36/2012 (OJ 2020 L 168, p. 1). Those measures amended the entry relating to the name of the person referred to in entry 36 of the lists at issue as follows: 'Nizar (نزار) AL-ASSAD (الأسد) (a.k.a al-Asad; Assad; Asad)'. The reasons for listing are the same as those of the 2019 measures.

35 By letter of 23 June 2020, the applicant's representatives, referring to the measures mentioned in paragraphs 29, 30 and 34 above, requested that the Council confirm that the applicant's name was not included on the lists at issue ('the letter of 23 June 2020').

36 By letter of 12 February 2021, the Council informed the applicant's representatives that it considered, after reviewing the information on its file, that the applicant was indeed the person referred to in entry 36 of the lists at issue ('the letter of 12 February 2021'). In the same letter, it informed the applicant's representatives that it intended to maintain the restrictive measures against the applicant with a new statement of reasons clarifying that he is indeed the person

mentioned in entry 36 of the lists at issue. Attached to that letter, the Council forwarded documents WK 4069/2019 INIT, of 21 March 2019, and WK 985/2021 INIT, of 22 January 2021. It asked those representatives to submit their observations by 26 February 2021 at the latest.

37 By letter of 26 February 2021, the applicant's representatives submitted their observations to the Council. In essence, they criticised the Council for altering its position with regard to the applicant whom it now regarded as being the person referred to in entry 36 of the lists at issue. They also commented on the reasons for listing and the information contained in documents WK 4069/2019 INIT and WK 985/2021 INIT. Lastly, they annexed to their letter a number of letters from persons and an entity commenting on the applicant's situation.

38 On 6 May 2021, the Council adopted Implementing Decision 2021/751 and Implementing Regulation 2021/743 (together referred to as 'the 2021 measures').

39 First, as regards the applicant's name, it is stated that this is 'Nizar AL-ASSAD (a.k.a al-Asad, Assad, Asad, Assaad, Asaad, Al-Assaad) (نزار الأسد; الأسعد; أسعد)'.

40 Second, as regards the identifying information, it is stated that the date of birth of the applicant, who is male, is 2 March 1948, or 23 March 1948 or March 1948. His nationalities are Syrian, Lebanese and Canadian. The numbers of the applicant's Syrian (No 011090258), Lebanese (RL 0003434) and Canadian (AG 629220) passports are also specified.

41 Lastly, the reasons for listing are worded as follows:

'Leading Syrian businessperson with close ties to the regime. Associated with the Assad and Makhlouf families.

As such, he has been participating in, benefitting from or otherwise supporting the Syrian regime.

Leading oil investor, founder and head of the Lead Contracting & Trading Ltd company.'

42 By letter of 7 May 2021, the Council informed the applicant's representatives that it considered that none of the arguments they had raised cast doubts on its assessment. It also drew their attention to the possibility of submitting further observations before 1 March 2022.

43 By letter of 28 May 2021, the Council informed the applicant's representatives that his name would continue to be included in the lists at issue, also after reviewing the lists.

44 By application lodged at the Court Registry on 14 July 2021, the applicant brought the present action.

45 By letter of 13 April 2022, the Council informed the applicant's representatives of its intention to maintain the restrictive measures against him, by amending the reasons referred to in the 2021 measures in order to add to the end thereof: 'Majority shareholder of the company Syrian Olive Oil Private JSC, producer of edible oils based in Syria'.

46 As an annex to its letter of 13 April 2022, the Council communicated to the applicant's representatives document WK 5366/2022 INIT of 11 April 2022 and gave them the opportunity to submit their observations, on the new reason for listing and document WK 5366/2022 INIT, by 29 April 2022.

47 By letter of 28 April 2022, the applicant's representatives submitted their observations to the Council.

48 On 30 May 2022, the Council adopted Decision 2022/849 and Implementing Regulation 2022/840 (together referred to as 'the 2022 retention measures'). Pursuant to Decision 2022/849, the application of Decision 2013/255 was extended until 1 June 2023. The applicant's name was maintained in entry 36 of Section A (Persons) of the lists at issue. The Council justified the adoption of restrictive measures against the applicant by referring to reasons identical to those relied on in the 2021 measures.

II. Forms of order sought

49 The applicant claims that the Court should:

– annul the 2021 measures and the 2022 retention measures (together, 'the contested measures') in so far as they apply to the applicant;

– order the Council to pay the costs.

50 The Council contends that the Court should:

– dismiss the action;

– order the applicant to pay the costs;

– in the alternative, should the Court annul the contested measures, order that the effects of Decision 2022/849 be maintained as regards the applicant until the partial annulment of Implementing Regulation 2022/840 takes effect.

III. Law

51 In support of his application, the applicant raises five pleas in law alleging (i) errors of assessment, (ii) breach of the principle of protection of legitimate expectations, (iii) breach of the principle of legal certainty, (iv) 'abuse/misuse of powers', and (v) infringement of the force of *res judicata*.

52 It is appropriate to examine the second and third pleas together, inasmuch as the principle of the protection of legitimate expectations is a corollary to the principle of legal certainty (see judgment of 12 April 2013, *Du Pont de Nemours (France) and Others* v *Commission*, T-31/07, not published, EU:T:2013:167, paragraph 301 and the case-law cited). Furthermore, those two pleas are rooted in the same premiss, namely that the contested measures have retroactive effect in the sense that, according to the applicant, they establish for the first time that he has been the person named in entry 36 since the adoption of the 2011 measures.

53 Before examining those pleas, it is necessary to clarify the subject matter of the present action and rule on the admissibility of the evidence submitted by the applicant in his reply.

A. The subject matter and scope of the present action

54 By his action, the applicant seeks only the annulment of the 2021 measures and the 2022 retention measures, in so far as they concern him.

55 It should be recalled that the applicant is indeed the person concerned by the contested measures, and it is not disputed that he has been subject to restrictive measures since, at the very least, the adoption of those measures. However, the parties disagree as to whether the applicant was subject to restrictive measures before the adoption of the 2021 measures.

56 In that regard, the applicant essentially takes the view that he was not subject to such measures, as the Council acknowledged on numerous occasions before the letter of 12 February 2021 was sent. The Council, for its part, takes the view that it erred in considering that the applicant was not the person referred to in entry 36 of the lists at issue when, in reality, this was in fact the applicant, and indeed had been since the adoption of the 2011 measures. In those circumstances, the Council intended, by means of the 2021 measures, to clarify the information identifying the person referred to in entry 36 of the lists at issue and to amend the reasons for listing so that it should be clear therefrom that the person listed was the applicant and that his name had been included on the lists at issue since the 2011 measures. The applicant infers from this that the contested measures have retroactive effect, which the Council disputes.

57 First, it is therefore necessary to examine whether the reasons for listing contained in the contested measures are sufficiently substantiated. That will be analysed in the context of the first plea in law, alleging errors of assessment. Second, it is necessary to examine the potentially retroactive effect of the contested measures, which will be examined in the second and third pleas in law, taken together, alleging breach of the principle of the protection of legitimate expectations and breach of the principle of legal certainty, respectively.

58 It is clear, however, from paragraphs 49 and 54 above that the question of the lawfulness of the measures adopted prior to the contested measures is not the subject of the proceedings before the Court. In other words, it is not a matter of ascertaining whether the reasons for listing set out in those measures are substantiated to the requisite legal standard, or even whether the identifying information contained in those measures is sufficiently detailed as to establish that the applicant is actually the person concerned by those measures.

B. The admissibility of the evidence submitted by the applicant in his reply

59 The Council submits that most of the certificates produced by the applicant relating to his business interests in undertakings such as Lead Contracting and Trade Company ('Lead Syria in Liquidation'), Lead Contracting and Trading Limited ('Lead UAE'), Gulfsands Petroleum and Cham Holding predate the application, and that the applicant has failed to justify the delay in submitting those documents.

60 When questioned at the hearing, the applicant stated, in essence, that the Council had failed to specify which of the documents annexed to the reply it regarded as being out of time. In any event, the applicant maintains that the documents annexed to the reply were submitted in response to the arguments put forward by the Council in the defence.

61 It should be recalled that Article 85(1) of the Rules of Procedure provides that evidence produced or offered is to be submitted in the first exchange of pleadings. Article 85(2) adds that in reply or rejoinder a party may produce or offer further evidence in support of its arguments, provided that the delay in the submission of such evidence is justified. In the latter case, in accordance with Article 85(4), the Court is to rule on the admissibility of the evidence produced or offered after the other parties have been given an opportunity to comment on such evidence (judgment of 13 December 2018, *Post Bank Iran* v *Council*, T-559/15, EU:T:2018:948, paragraph 74).

62 Furthermore, Article 85(2) of the Rules of Procedure must be read in the light of Article 92(7) of those rules, which expressly provides that evidence may be submitted in rebuttal and previous evidence may be amplified. Consequently, as is apparent from settled case-law, evidence in rebuttal and the amplification of offers of evidence submitted in response to evidence in rebuttal from the opposite party are not covered by the time-bar rule laid down in Article 85(2) of those rules (see judgment of 18 September 2017, *Uganda Commercial Impex* v *Council*, T-107/15 and T-347/15, not published, EU:T:2017:628, paragraph 72 and the case-law cited).

63 In the present case, it should be observed, as the applicant does, that the Council has not compiled an exact list of the documents annexed to the reply which it regards as out of time. Nevertheless, having regard to the undertakings mentioned in paragraph 59 above, it must be held that the Council refers to Annexes C.4 to C.6 (relating to Lead Contracting and Trade Company), C.8 to C.10 (relating to Lead Contracting and Trading Limited), C.11 and C.14 (relating to Gulfsands Petroleum) and Annex C.16 (relating to Cham Holding).

64 It should be observed that the Council stated, in paragraph 79 of the defence, that the applicant had neither provided a single certificate of the winding up of any of the undertakings linked to him, nor submitted a certificate of sale for any of the shares he held in those undertakings. Furthermore, in paragraphs 80 to 83 of the defence, the Council disputed the probative value of the letters from third parties annexed by the applicant to his application and seeking to demonstrate that he no longer had business interests in Syria.

65 Thus, the applicant's evidence, by which he seeks to show that he no longer has interests in the companies referred to in paragraph 59 above, was produced in order to respond to the Council's arguments.

66 Similarly, the other evidence submitted by the applicant in annex to the reply – the admissibility of which is not, moreover, disputed by the Council – is intended to support the arguments which the applicant presented in response to those put forward in the defence submitted by the Council and recalled in paragraph 64 above.

67 In those circumstances, it must be held that all the evidence submitted by the applicant in annex to the reply is intended to respond to the Council's arguments submitted in the defence and is, therefore, admissible.

C. The first plea, alleging errors of assessment

68 The applicant claims, in essence, that the Council erred in including his name on the lists at issue, since he does not fall within any of the listing criteria. In that regard, he claims that, while he has in the past been a businessperson in Syria, he is currently no longer active in that country. Similarly, he claims not to have any links with either the Assad or the Makhlouf families. Lastly, he claims not to be associated with the Syrian regime.

69 The Council disputes the applicant's arguments and contends, in essence, that it has demonstrated that the reasons for listing are well founded.

1. Preliminary observations

70 It should be recalled that the effectiveness of the judicial review guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union requires, in particular, that the Courts of the Union ensure that the decision by which restrictive measures were adopted or maintained, which has an individual scope for the person or entity concerned, rests on a sufficiently sound 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 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).

71 It is for the Courts of the European Union, in order to carry out that examination, to request the competent EU authority, when necessary, to produce information or evidence, confidential or not, relevant to such an examination (see 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 120 and the case-law cited).

72 It is the task of the competent EU authority to establish, in the event of challenge, that the reasons relied on against the person or entity concerned are well founded, and not the task of that person or entity to adduce evidence of the negative, that those reasons are not well founded (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 121).

73 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 measure in respect of which annulment is sought. It is however necessary that the information or evidence produced should support the reasons relied on against the person or entity concerned (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 122).

74 If the competent EU authority provides relevant information or evidence, the EU judicature 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 or entity concerned (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 124).

75 In accordance with the case-law of the Court of Justice, the assessment as to whether a listing was well founded must be carried out by examining the evidence not in isolation, but in the context in which it fits (see, to that effect, 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).

76 Lastly, in carrying out the assessment of the importance of what was at stake, which forms part of the review of the proportionality of the restrictive measures at issue, account may be taken of the context of those measures, of the fact that there was an urgent need to adopt such measures

intended to put pressure on the Syrian regime to stop the violent repression against the population and of the difficulty of obtaining more specific evidence in a State at civil war and having an authoritarian regime (judgment of 21 April 2015, *Anbouba* v *Council*, C-605/13 P, EU:C:2015:248, paragraph 46).

77 The first plea must be examined in the light of those considerations.

2. The reasons for listing and the determination of listing criteria

78 It should be borne in mind that the general listing criteria laid down in Article 27(1) and Article 28(1) of Decision 2013/255, as amended by Decision 2015/1836, which are reproduced, as regards the freezing of funds, in Article 15(1)(a) of Regulation No 36/2012, as amended by Regulation 2015/1828, provide that persons and entities benefiting from or supporting the Syrian regime are to be subject to restrictive measures. Similarly, Article 27(2)(a) and (3) and Article 28(2)(a) and (3) of that decision, which are reproduced, as regards the freezing of funds, in Article 15(1a)(a) and (1b) of that regulation, provide that the category of 'leading businesspersons operating in Syria' is to be subject to restrictive measures, unless there is sufficient information that they 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. Lastly, the final sentence of Article 27(2), Article 27(3), the final sentence of Article 28(2) and Article 28(3) of that decision, reproduced, as regards the freezing of funds, in the last sentence of Article 15(1a) and Article 15(1b) of that regulation, provide that persons and entities associated with persons, entities and bodies covered by one of the listing criteria are to be subject to restrictive measures, unless there is sufficient information that they 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.

79 As has been mentioned in paragraph 41 above, the reasons for including the applicant's name on the lists at issue are as follows:

'Leading Syrian businessperson with close ties to the regime. Associated with the Assad and Makhlouf families.

As such, he has been participating in, benefiting from or otherwise supporting the Syrian regime.

Leading oil investor, founder and head of the Lead Contracting & Trading Ltd company.'

80 It must be inferred from the reasons for including the applicant's name on the lists at issue that the latter was included by reason of (i) his status as a leading businessperson operating in Syria, in accordance with the criterion defined in Article 27(2)(a) and Article 28(2)(a) of Decision 2013/255, as amended by Decision 2015/1836, reproduced, as regards the freezing of funds, in Article 15(1a)(a) of Regulation No 36/2012, as amended by Regulation 2015/1828 ('leading businesspersons operating in Syria' criterion), (ii) his links with the Syrian regime, in accordance with the criterion defined in Article 27(1) and Article 28(1) of that decision and in Article 15(1)(a) of that regulation ('association with the regime' criterion), and (iii) his links with members of the Assad and Makhlouf families, in accordance with the criterion laid down in the final sentence of Article 27(2) and the final sentence of Article 28(2) of that decision and in the final sentence of Article 15(1a) of that regulation ('association with persons or entities subject to restrictive measures' criterion).

3. The evidence

81 In order to justify the inclusion of the applicant's name on the lists at issue, the Council produced the document bearing the reference WK 4069/2019 INIT, which contained publicly available information, namely links to websites, press articles and screenshots from:

– the *Syrian Oil & Gas News* website which, in a publication dated 31 July 2010, shows a photograph of the applicant and describes him as a businessperson who has made significant investments in Syria, in particular through Lead Syria in Liquidation, in partnership with Mr Ghassan Muhanna; according to this publication, that company is one of the oldest and largest construction companies in the Syrian oil sector; that publication also states that the applicant is a partner in the Asaad Beitenjaneh & Partners Company for Processing & Refining Edible Oils, which is active in oil production, and that he is at the head of the Syrian branch of the Syrian-Algerian Chamber of Commerce, and a member of the Syrian National Committee of the International Chamber of Commerce Syria; that publication refers, lastly, to the projects and companies in which the applicant was involved, namely Cham Holding, United Insurance Company, Al Badia Cement JSC, Bank Audi Syria, Syrian Arab Insurance Company, Aqeelah Takaful Insurance Company, Dajajouna, and the fact that he owns a stable of Arabian thoroughbred horses;

– the *Aks al Ser* website, which, in a publication of 6 September 2012, states that, according to a source close the applicant, the applicant fled Syria, taking millions of dollars with him, for Algeria where he has huge projects and investments in the oil and gas sectors; that publication reports that, according to that source, the applicant began to liquidate his financial assets and withdraw his money from the banks after the bombing of the Syrian National Security headquarters; that publication also describes the applicant as one of the biggest investors in the Syrian oil sector and that he is known as that sector's central 'kingpin' in the business world; that publication also states that the applicant owns shares in Cham Holding, is one of the founders of Bank Audi Syria, and is a partner in Al Badia Cement and in Lead Syria in Liquidation; lastly, that publication states that the applicant belongs to a group of businessmen that benefits from the Syrian regime, and that he has extensive relations within decision-making circles, mediating between the Syrian regime and other countries to extract oil;

– the *Dawdaa* website which, in a publication dated 2 November 2017, states that there are unconfirmed reports of a schism between the Syrian regime and the applicant, who is in charge of oil-related issues; that publication also states that the applicant is not a member of the Assad family but remains close to it thanks to his responsibilities; that publication states, lastly, that the applicant is a business partner of Mr Ghassan Muhanna, the uncle of Mr Rami Makhlouf, in their company Lead Syria in Liquidation;

– the *Syriano* website which, in a publication dated 22 January 2015, states that the applicant owns 50% of Lead Syria in Liquidation and that the other share is held by Mr Ghassan Muhanna on behalf of Mr Mohammed Makhlouf, of whom he is the brother-in-law;

– from the *Orient News* website which, in an article of 2 February 2015, describes the applicant as the 'godfather' of the Syrian oil sector and as having participated in the 'oil-for-food' alliance in collaboration with Mr Maher Al-Assad, the brother of President Bashar Al-Assad;

– the *Ayn Almadina* website which, in an article of 22 July 2018, relates the applicant's rise, from his humble origins to his status as a wealthy businessman in the petroleum sector, which he owes to his links with his cousin, Mr Mohammed Makhlouf; that article also indicates that the applicant holds Canadian nationality and recently acquired Lebanese nationality; it is also stated that the applicant founded Lead Syria in Liquidation with Mr Mohammed Makhlouf and the latter's brother-in-law, Mr Ghassan Muhanna; that article states, lastly, that the applicant's mother, Ms Jamila Muhanna, is the cousin of the wife of Mr Mohammed Makhlouf.

82 The Council also provided document WK 985/2021 INIT. That document contains a first part, divided into three headings, providing information identifying the applicant, giving a presentation of the latter, along with a description of his ties to the Syrian regime and explaining variations in the spelling of the applicant's surname. Furthermore, as exhibit No 3, the Council provides a photocopy of the applicant's passports and identity documents. His Lebanese, Syrian and Canadian passports, together with his residence visa in the United Arab Emirates, are reproduced naming him as a director of Lead UAE. Exhibit No 4 is a certificate relating to Lead UAE dated 17 September 2018. Lastly, the document reproduces links, press articles and screenshots. Of those items, four of them are identical to those contained in document WK 4069/2019 INIT, namely publications from the *Syriano* and *Dawdaa* websites and press articles from the *Orient News* and *Ayn Almadina* websites. As to the other exhibits, these are comprised of information drawn from:

– the *Syrian Oil & Gas News* website, which, in a publication dated 2 August 2010, reproduces the same information as the post published on that website on 31 July 2010, and adds that the applicant is a partner in the entity Asaad Beitenjaneh Partners Company for Syrian Olive Oil;

– the *Al-Iqtisadi* website which, on a page viewed on 21 January 2020, describes the applicant as the founder and chairman of Lead UAE, registered in the Jebel Ali Free Zone in the United Arab Emirates;

– the *Al Khaleej Online* website which, in an article entitled 'Who steals the Syrian oil?' dated 8 November 2019, also published on the *Anadolu Arabic* website on 7 November 2019 under a different title, states that billions of dollars from oil sales made through undertakings such as Lead Syria in Liquidation, based in Damascus (Syria), went through the Assad family's account; Lead Syria in Liquidation is jointly held by Mr Mohammed Makhlouf and his relative Mr Nizar Asaad; Mr Mohammed Makhlouf registered his stake under the name of his wife's brother, Mr Ghassan Muhanna;

– the *Al Hewar* website which, in an article of 14 May 2014 entitled 'Looting of the Funds and wealth of the Syrian people under the rule of the Al-Assad family, coalition administration, and the interim government (in number and facts)', states that the applicant, as a relative of Mr Mohammed Makhlouf, established Lead Syria in Liquidation in the oil industry to the benefit of the Assad family;

– a book entitled 'The Political Economy of Investments in Syria', published in 2015, which states that, according to an article of 2 July 2007 published on the website *The Syria Report*, the applicant, an important businessman, is the CEO and main shareholder of Lead Syria in Liquidation, the country's largest oil field services firm and, together with Mr Rami Makhlouf, invested 23.2 million United States dollars (USD) (approximately EUR 17.23 million) in Gulfsands Petroleum, a UK-based oil company that conducts operations in Syria.

4. The reliability and relevance of the evidence

83 The applicant calls into question the reliability and relevance of the evidence submitted by the Council in order to substantiate the merits of the reasons for listing.

84 In the first place, as regards the reliability of the evidence submitted by the Council, it should be recalled, on the one hand, that in carrying out the assessment of the importance of what was at stake, which forms part of the review of the proportionality of the restrictive measures at issue, account may be taken of the context of those measures, of the fact that there was an urgent need to adopt such measures intended to put pressure on the Syrian regime in order for it to stop the violent repression against the population, and of the difficulty in obtaining more specific evidence in a State at civil war and having an authoritarian regime (see judgment of 14 April 2021, *Al-Tarazi* v *Council*, T-260/19, not published, EU:T:2021:187, paragraph 71 and the case-law cited).

85 On the other hand, 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 evaluation of evidence, and the only criterion for assessing the value of the evidence produced is its credibility Furthermore, in order to assess the probative value of a document, it is necessary to verify the plausibility of the information contained therein and to take into account, in particular, the origin of the document, the circumstances in which it was drawn up, its addressee and whether, on the basis of its content, it appears to be sound and reliable (see judgment of 14 April 2021, *Al-Tarazi* v *Council*, T-260/19, not published, EU:T:2021:187, paragraph 72 and the case-law cited).

86 It must be stated that the applicant merely alleges that the Council's evidence consists of hearsay reports from third parties and non-independent online publications, without substantiating his line of argument with specific evidence. In that connection, since the evidence submitted by the Council, which was disclosed to the applicant, comes from publicly accessible sources, it was possible for him to indicate which of those sources, in his view, were, for example, favourable to the Syrian regime. In particular, having regard to the case-law referred to in paragraph 74 above, while it is for the Council to provide evidence in support of the reasons for listing, it is for the applicant to indicate which of them might raise doubts as to their reliability (see, to that effect, judgment of 14 April 2021, *Al-Tarazi* v *Council*, T-260/19, not published, EU:T:2021:187, paragraph 73).

87 In the second place, as regards the relevance of the evidence submitted by the Council, the applicant submits that most of it is no longer relevant. In that connection, he observes that seven of the exhibits are more than six years old and that, of the three articles dating back less than six years, only one was less than two years old when the contested measures were adopted. Moreover, many of the articles are of even less relevance than their publication dates would suggest, inasmuch as they describe events pre-dating the applicant's winding up of his business interests in Syria. Ultimately, that material shows that the applicant was a businessperson operating in Syria, which he does not dispute, but cannot prove that he is now such a businessman.

88 In that connection, it should be observed that the older the evidence by reference to the date on which acts imposing restrictive measures against a person or entity were adopted, the less likely it is to constitute, in itself, a sufficient basis for the measures at issue. In that sense, while it may be used by the Council, the significant period of time elapsed between, on the one hand, the publication of that evidence and, on the other, the adoption of the acts at issue requires that the

Council corroborate that evidence with other, more recent evidence (see, to that effect and by analogy, judgment of 26 July 2017, *Council* v *Hamas*, C-79/15 P, EU:C:2017:584, paragraphs 32 and 33).

89 In the present case, the majority of the various items of evidence submitted by the Council contain overlapping information, with the result that even the oldest may, to a certain extent, be relevant to demonstrating that the reasons for listing are well founded.

90 In those circumstances, it must be held that the evidence submitted by the Council is sound and reliable and is, a priori, relevant to substantiating the reasons for listing.

91 Nevertheless, it will be necessary to take into consideration the fact that the evidence produced by the Council is old in order to determine whether, in the light of the case file as whole, that evidence is sufficient to demonstrate that the reasons for listing are well founded.

5. The reasons for listing

(a) The status of leading businessperson operating in Syria

(1) The applicant's economic interests

92 First of all, it is apparent from the information from almost all the articles or publications submitted by the Council – with the exception of the article from the *Orient News* website and the page from the *Al-Iqtisadi* website – that the applicant is the founder of and partner in Lead Syria in Liquidation, a company operating in the oil and gas sectors. That is also stated in the first part of document WK 985/2021 INIT, under the heading 'Présentation et liens de proximité avec le régime syrien' ('Presentation and close ties to the Syrian regime'). Next, it is apparent both from the applicant's residence visa in the United Arab Emirates and from the page from the *Al-Iqtisadi* website that the applicant runs Lead UAE. Furthermore, the applicant is described, on the *Syrian Oil & Gas News* and *Aks al Ser* websites, as being involved in various entities. Lastly, the extract from the book 'The Political Economy of Investment in Syria' refers to the applicant's investment in Gulfsands Petroleum, a UK-based oil company which conducts operations in Syria.

93 Thus, the evidence submitted by the Council seeks to establish that the applicant is an investor in the Syrian oil sector.

94 The applicant disputes that description and claims, in essence, that he no longer has any business interests in Syria.

95 In the first place, as regards Lead Syria in Liquidation, the applicant has provided the November 2011 contract by way of which he withdrew from the company to the benefit of A, and has produced, in order to demonstrate that that company had been inactive since 2012, that entity's tax returns for the years 2012 to 2020. He has also produced a certificate from the Damascus trade register, dated 5 January 2021, which states that Lead Syria in Liquidation was placed into liquidation on 8 November 2020, that is, before the date on which the contested measures were adopted.

96 It must be stated that, first, all the evidence submitted by the Council relating to Lead Syria in Liquidation predates 5 January 2021. Second, the Council has failed to put forward any argument to support the contention that Lead Syria in Liquidation is still active or that the evidence furnished by the applicant is neither sound nor reliable.

97 Consequently, it must be held that the applicant has demonstrated that he no longer has any interest in Lead Syria in Liquidation, which was, in any event, inactive and in liquidation on the date on which the contested measures were adopted.

98 In the second place, in so far as concerns Lead UAE, the applicant has submitted two documents originating from QNA Auditors, an auditing firm located in Dubai (United Arab Emirates), by way of which the latter certifies that Lead UAE is not active in Syria. These documents are a letter of 18 February 2021 and a table of 15 November 2021 drawn up by QNA Auditors in order to certify the list of projects under way and completed by Lead UAE. It is apparent from that table that Lead UAE has construction projects in Algeria and Qatar.

99 It should be noted that, aside from the applicant's residence visa in the United Arab Emirates, produced by the Council, the page on the *Al-Iqtisadi* website alone refers to Lead UAE. However, that page does not state where the Lead UAE projects are being carried out.

100 As to the Council's argument that it is not clear from the letter of 18 February 2021 whether the statements contained therein concern Lead UAE or Lead Syria in Liquidation, this must be rejected as unfounded. The applicant has in fact provided substantiated explanations intended to draw a distinction between Lead Syria in Liquidation and Lead UAE. In that connection, he has produced evidence relating to each of those companies, from bodies such as an auditing firm or a trade register, which suggests that Lead Syria in Liquidation is the company which he had founded with Mr Ghassan Muhanna in Syria before withdrawing from it in 2011, while Lead UAE is an undertaking which he established in the United Arab Emirates.

101 Admittedly, the great similarity between the names of those companies can lead to confusion. Nevertheless, while the applicant has taken care to establish a clearly defined term and to provide explanations in order to assist the Court in drawing a distinction between those two entities, the Council has not, however, placed the Court in a position easily to understand to which entity the various items of evidence contained in documents WK 4069/2019 INIT and WK 985/2021 INIT – each of which employs different names – refer, and indeed maintains a degree of some confusion in its written pleadings. Lastly, it is clear that the Council confirmed, in reply to a question from the Court at the hearing, that there were indeed two entities, Lead Syria in Liquidation and Lead UAE, and that where reference was made to an entity set up by the applicant and Mr Ghassan Muhanna, it was to be understood that this was Lead Syria in Liquidation.

102 Consequently, the applicant has demonstrated that Lead UAE, established in the United Arab Emirates – which is confirmed by the evidence submitted by the Council – does not engage in any activities in Syria.

103 In any event, it should be observed that the applicant has produced a decision of 23 March 2020 from the sole shareholder of Lead UAE, Company B, accepting his resignation as managing director as of that date.

104 The Council has neither put forward any argument disputing the applicant's resignation nor called into question the reliability of the evidence produced by the applicant.

105 Accordingly, it must be held that the applicant has demonstrated that he is no longer involved in Lead UAE, which, in any event, is not a company established in Syria and is not active there.

106 In the third place, it is necessary to examine the applicant's involvement in the various entities referred to on the *Syrian Oil & Gas News* and *Aks al Ser* websites.

107 First, as regards the company Asaad and Petngnap & Co., which he associates, without being contradicted on that point by the Council, with Asaad Beitenjaneh & Partners Company for Processing & Refining Edible Oils, which was converted into a private company named Syrian Private Joint-Stock Company for Processing and Refining Edible Oils in 2011, the applicant has produced a letter of 15 November 2021 from that entity certifying that he held no shares in that company as at that date. Admittedly, that statement, which establishes the applicant's situation with regard to that company as it existed at a date subsequent to that of the adoption of the 2021 measures, does not demonstrate that the applicant did not hold any such shares at the time when the Council adopted the restrictive measures against him. However, the only item of evidence produced by the Council indicating that the applicant is a partner of that entity is old, since it dates back to 2010. Furthermore, no other, more recent, item of evidence corroborates that information. Moreover, the Council has failed to put forward any argument to maintain that the applicant continued to have interests in that company. Lastly, it has also failed to put forward any argument disputing the reliability and relevance of the item of evidence produced by the applicant. In those circumstances, there is reasonable doubt that, when the 2021 measures were adopted, the applicant still had the status of shareholder in the company in question.

108 By contrast, as regards the 2022 retention measures, since the evidence adduced by the applicant predates the adoption thereof and the Council has not produced any supplementary evidence, it must be held that the applicant has demonstrated that he no longer had the status of shareholder in Asaad and Petngnap & Co. when those retention measures were adopted.

109 Second, as regards the United Insurance Company, the applicant has produced a letter of 16 November 2021 from the chairman of that company, stating that the applicant has not held any shares in that company since 2012. For its part, the Council has produced a single publication intended to demonstrate that the applicant has had an investment in that entity since 2010, and it has failed to put forward any argument disputing the reliability or content of the aforementioned letter. It must therefore be held that the applicant has demonstrated that he did not hold any shares in that company when the contested measures were adopted.

110 Third, as regards the company Al Badia Cement JSC, the applicant has provided a letter of 25 April 2021 from that entity certifying that he resigned from his position as a member of the Board of Directors on 25 September 2011, and sold the shares that he held in 2011. He has produced, for the purposes of demonstrating that he no longer has any interest in that company, two further documents, taken from the WikiLeaks website, which confirm that resignation. For its part, the Council has failed to put forward any argument challenging the reliability or the content of those items of evidence. The applicant has thus demonstrated that he was not linked to the company in question when the contested measures were adopted.

111 Fourth, as regards Bank Audi Syria, which the applicant claims has become Ahli Trust Bank, which is not disputed by the Council, the applicant has produced a letter of 11 November 2021 from that entity certifying that he does not hold any shares therein up until that date. For its part, the Council has produced only evidence dating from 2010 and 2012 indicating that the applicant is a partner in that entity, and has failed to put forward any argument challenging the reliability or

content of the aforementioned letter. It must therefore be held that the applicant has demonstrated that he was not a shareholder in that bank when the contested measures were adopted.

112 Fifth, as regards the company Syrian Arab Insurance Company, the applicant has produced a letter of 9 November 2021 from that entity certifying that he did not hold any shares in that company as at that date. For its part, the Council has produced a single publication intended to demonstrate that the applicant has had an investment that company since 2010; the Council has failed to put forward any argument challenging the reliability or content of the aforementioned letter. It must therefore be held that the applicant has demonstrated that he did not hold any shares in that company when the contested measures were adopted.

113 Sixth, as regards the Aqeelah Takaful Insurance Company, the applicant has provided a letter of 10 May 2021 from that entity, certifying that he held no shares in that company 'until 31 March 2021'. When questioned at the hearing, he confirmed that that wording suggested only that he did not own shares in that company. In any event, that item of evidence demonstrates, at the very least, that, contrary to what was stated in a publication on the *Syrian Oil & Gas News* website, the applicant did not own any shares in that company in 2010. For its part, the Council has produced a single publication intended to demonstrate a link between the applicant and that insurance company, and has failed to put forward any argument challenging the reliability or content of the aforementioned letter. There is therefore a reasonable doubt that, when the contested measures were adopted, the applicant was linked to the insurance company in question.

114 Seventh, as regards Dajajouna, which, according to the applicant, is a trade mark of DANZ for Food Industries – which is not disputed by the Council – the applicant has produced a letter of 15 November 2021 stating that he did not hold any shares in that company between 3 January 2010 and 15 November 2021. For its part, the Council has produced a single publication intended to demonstrate that the applicant has had an investment in that entity since 2010, and it has failed to put forward any argument disputing the reliability or content of the aforementioned letter. It must therefore be held that the applicant has demonstrated that he did not hold any shares in that company when the contested measures were adopted.

115 Eighth, as regards the company Assaad Baitangana and Partners for Producing Oils, which he associates, without being challenged on this point by the Council, with Asaad Beitenjaneh & Partners Company for Syrian Olive Oil, which was converted into a private company named Syrian Olive Oil Private Joint-Stock Company in 2011, the applicant has provided a letter of 15 November 2021 from that company certifying that he held no shares therein as at that date. Admittedly, that statement, which establishes the applicant's situation with regard to that company as it existed on a date subsequent to that of the adoption of the 2021 measures, does not demonstrate that the applicant did not hold any such shares at the time when the Council adopted the restrictive measures against him. However, the only evidence produced by the Council indicating that the applicant is a partner in that entity is old, since it dates back to 2010. Furthermore, no other, more recent, item of evidence corroborates that information. Moreover, the Council has failed to put forward any argument to maintain that the applicant continued to have interests in that company. Lastly, it has also failed to put forward any argument disputing the reliability and relevance of the item of evidence produced by the applicant. In those circumstances, there is reasonable doubt that, when the 2021 measures were adopted, the applicant still had the status of shareholder in the company in question.

116 By contrast, as regards the 2022 retention measures, since the evidence adduced by the applicant predates the adoption thereof, and since the Council has adduced no additional evidence, it must be held that the applicant has demonstrated that he no longer had the status of shareholder in Syrian Olive Oil Private Joint-Stock Company at the time of the adoption of those retention measures.

117 Ninth, as regards Cham Holding, the applicant has produced a letter of 12 May 2021 from that entity certifying that he no longer had any shares in that company as at 26 June 2014. For its part, the Council has produced two publications dating from 2010 and 2012 which state that the applicant has interests in that company; the Council has failed to put forward any argument challenging the reliability and relevance of the aforementioned letter or demonstrating that the applicant still had interests in that company. It must therefore be held that the applicant has adduced evidence that he no longer held any shares in the company in question when the contested measures were adopted.

118 It follows from the foregoing that the applicant has adduced sufficient evidence to call into question the correctness of the Council's findings concerning his involvement in various Syrian entities.

119 Tenth and last, as regards Gulfsands Petroleum, first of all, the applicant does not deny having held shares in that company, but states that he held those shares through Hickam Ventures Ltd. In that connection, he has submitted a list of the latter company's share portfolio of 31 December 2008, from which it is apparent that Hickam Ventures Ltd. did indeed own shares in Gulfsands Petroleum. Next, the applicant states that he did not found Gulfsands Petroleum, contrary to the Council's claim, and has produced in that connection the Memorandum of Association for such company, dated 2 December 2014. It is apparent from reading that document that the applicant was neither the founder nor the director of the company concerned at the time of its incorporation. In addition, the applicant has provided a breakdown of the distribution of assets and the evolution of the Hickam Ventures portfolio in order to show that the latter divested itself of the shares in the company in question in 2009. It should be noted that the evolution of the portfolio established on 31 December 2009 reflects the disappearance of such shares. That is confirmed by the list of shareholders in that company, dated 3 December 2010, in which neither Hickam Ventures nor the applicant's name appears. Finally, the applicant has produced a certified list of the shareholders in Hickam Ventures as at 12 January 2021 to show that he no longer had any interest in it. It is indeed apparent from that document that the applicant's name does not appear on the list of shareholders in Hickam Ventures. For its part, the Council neither disputes the description of the facts as proposed by the applicant in a substantiated manner nor calls into question the reliability or content of the evidence produced by the applicant, and has produced a single document indicating that the latter invested in that company, namely an extract from a book dating from 2015 which relies on an article from 2007. Consequently, it must be held that the applicant has validly called into question the fact that he held interests in the company in question when the contested measures were adopted.

120 In the light of all the foregoing, it must be concluded that the Council has failed to substantiate to the requisite legal standard that the applicant had commercial interests in Syria.

121 Moreover, it is apparent from the publication dated 6 September 2012 from the *Aks al Ser* website, produced by the Council, that the applicant began to liquidate his financial assets and withdraw his money from banks after the bombing of the Syrian National Security headquarters, which tends to confirm the applicant's claim that, from 2012 onwards, he no longer had any interests in Syria.

(2) The applicant's posts in certain trade-related bodies

122 It is apparent from the *Syrian Oil & Gas News* website that the applicant is at the head of the Syrian branch of the Syrian-Algerian Chamber of Commerce and is a member of the Syrian National Committee of the International Chamber of Commerce Syria.

123 In that regard, the applicant does not deny having been part of the Syrian-Algerian Chamber of Commerce or of the International Chamber of Commerce Syria.

124 However, first, in so far as concerns the Syrian-Algerian Chamber of Commerce, the applicant has produced a letter of 1 July 2013 sent by that chamber to Bank Audi following the adoption of Decision No 247 of the Syrian Ministry of Economy and Foreign Trade providing for the dissolution of the Syrian joint businessmen councils. It must be stated that the only evidence produced by the Council consists in publications from the *Syrian Oil & Gas News* website dating from 2010, that is to say, before the adoption of that decision. Furthermore, the Council has neither challenged the reliability or the content of the aforementioned letter, nor proved that, when the contested measures were adopted, that chamber had been reconstituted and that the applicant was a member thereof. Since the applicant has demonstrated that the chamber in question did not exist when the contested measures were adopted, the fact that he was a member thereof cannot be relied upon in order to substantiate his status as a leading businessperson operating in Syria.

125 Second, as regards the International Chamber of Commerce Syria, the applicant produces a letter of 16 February 2021 from the President of the Syrian National Committee of that chamber showing that he resigned from his post on the Board of Directors of that Chamber and has not been an active member of that board since 2012. It must be stated that the only evidence produced by the Council comprises publications from the *Syrian Oil & Gas News* website dating from 2010, that is to say, before the applicant's resignation in 2012. Furthermore, the arguments which the Council puts forward with regard to the letters from third parties produced by the applicant seek to call into question the statements made therein with regard to the business activities carried out by the applicant in Syria. By contrast, it has failed to put forward any argument specifically to dispute the fact that the applicant did indeed resign from the Board of Directors of the Chamber in question and has even acknowledged the existence of that resignation, just as it has acknowledged that that activity on the part of the applicant lies in the past. Lastly, the Council does not dispute the reliability of the aforementioned letter. Accordingly, it must be held that the applicant has demonstrated that, when the contested measures were adopted, he was no longer a member of the board of the chamber in question. The Council has failed to put forward any sound and consistent evidence from which it could reasonably be inferred that the applicant maintains links with that chamber, justifying the inclusion of his name on the lists at issue, after the termination of that person's activities within that structure (see, to that effect and by analogy, judgment of 24 November 2021, *Assi* v *Council*, T-256/19, EU:T:2021:818, paragraph 128).

126 It follows from the foregoing that the Council has failed to substantiate to the requisite legal standard the fact that the applicant was a member of the Syria-Algeria Chamber of Commerce and of the International Chamber of Commerce Syria.

(3) Finding as to the applicant's status as a leading businessperson operating in Syria

127 Since the Council has failed to demonstrate to the requisite legal standard that the applicant had business interests in Syria or that he occupied positions in bodies associated with trade, it must be found that it has failed to substantiate the ground for listing relating to the applicant's status as a leading businessperson operating in Syria.

(b) Ties to members of the Assad and Makhlouf families

128 First, it is apparent from the information from the *Dawdaa*, *Syriano*, *Ayn Almadina*, *Al Khaleej Online* and *Al Hewar* websites, the book entitled 'The Political Economy of Investment in Syria', and the first part of document WK 985/2021 INIT, that the applicant has ties to Mr Mohammed Makhlouf and Mr Rami Makhlouf. Second, according to information from the *Dawdaa*, *Orient News*, *Al Khaleej Online* and *Al Hewar* websites, and according to the first part of document WK 985/2021 INIT, the applicant has ties to the Assad family.

(1) Ties to members of the Makhlouf family

129 It should be observed that the evidence provided by the Council tends to show that the applicant's ties to members of the Makhlouf family are of two kinds: professional and personal. That finding is, moreover, confirmed in the rejoinder.

130 In the first place, as regards the applicant's professional ties to members of the Makhlouf family, these are apparent, according to the information provided by the Council, on the one hand, from the partnership entered into with Mr Ghassan Muhanna, serving as a front for his brother-in-law, Mr Mohammed Makhlouf, father of Mr Rami Makhlouf, in the context of Lead Syria in Liquidation; and, on the other hand, from the investment made in Gulfsands Petroleum, alongside Mr Rami Makhlouf, and the applicant's interests in Cham Holding, which is controlled by Mr Rami Makhlouf.

131 First, as regards Lead Syria in Liquidation, the applicant has demonstrated, as is clear from paragraphs 95 to 97 above, that he left that company in November 2011 and that it was in liquidation when the contested measures were adopted. Consequently, the Council cannot rely on the applicant's involvement in that company in order to demonstrate that there was a professional relationship between the applicant and Mr Mohammed Makhlouf when those measures were adopted.

132 Second, as regards Cham Holding and Gulfsands Petroleum, the applicant has proved – as is clear, respectively, from paragraph 117 and paragraph 119 above – that he no longer had any interest in those companies when the contested measures were adopted. Consequently, the Council cannot rely on the applicant's involvement in those companies in order to demonstrate that there was a professional relationship between the applicant and Mr Rami Makhlouf when those measures were adopted.

133 In the second place, in so far as concerns the applicant's personal ties with members of the Makhlouf family, it is apparent from the article from the *Ayn Almadina* website that the applicant is Mr Mohammed Makhlouf's cousin, while his mother, Ms Jamila Muhanna, is the cousin of the wife of Mr Mohammed Makhlouf. As to the article published on the *Al Khaleej Online* website, this states that the applicant is a relative of Mr Mohammed Makhlouf.

134 The first part of document WK 985/2021 INIT describes, in the presentation of the applicant and his close links with the Syrian regime, the applicant as being the cousin by marriage of the Assad and Makhlouf siblings, in so far as his maternal aunt is the wife of Mr Mohammed Makhlouf, who is the father of Mr Rami Makhlouf and the uncle of President Bashar Al-Assad.

135 It should also be noted that, in the letter of 12 February 2021, the Council reiterated that the applicant was linked to the families of Mr Rami Makhlouf and President Bashar Al-Assad on account of the marriage of his maternal aunt to Mr Mohammed Makhlouf.

136 First of all, the Council, on which the burden of proof rests, as has been recalled in paragraph 72 above, provides only two publications taken from websites which refer to the family ties between the applicant and the Makhlouf family. One of them, namely the *Al Khaleej Online* website, refers only vaguely to those family ties, but does not describe them. Next, the family ties referred to by the *Ayn Almadina* website – namely that the applicant is the cousin of Mr Mohammed Makhlouf, while his mother, Ms Jamila Muhanna, is the cousin of the wife of Mr Mohammed Makhlouf – differ from those mentioned in the first part of Document WK 985/2021 INIT. The latter states that it is the applicant's maternal aunt – therefore, in theory, the sister of Ms Jamila Muhanna – who is married to Mr Mohammed Makhlouf.

137 Consequently, the items of information contained in documents WK 4069/2019 INIT and WK 985/2021 INIT do not corroborate each other.

138 Moreover, the assertion in Document WK 985/2021 INIT that one of the applicant's maternal aunts is married to Mr Mohammed Makhlouf is unsubstantiated and vague, since there is no evidence to confirm it and no name is given to designate the wife of Mr Mohammed Makhlouf. Furthermore, the Council's assertion that the expression 'maternal aunt' may also refer to an aunt of the applicant's mother is not convincing. The first part of that document in fact clearly describes the wife of Mr Mohammed Makhlouf as the applicant's maternal aunt. The Council relied on that family tie, without expressing any reservations, in the letter of 12 February 2021. Thus, it cannot now maintain that this could actually be an aunt of the applicant's mother. In any event, its assertion is put forward as a hypothesis and is unsubstantiated.

139 Finally, the Council's argument that Mr Ghassan Muhanna and the applicant's mother are related is at most a hypothesis set out for the first time in the defence. In any event, none of the evidence submitted by the Council supports that view.

140 Furthermore, the Council has produced the judgment of the tribunal administratif de Paris (Administrative Court, Paris, France) of 13 September 2021 concerning the applicant in order to demonstrate that it has been recognised that he did indeed have family ties with the Makhlouf and Assad families.

141 In that regard, it should be observed that, in so doing, the Council does not rely on the French court's decision as evidence seeking to substantiate the reasons for the inclusion of the applicant's name on the lists at issue, but instead submits that decision in evidence in order to

confirm the description of the applicant that the Council has given to the Court. In that sense, it is therefore no longer necessary to consider the admissibility of that item of evidence in the light of the case-law, according to which the legality of an EU act must be assessed on the basis of the facts and the law as they stood at the time when the act was adopted (see, to that effect, judgments of 3 September 2015, *Inuit Tapiriit Kanatami and Others* v *Commission*, C-398/13 P, EU:C:2015:535, paragraph 22 and the case-law cited, and of 4 September 2015, *NIOC and Others* v *Council*, T-577/12, not published, EU:T:2015:596, paragraph 112 and the case-law cited).

142 That said, it should be borne in mind that, under Article 263 TFEU, the Courts of the European Union have exclusive jurisdiction to review the lawfulness of measures taken by the Council. Accordingly, it is for the Court to examine the lawfulness of the contested measures solely in the light of the arguments and evidence submitted by the parties before it.

143 Furthermore, it should be noted that the tribunal administratif de Paris (Administrative Court, Paris), ruling on the decision of 12 February 2020 of the French Minister for Economic Affairs and Finance ('the French decision of 12 February 2020'), ruled on the reasons for listing as set out in the 2019 measures. Thus, the subject matter of the actions is different, with the result that, in any event, the Court cannot be bound by the possible force of *res judicata* of that ruling.

144 In that connection, it is apparent from the excerpts from the Syrian register of civil status submitted by the applicant and relating to the maternal side of his family, dated 25 and 26 April 2021, the reliability or relevance of which the Council has not disputed, that none of the applicant's maternal aunts is married to Mr Mohammed Makhlouf.

145 While it is true that the spelling of the forename and surname of the applicant's mother appearing on the extracts from the Syrian register of civil status differs slightly from that which appears in other items of evidence ('Jamileh' instead of 'Jamila' and 'Mhanna' instead of 'Muhanna'), such differences may be explained by the transliteration of Arabic names into Latin characters.

146 Furthermore, the Council itself states, in the defence, that Ms Jamila Muhanna is the applicant's mother. Accordingly, it must be held that the excerpts from the Syrian register of civil status do indeed relate to the maternal side of the applicant's family. Therefore, it must be found that the applicant has indeed adduced evidence that none of his maternal aunts was married to Mr Mohammed Makhlouf.

147 In conclusion, on account of the inconsistencies in the evidence provided by the Council and in the light of the documents produced by the applicant, it must be held that the Council has failed sufficiently to substantiate the merits of the reasons for listing alleging that the applicant has ties to members of the Makhlouf family.

(2) The applicant's ties to members of the Assad family

148 It should be observed that the evidence submitted by the Council tends to show that the applicant's ties to members of the Assad family are purely professional in nature.

149 It is apparent from the *Dawdaa* website that the applicant is not a member of the Assad family, but remains close to the latter on account of his responsibilities.

150 Moreover, the Council has taken an approach that is not entirely unambiguous. While it accepts that the applicant is not the cousin of President Bashar Al-Assad and confirmed at the hearing that that President did not have a cousin bearing the same name as the applicant, the Council has explained, in the defence, that the applicant could be regarded as the cousin of that President, in so far as Mr Mohammed Makhlouf, allegedly related to the applicant by his marriage to one of the latter's maternal aunts, is the uncle of the President in question.

151 In that regard, first, it should be noted that the Council has not formally relied on the fact that the applicant is the cousin of President Bashar Al-Assad in order to justify the inclusion of his name on the lists at issue. Second, it must be borne in mind that, as has been established in paragraph 147 above, the Council has failed to demonstrate to the requisite legal standard the applicant's personal ties with the Makhlouf family, through which he is allegedly linked to the Assad family.

152 In so far as concerns the professional ties binding the applicant to members of the Assad family, it is apparent from the information from the *Dawdaa*, *Orient News*, *Al Khaleej Online* and *Al Hewar* websites that those ties were developed in the oil sector. In the first part of document WK 985/2021 INIT, the applicant is described as having profited from his links with Mr Bassel Al-Assad, the eldest son of Mr Hafez Al-Assad, who died on 21 January 1994, to make his fortune.

153 In view of the death of Mr Bassel Al-Assad in 1994, it is appropriate to focus solely on the applicant's ties to members of the Assad family through his activities in the oil sector.

154 In that connection, first, it follows from the articles from the *Al Khaleej Online* and *Al Hewar* websites that it is through Lead Syria in Liquidation that the applicant had ties to members of the Assad family. As has been established in paragraph 97 above, when the contested measures were adopted, the applicant no longer had any connection with that company.

155 Second, as regards the partnership between the applicant and Mr Maher Al-Assad in connection with the 'oil for food' alliance, it must be stated that this is referred to only in the article on the *Orient News* website. However, that item of evidence alone – which was not, moreover, the subject of any convincing explanation from the Council, be it in its written pleadings or at the hearing – does not explain how that alliance materialised, that is to say through which entities, or what the consequences thereof were. Such explanations were, however, necessary since, furthermore, it is a well-known fact that the expression 'oil for food' refers to the programme which had been instituted by the United Nations Organisation between 1996 and 2003 for the benefit of Iraq.

156 Third, the publication from the *Dawdaa* website refers to a schism between the applicant and the Assad family on account of oil-related issues, with the result that that item of evidence suggests rather the cutting of ties between the applicant and the Assad family in that sector.

157 Consequently, the Council has failed to adduce a sufficiently concrete, precise and consistent body of evidence to establish that the applicant has professional ties to members of the Assad family on account of activities in the oil sector.

158 Furthermore, the publication from the *Dawdaa* website mentions that the applicant continues to have links with the Assad family owing to his responsibilities. However, it neither specifies which responsibilities are involved, nor explains how those responsibilities serve to establish such links.

Since, moreover, that information is not corroborated by other items of evidence, it must be held that it does not substantiate to the requisite legal standard the existence of professional ties between the applicant and members of the Assad family.

159 It follows from the foregoing that the Council has failed sufficiently to substantiate the reasons for listing based on the fact that the applicant has ties to members of the Assad family.

(3) Finding as to the applicant's ties to members of the Makhlouf and Assad families

160 Since the Council has failed to demonstrate that the applicant had ties to members of the Makhlouf and Assad families, be it from a professional or a personal perspective, it must be found that the Council has failed to substantiate the reason for listing relating to the applicant's ties to members of the Makhlouf and Assad families.

(c) Association with the Syrian regime

161 It is necessary to ascertain whether the applicant's situation constitutes sufficient evidence that he provides support to the Syrian regime or that he benefits from the policies pursued by that regime. Such an assessment must be carried out by examining the evidence, not in isolation, but in the context to which it belongs. The Council discharges the burden of proof it bears if it produces before the Courts of the European Union a sufficiently concrete, precise and consistent body of evidence to establish that there is a sufficient link between the person subject to a measure freezing his or her funds and the regime concerned (see judgment of 9 September 2016, *Tri-Ocean Trading* v *Council*, T-709/14, not published, EU:C:2016:459, paragraph 42 and the case-law cited).

162 According to the reasons for listing referred to in paragraphs 41 and 78 above, in view of his status as a leading businessperson operating in Syria and his ties to members of the Makhlouf and Assad families, the applicant had been participating in, benefiting from or otherwise supporting the Syrian regime.

163 It should be observed that the Council uses the past tense to indicate that the applicant had benefited from, supported and participated in the Syrian regime. That finding also applies to the German and Spanish versions of the reasons for listing, which state, respectively, that the applicant '*war in dieser Eigenschaft Teil, Nutznießer oder anderweitig Unterstützer des syrischen Regimes*' and '*ha participado en el régimen sirio, se ha beneficiado de él o lo ha apoyado*'.

164 As to the English version of the reasons for listing, it states that the applicant 'has been participating in, benefiting from or otherwise supporting the Syrian regime'. The use of the present perfect continuous in English suggests rather that the applicant participated in, benefited from and supported the Syrian regime and continues to do so.

165 When questioned at the hearing about the verb tenses in the various language versions of the reasons for listing, the Council stated, in essence, that it was necessary, above all, to focus on the evidence and various periods during which support had been provided to the Syrian regime.

166 It should be observed that the reasons why the applicant is regarded by the Council as supporting and benefiting from the Syrian regime overlap with those which led it to regard him as a leading businessperson operating in Syria and as having ties with members of the Assad and Makhlouf families.

167 In that regard, it should be borne in mind that, according to the case-law, it cannot be excluded that, for a specific person, the reasons for listing might overlap to a certain extent, in that a person may be considered to be a leading businessperson operating in Syria and also regarded as benefiting, in the course of his or her activities, from the Syrian regime or supporting it through those same activities. That follows precisely from the fact that, as established in recital 6 of Decision 2015/1836, the close ties to the Syrian regime and the support provided by the latter to that category of persons are one of the reasons why the Council decided to establish that category. The fact remains that, even in such a situation, those are separate criteria (judgment of 23 September 2020, *Kaddour* v *Council*, T-510/18, EU:T:2020:436, paragraph 77). That also applies to persons with ties to members of the Makhlouf and Assad families, since, as is established in recital 7 of Decision 2015/1836, power in the present Syrian regime is concentrated in influential members of those families.

168 First, it should be noted that, as regards the status of leading businessperson operating in Syria, the Council failed to show that the applicant had business interests in Syria when the contested measures were adopted (see paragraph 127 above). As to his ties to members of the Makhlouf and Assad families, the Council has also failed to demonstrate that these existed when it adopted the restrictive measures against the applicant (see paragraph 160 above). Accordingly, it must be inferred that it is not on account of his business activities in Syria or his ties to members of the Makhlouf and Assad families that the applicant may be associated with the Syrian regime.

169 Second, although the publication from the *Dawdaa* website refers to other responsibilities that the applicant could have exercised on behalf of or for the benefit of the Syrian regime, it is clear, as has been stated in paragraph 158 above, that that publication does not specify what those responsibilities were or explain how these make it possible to establish the applicant's association with that regime. Since, moreover, that information is not corroborated by other items of evidence, it must be held that this does not substantiate the applicant's association with that regime.

170 Third, it is apparent from the information from the *Al Khaleej Online* and *Al Hewar* websites that the Syrian regime benefits from Lead Syria in Liquidation. First, it has been established, in paragraph 97 above, that the applicant is not linked to that company. Second, the applicant has produced items of evidence showing that that company has been inactive since 2012 and in liquidation since 2020, as has been stated in paragraphs 95 and 96 above, with the result that, in the absence of evidence to the contrary put forward by the Council or any argument put forward by the latter in order to challenge the reliability and relevance of that evidence, it is not possible to determine how that regime could have benefited from the activities of the company in question.

171 Fourth and last, it should be observed that other items of information, contained in documents WK 4069/2019 INIT and WK 985/2021 INIT, tend to show that the applicant has distanced himself from the Syrian regime. Thus, the publication from the *Aks al Ser* website states that the applicant liquidated his financial assets and withdrew his money from Syrian banks after the bombing of the Syrian National Security headquarters. As to the publication from the *Dawdaa*

website, this refers to a schism between the applicant and that regime. Finally, the first part of document WK 985/2021 INIT states that the applicant is shut out of the main financial networks of the Syrian regime.

172 It follows from all the foregoing that the Council has failed to demonstrate to the requisite legal standard that the applicant is associated with the Syrian regime.

6. Finding as to the first plea, alleging errors of assessment

173 In view of the findings set out in paragraphs 127, 160 and 172 above, the Council has failed to substantiate to the requisite legal standard the grounds for including the applicant's name on the lists at issue.

174 The first plea in law must therefore be upheld.

175 Since the first plea concerns only the merits of the reasons for including the applicant's name on the lists at issue as of the entry into force of the contested measures, it is still necessary to examine the second and third pleas in law in order to ascertain whether, as the applicant claims, those measures also have retroactive effect in so far as they establish that the applicant was the person subject to the restrictive measures from 23 August 2011 onwards and, if so, whether the Council lawfully attributed such an effect to those measures.

D. The second plea, alleging breach of the principle of the protection of legitimate expectations, and the third plea, alleging breach of the principle of legal certainty

176 In support of his second plea in law, the applicant maintains that it was not open to the Council to adopt the contested measures since they are a direct breach of the legitimate expectation created by the fact that that institution consistently confirmed, over the course of the previous 10 years, that the applicant was not the person identified in entry 36 of the lists at issue.

177 In the third plea, the applicant claims that the contested measures seek impermissibly to have retroactive effect and are inimical to the principle of legal certainty. In the applicant's submission, that is significant not only for him but also for third parties who have, in good faith, had dealings with him on the basis of the Council's public assurances that the person identified in entry 36 of the lists at issue was not the applicant.

178 In so far as concerns the second plea, the Council takes the view that the case-law relied on by the applicant to justify recourse to the principle of the protection of legitimate expectations cannot be transposed to the applicant's situation since he is not the beneficiary of any measures by the Council. In that regard, it considers that the information given about the identity of the person targeted by restrictive measures is not, in itself, capable of creating individual rights.

179 As regards the third plea, the Council submits that the contested measures entered into force only on the day following their publication in the *Official Journal of the European Union*. The applicant has not specified in what way the contested measures would have a retroactive effect, considering, in particular, that, as a matter of fact, funds cannot be frozen retroactively. Consequently, the Council considers that the plea is insufficient for the purposes of Article 21 of the Statute of the Court of Justice of the European Union and should be rejected for that reason alone.

1. Admissibility of the third plea in law

180 The Council contends, in essence, that the third plea, alleging breach of the principle of legal certainty, must be rejected as inadmissible, in so far as the applicant has failed clearly to explain how the contested measures have retroactive effect.

181 It should be recalled that, under the first paragraph of Article 21 of the Statute of the Court of Justice of the European Union, which is applicable to proceedings before the General Court by virtue of the first paragraph of Article 53 of that Statute, and under Article 76(d) of the Rules of Procedure, all applications must state the subject matter of the dispute, the pleas and arguments put forward and a brief statement of those pleas. Those elements must be sufficiently clear and precise to enable the defendant to prepare its defence and the General Court to rule on the application, if necessary without any further information. In order to guarantee legal certainty and the sound administration of justice, it is necessary, in order for a plea to be admissible, that the essential matters of law and fact relied on are stated coherently and intelligibly in the application itself (see, to that effect, order of 28 April 1993, *De Hoe* v *Commission*, T-85/92, EU:T:1993:39, paragraph 20 and the case-law cited). The application must, accordingly, specify the nature of the grounds on which the action is based, with the result that a mere abstract statement of the grounds does not satisfy the requirements of the Rules of Procedure. Similar requirements are called for where a submission is made in support of a plea in law (see judgment of 25 March 2015, *Belgium* v *Commission*, T-538/11, EU:T:2015:188, paragraph 131 and the case-law cited; order of 27 November 2020, *PL* v *Commission*, T-728/19, not published, EU:T:2020:575, paragraph 64).

182 In the present case, the applicant submits, in essence, that the contested measures have retroactive effect, in so far as they alter the legal situation he was in until the adoption of the contested measures, namely that he was not the person referred to in entry 36 of the lists at issue.

183 That is apparent, in essence, from paragraphs 59 and 60 of the application. The applicant has also explained the impact of the retroactivity of the contested measures on his legal situation in paragraphs 48 and 49 of the reply.

184 It is clear that the Council responded to the applicant's arguments not only in the defence but also in the rejoinder. Furthermore, in its rejoinder, the Council contends that the applicant's arguments do not faithfully reflect the circumstances of the present case, thereby positioning itself on the merits, and no longer on the inadmissibility, of the plea. Finally, the Court is in a position to examine this plea, which is accompanied by sufficient details to that effect.

185 Consequently, the third plea in law is sufficiently clear, in accordance with the requirements laid down by the provisions of the Statute of the Court of Justice of the European Union and the Rules of Procedure, and is therefore admissible.

2. Merits of the second and third pleas

186 According to the case-law, the principle of legal certainty, of which the principle of legitimate expectations is a corollary, aims to ensure that situations and legal relationships governed by EU law remain foreseeable. To that end, it is essential that the EU institutions observe the principle that they may not alter measures which they have adopted and which affect the legal and factual

situation of persons, so that they may amend such measures only in accordance with the rules on competence and procedure (judgment of 4 May 2016, *Andres and Others* v *ECB*, T-129/14 P, EU:T:2016:267, paragraph 35).

187 In the present case, the applicant submits that both the principle of the protection of legitimate expectations and the principle of legal certainty were breached by the contested measures inasmuch as these establish that his name had been included on the lists at issue since 23 August 2011, whereas, from the adoption of the 2011 measures until the adoption of the contested measures, the Council did not regard him as being the person referred to in entry 36 of the lists at issue.

188 In order to determine whether the contested measures were adopted in breach of those two principles, it is therefore necessary to examine, first of all, the effects of those measures and then to ascertain whether, as the applicant claims and contrary to what the Council contends, they have retroactive effect by establishing that the applicant has, ultimately, been the person referred to in entry 36 of the lists at issue, since the adoption of the 2011 measures.

(a) Retroactivity of the contested measures

189 It is accepted in the case-law that the retroactivity of an act may be expressly laid down in the measure itself, but may also result from its content (see, to that effect, judgment of 11 July 1991, *Crispoltoni*, C-368/89, EU:C:1991:307, paragraph 17).

190 The contested measures do not contain any express provision providing for the retroactive application of their effects. It is therefore necessary to ascertain whether, by reason of their content, they do indeed have retroactive effect.

191 In the first place, as regards the 2021 measures, first of all, it should be noted that recital 2 of those measures states that the information relating to a person whose name is on the lists at issue, in this case the person referred to in entry 36, must be updated. Consequently, these are not initial listing or re-listing measures, but measures which are intended to be a continuation of earlier measures to which they make amendments.

192 Next, it should be noted that the quotation marks around the text annexed to the 2021 measures is open at number 36 and close at the initial date of inclusion, namely 23 August 2011. Thus, it is entry 36 in its entirety which is replaced by the text concerned. Consequently, contrary to what is claimed by the Council, the 2021 measures did indeed specify that the date of initial inclusion of the applicant's name on the lists at issue was 23 August 2011.

193 Lastly, in order to assess the retroactive effect of the 2021 measures, it is also necessary to compare the situation which existed before those measures were adopted and that which existed following that adoption. On that point, it is clear that the 2021 measures were adopted after the Council found that it had made a mistake as to the identity of the person referred to in entry 36 of the lists at issue and of the applicant. That is apparent from the letter of 12 February 2021, in which it states that 'the Council consider[s], after receiving the information on its file, that [the applicant] is indeed the person listed under entry no 36 in the annexes to the [Decision 2013/255 and Regulation No 36/2012]', and by way of which it gives the applicant's representatives a time limit by which they may submit their client's observations on the new reasons for listing which the Council intends to adopt in respect of him, which grounds are set out precisely in the 2021 measures.

194 It follows that, by amending entry 36 of the lists at issue so that it is clear that the amendment concerns the applicant and having regard to the context in which they were adopted, the 2021 measures have retroactive effect on the applicant's legal situation.

195 That is confirmed by the Council's stated intention, recalled both in the defence and at the hearing, to correct, by means of the 2021 measures, the confusion over the applicant's identity.

196 The conclusion set out in paragraph 194 above cannot be called into question by the Council's arguments.

197 First, the Council states that the 2021 measures do not have retroactive effect, since funds cannot be frozen retroactively.

198 It is true that, in principle, the funds of a person or entity may be frozen only for the future, just as, moreover, restrictions on admission to the territory of the Member States can be issued only for the future. Nevertheless, on the one hand, in the present case, confining the effects of the 2021 measures solely to the freezing of the applicant's funds and economic resources, or to restrictions on admission to the territory of the Member States, wrongly disregards the effects which the adoption of those measures has had on the applicant's overall legal situation and, in particular, on his reputation and integrity.

199 In that sense, it has already been recognised that restrictive measures have substantial negative consequences and a considerable impact on the rights and freedoms of the persons covered. Apart from the freezing of funds or restrictions on admission to the territory of the Member States as such which, through its broad scope, seriously disrupts both the working and the family life of the persons covered, account must be taken of the opprobrium and suspicion that accompany the public designation of the persons covered as being associated with the Syrian regime (see, to that effect and by analogy, judgment of 6 June 2013, *Ayadi* v *Commission*, C-183/12 P, not published, EU:C:2013:369, paragraph 68).

200 In establishing, by means of the 2021 measures, that the applicant's name has been included on the lists at issue since the 2011 measures, the Council asserts that, since that date, the applicant has had links with the Syrian regime and has carried out the various acts which justified his name being entered on the lists at issue and retained since then. Such an assertion is sufficient to alter retroactively the applicant's legal situation, quite beyond the freezing of his funds alone.

201 On the other hand, in the present case, it cannot be argued that the 2021 measures had no retroactive effect on the freezing of the applicant's funds. As the Council essentially stated at the hearing, one of the objectives pursued by the adoption of the 2021 measures was to clarify the applicant's situation prior to the adoption thereof on account, in particular, of the existence of the French decision of 12 February 2020 which had frozen the applicant's funds, on the basis of the 2019 measures. Thus, while it is not possible, technically, to freeze funds in the past, it is however possible to validate the freezing of funds which took place in the past by altering the legal position of the person concerned which prevailed at that time. Consequently, the 2021 measures, by confirming that the applicant was indeed the person referred to in entry 36 of the lists at issue since 23 August 2011, retroactively altered his legal situation so that it corresponded to that enabling the French decision of 12 February 2020 to produce its effects.

202 Second, in the rejoinder and at the hearing, the Council claimed that document WK 4069/2019 INIT, which also supported the reasons for listing in the 2019 measures, already contained photographs of the applicant which clearly allowed him to be identified. Therefore, in the Council's view, the applicant was already subject to restrictive measures in 2019.

203 Nevertheless, the Council's assertion that the applicant was already subject to restrictive measures in 2019 is at odds with the fact that, by means of the 2019 corrigendum, the Council intended to amend the Arabic name of the person referred to in entry 36 of the lists at issue so that it matched that contained in the 2011 measures as amended by the measures of November 2011. It must be inferred from this that the Council still believed, when adopting the 2019 measures, that the applicant, whose Arabic name differed from that contained in that corrigendum, was not the person referred to in that entry. That remained the case, moreover, when Decision 2020/719 and Implementing Regulation 2020/716, which contain the same Arabic name, were adopted.

204 Accordingly, even though document WK 4069/2019 INIT, substantiating the reasons for listing in the 2019 measures, contained information such as to identify the applicant as the person referred to in entry 36 of the lists at issue, the fact remains that, when those lists were adopted and until the adoption of the 2021 measures, the Council considered that the applicant was not the person referred to in entry 36 of the lists at issue. It was by adopting the 2021 measures that the Council intended to rectify its mistake by clearly establishing that the applicant was indeed the person referred to in entry 36 of the lists at issue, and had been since 23 August 2011.

205 Consequently, the Council cannot claim that, apart from the error which it made, it must be held that the applicant was already subject to restrictive measures before the adoption of the 2021 measures. Furthermore, such a legal position cannot be reconciled with reality since, as is apparent from the letters of 2 November 2011 and 21 April 2015 from the Swiss State Secretary for Economic Affairs, produced as an annex to the application, the Swiss bank with which the applicant had accounts released the funds that it had frozen following the adoption of the 2011 measures and of the ensuing measures, given the assurances it had received that the applicant was not the person referred to in entry 36 of the lists at issue.

206 Furthermore, at the hearing, the Council stated that it was after receiving the letter of 23 June 2020 that it had carried out an investigation in order to obtain further information on the applicant. In that connection, it should be noted that the applicant sent that letter in order to obtain confirmation from the Council that he was not the person referred to in entry 36 of the lists at issue. That confirmation was necessary for the applicant on account of the French decision of 12 February 2020, by way of which banks located in France were asked to freeze his funds. As is apparent from the letter of 12 February 2021 and as is common ground between the parties, the Council realised its mistake by obtaining further information from the French authorities, that information being reproduced in document WK 985/2021 INIT.

207 Thus, it was indeed by adopting the 2021 measures that the Council intended to alter the applicant's legal situation which had existed until then, namely that he was not the person referred to in entry 36 of the lists at issue. With those measures, the Council wished to identify with certainty the applicant as being the person whose name had been listed on 23 August 2011 in that entry and therefore established, from that date, a link between him and the actions of the Syrian regime which the European Union sought to condemn through the adoption of a restrictive measures regime.

208 Consequently, the 2021 measures have retroactive effect.

209 In the second place, as regards the 2022 retention measures, it should be noted that, as is apparent, in essence, from recital 3 of Decision 2022/849, those measures were intended, as regards the applicant, only to extend the restrictive measures adopted against him until 1 June 2023.

210 Moreover, it should be noted that it was only when the 2021 measures were adopted that the Council intended to clarify the situation of the person referred to in entry 36 of the lists at issue in order to indicate that this was indeed the applicant. In other words, it is only those measures which marked a break in the stance taken by the Council up until that point. By contrast, the 2022 retention measures seek solely to retain the applicant's name on the lists at issue. In that sense, it cannot be held that, when it adopted those measures, the Council sought to correct an error previously committed.

211 Accordingly, the 2022 retention measures do not have retroactive effect, with the result that the second and third pleas in law must be rejected in so far as they concern those measures.

(b) Breach of the principles of legal certainty and legitimate expectations

212 It should be recalled that, in general, the principle of legal certainty precludes a European Union measure from taking effect from a point in time before that measure was published, it may exceptionally be otherwise where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected and, in so far as it follows clearly from the terms, objectives or general scheme of the rules of European Union law concerned, that such effect must be given to them (see judgment of 19 March 2009, *Mitsui & Co. Deutschland*, C-256/07, EU:C:2009:167, paragraph 32 and the case-law cited).

213 Since it has just been established in paragraph 208 above that it is clear from the content and purpose of the 2021 measures that these have retroactive effect, it is necessary to ascertain whether the other two requirements laid down by the case-law cited in paragraph 212 above for accepting the retroactivity of EU measures are satisfied.

214 It is therefore necessary to examine whether, first, an aim in the general interest required the retroactivity of the 2021 measures and, second, the applicant's legitimate expectations were duly observed.

(1) The existence of a general interest

215 As regards the existence of a general public policy interest, the Council relies, in essence, on the fact that restrictive measures pursue the attainment of objectives of general interest, in particular that of consolidating and supporting human rights and international humanitarian law. In its written pleadings and at the hearing, the Council also argued that, by adopting the 2021 measures and by clarifying the applicant's situation before those measures were adopted, it ensured legal certainty.

216 In that connection, it should be recalled that the Courts of the European Union have recognised that the prime importance of maintaining international peace and security justifies the adoption of restrictive measures (see, to that effect, judgment of 27 February 2014, *Ezz and Others* v *Council*, T-256/11, EU:T:2014:93, paragraph 191).

217 Moreover, as the applicant also submits, the principle of legal certainty requires that it be possible to identify clearly who is and who is not subject to restrictive measures adopted by the European Union. The Council guidelines, entitled '[European Union] Best Practices for the effective implementation of restrictive measures', of 4 May 2018, rightly emphasise the importance of that requirement.

218 It is in fact only if the persons and entities are clearly identified that it is possible to ensure legal certainty and the effectiveness of the restrictive measures adopted and, accordingly, attain the objectives referred to in paragraph 216 above.

219 In such circumstances, and having regard to the fact that the national authorities of the Member States rely on measures adopted by the Council in order to decide on the freezing of funds of persons and entities, it must be recognised that it is legitimate and necessary for the Council to be able to correct the error which it has committed regarding a person's identity and that it may therefore clarify the situation of a person or entity. That contributes to ensuring the attainment of the objectives pursued by the restrictive measures by enabling, on the one hand, the administrative authorities and third parties to know clearly who is subject to the restrictive measures and, on the other hand, the person or entity concerned to bring an action against the measures concerning that person or entity.

(2) The existence of legitimate expectations on the part of the applicant

220 In the first place, it must be pointed out that, contrary to the Council's contention, the applicant does not rely so much on a breach of his legitimate expectations on account of the fact that the Council adopted, by means of the 2021 measures, restrictive measures against him, but rather on the fact that, by adopting the 2021 measures, the Council asserts that he is indeed the person referred to in entry 36 of the lists at issue, and has been since the adoption of the 2011 measures.

221 In that sense, the applicant does not claim that the Council was never entitled to include his name on the lists at issue, but rather maintains that the Council could not, after having confirmed for 10 years that he was not the person referred to in entry 36 of the lists at issue, then say the contrary.

222 In so doing, the applicant's situation differs from the cases which gave rise to the judgments of 29 November 2018, *National Iranian Tanker Company* v *Council* (C-600/16 P, EU:C:2018:966), and of 3 May 2016, *Iran Insurance* v *Council* (T-63/14, not published, EU:T:2016:264), on which the Council relies, in which the Court of Justice and the General Court essentially indicated, respectively, that the annulment by the Courts of the European Union of the restrictive measures adopted by the Council against a person or entity could not give rise to any legitimate expectation on the part of that person or entity that the Council, while abiding by that annulling judgment, would not be able to take a re-listing decision in the future (judgment of 29 November 2018, *National Iranian Tanker Company* v *Council*, C-600/16 P, EU:C:2018:966, paragraph 51; see also, to that effect, judgment of 3 May 2016, *Iran Insurance* v *Council*, T-63/14, not published, EU:T:2016:264, paragraphs 152 and 153).

223 In the second place, the parties disagree as to whether the applicant may rely, in the present case, on the principle of the protection of legitimate expectations.

224 Although the applicant, relying on the case-law on the withdrawal of administrative acts, considers himself to be the beneficiary of acts adopted by the Council in which the Council confirmed that he was not the person referred to in entry 36 of the lists at issue, the Council disputes that fact and takes the view that the case-law relied on by the applicant is not applicable to the facts of the present case.

225 In that connection, first, it should be recalled that the principle of the protection of legitimate expectations is a general principle of EU law which must be observed by the Council (see, to that effect, judgment of 10 December 2015, *Veloserviss*, C-427/14, EU:C:2015:803, paragraphs 29 and 30).

226 Second, it is clear from the case-law referred to in paragraph 212 above that the protection of legitimate expectations is one of the conditions to be satisfied in order that an EU act might have retroactive effect, in keeping with the principle of legal certainty.

227 Lastly, according to the case-law, the conditions established in the case-law as to the existence of precise, unconditional and consistent assurances to establish the existence of legitimate expectations relate only to the situation in which an individual finds him or herself when a measure is applied to him or her with immediate, and not retroactive, effect (see, to that effect, judgment of 10 November 2010, *OHIM* v *Simões Dos Santos*, T-260/09 P, EU:T:2010:461, paragraph 64). That is justified by the fact that, since the retroactivity of an EU measure is permitted only exceptionally, an individual cannot be required to adduce evidence of having received assurances that his or her legal situation will not be altered retroactively.

228 Consequently, contrary to what the Council contends, it is not necessary for the applicant to have been the addressee of acts constituting subjective rights in order for him to be able to rely on the protection of his legitimate expectations.

229 In support of its position, the Council cannot rely on the judgment of 14 September 2017, *Petrea* (C-184/16, EU:C:2017:684, paragraph 31 et seq.), and on the Opinion of Advocate General Szpunar in *Petrea* (C-184/16, EU:C:2017:324, point 61 et seq.).

230 In that case, the Court of Justice had before it a request for a preliminary ruling on whether the withdrawal of a registration certificate provided for in Article 8(2) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35//EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigenda OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34), could infringe the principle of protection of the legitimate expectations of the person to whom such a certificate was issued.

231 In essence, the Court of Justice, confirming the position taken by Advocate General Szpunar, held that a declaratory act, such as a registration certificate, cannot in itself give rise to a legitimate expectation on the part of the person concerned in his right to stay on the territory of the Member State concerned (judgment of 14 September 2017, *Petrea*, C-184/16, EU:C:2017:684, paragraph 35).

232 By analogy, the Council takes the view that the information relating to the identity of the person designated on the lists at issue is merely declaratory and, as such, is not capable of creating subjective rights.

233 In so doing, the Council proceeds from the incorrect premiss that, in order to apply, the principle of the protection of legitimate expectations always requires the adoption of acts giving rise to subjective rights. That condition is not apparent from the case-law or, in particular, from the judgment of 14 September 2017, *Petrea* (C-184/16, EU:C:2017:684). Although the Court of Justice states in that judgment that, in itself, the registration certificate cannot give rise to a legitimate expectation on the part of the person concerned since it is a declaratory act, it must be stated that the Court of Justice adds, in paragraph 36 of that judgment, that, moreover, in the case at issue in the main proceedings, none of the circumstances described in the order for reference allows the conclusion that the competent authorities gave rise to expectations concerning the right to stay of the person concerned by providing him with precise assurances. It follows that, far from ruling out the possibility that the person concerned might have been given assurances, in whatever form, by the competent authorities such as to give rise to certain expectations on his part, the Court of Justice accepted such a possibility and verified whether it took place in the case in point.

234 In the third place, it is therefore necessary to ascertain whether the Council had due regard for the applicant's legitimate expectations.

235 In that regard, it must be inferred from the case-law cited in paragraph 227 above that it is not for the applicant to show that he received precise, unconditional and consistent assurances such as to establish the existence of a legitimate expectation on his part that the Council would not adopt measures that were retroactive in scope, but it is for the Court to ascertain whether the 2021 measures were adopted with due regard to the applicant's legitimate expectations.

236 That examination requires that account be taken of all the circumstances of the case.

237 It is apparent from the letters of 28 October 2011, 15 November 2011 and 6 May 2013 sent to the applicant's representatives by the Council, and from the plea of inadmissibility lodged by the Council in the case which gave rise to the order of 24 May 2012, *Assaad* v *Council* (T-550/11, not published, EU:T:2012:266), that the Council stated, without reservation, that the applicant was not the person referred to in entry 36 of the lists at issue. That statement is confirmed by the adoption of the measures of November 2011 and the corrigenda of 2013 (see paragraph 24 above) and 2019. It is important to point out in that connection that the Council never asked the applicant's representatives for further identifying information concerning him, and that it does not claim that the applicant concealed information from it. In other words, until the letter of 12 February 2021 was sent, the Council expressed no doubts as to the fact that the applicant was not the person referred to in entry 36 of the lists at issue.

238 Accordingly, the Council confirmed to the applicant on several occasions that he was not the person referred to in entry 36 of the lists at issue.

239 In that regard, the Council seeks to maintain that any conclusion as to the identity of a person subject to restrictive measures is merely declaratory and seeks to establish an analogy between the present situation and that of the case giving rise to the judgment of 25 January 2017, *Almaz-Antey Air and Space Defence* v *Council* (T-255/15, not published, EU:T:2017:25, paragraphs 38 and 39). However, in that latter case, the General Court had to rule on the

admissibility of requests to amend the form of order lodged by the applicant with regard to a letter sent by the Council, by way of which the latter stated that it confirmed its point of view that the applicant continued to meet the criteria laid down in Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in view of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2014 L 78, p. 16), and by Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in view of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2014 L 78, p. 6), and that the restrictive measures were to be maintained against the applicant. It rejected as inadmissible those requests for modification, stating that the letter in question merely confirmed the Council's assessment and was not intended either to replace or amend the reasons for listing set out in Council Decision (CFSP) 2015/432 of 13 March 2015 amending Decision 2014/145 (OJ 2015 L 70, p. 47) and extending the restrictive measures at issue until 15 September 2015, and in Council Implementing Regulation (EU) 2015/427 of 13 March 2015 implementing Regulation No 269/2014 (OJ 2015 L 70, p. 1).

240 In the present case, the applicant does not seek the annulment of the letters sent to him by the Council, but he relies on them in order to demonstrate that the Council caused him to entertain a legitimate expectation that that institution did not regard him as the person referred to in entry 36 of the lists at issue. Thus, even if those letters merely confirmed the various measures adopted by the Council, the fact remains that they contributed to giving rise, in conjunction with those measures, to the applicant's legitimate expectation that he was not the person referred to in entry 36 of the lists at issue. Thus, on account of the combination of those letters, confirming or announcing the measures adopted by the Council, and the exceptional retroactive nature of the EU measures, the applicant could legitimately expect that he would not be retroactively associated with the person referred to in entry 36 of the lists at issue.

241 It follows from the foregoing that the Council failed to have due regard for the applicant's legitimate expectations by adopting restrictive measures with retroactive effect against him.

242 That finding cannot be called into question by the Council's other arguments.

243 In the first place, the Council takes the view that any finding as to the identity of a person who is targeted by a listing is based on the factual elements contained in the file which enable the Council and the authorities implementing restrictive measures to identify the person targeted by a listing. In other words, according to the Council, its position regarding the identity of a person can change in the light of the information in its possession.

244 Admittedly, on the one hand, it is accepted that the Council may establish the identity of persons and entities in respect of whom or which it adopts restrictive measures to the requisite legal standard (see judgment of 9 September 2016, *Tri Ocean Energy* v *Council*, T-719/14, not published, EU:T:2016:458, paragraph 30 and the case-law cited). In so doing, the Courts of the European Union took account of the difficulty in obtaining more precise evidence in a State at civil war governed by an authoritarian regime. In such circumstances, it must be accepted that the Council may change its mind as to the identity of a person or entity on the basis of the evidence available to it.

245 On the other hand, as has been stated in paragraph 219 above, it must be acknowledged that it is possible for the Council to correct the error which it has made as to the identity of a person and thereby enable it to clarify the situation of a person or entity.

246 However, the right conferred on the Council in paragraph 219 above is subject to limits, namely observance of the principle of the protection of legitimate expectations, the compliance with which is all the more important since the consequences for the legal situation of the persons and entities concerned by the restrictive measures are not insignificant.

247 In that regard, it should also be recalled that, according to the case-law, even if the restrictive measures do not constitute criminal penalties, the fact remains that it is for the Council, in accordance with the case-law referred to in paragraphs 70 and 71 above, to establish to the requisite legal standard the identity of the persons and entities in respect of which it adopts restrictive measures. That is important inasmuch as, with respect to restrictive measures, identification to the requisite legal standard of the addressees of measures taken by the Council is a prerequisite for their listing and for the concrete examination of the facts at issue (see, to that effect, judgment of 16 December 2020, *Haikal* v *Council*, T-189/19, not published, EU:T:2020:607, paragraph 102).

248 Furthermore, that type of error should be limited as far as possible, as there is the risk, otherwise, of diminishing the effectiveness of the restrictive measures and undermining the objective of the legal regime established by the European Union, namely to put pressure on the Syrian regime by preventing the funding thereof.

249 Thus, although the Council has the right to correct retroactively an error which it has made in the identification of a person concerned by restrictive measures, it cannot act without observing the principle of the protection of legitimate expectations. Its argument should, therefore, be rejected.

250 In the second place, the Council states that its misconception of the identity of the person referred to in entry 36 of the lists at issue was not based on a lack of information as to the identity of that person, but rather due to a lack of information on the applicant's identity.

251 However, even if the Council's argument were to be accepted, the Council does not refer to any letter sent to the applicant's representatives in order to clarify the situation. In view of the fact that, in the present case, the applicant's funds had been temporarily frozen in 2011 and again in 2015 by a Swiss bank, as has been observed in paragraph 205 above, the Council ought already to have used the means at its disposal at that time to clarify the situation if it considered that it did not have sufficient information on the applicant's identity. Ultimately, it was only on receiving the letter of 23 June 2020 by way of which he was informed that the French Minister for Economic Affairs and Finance had adopted the French decision of 12 February 2020 in order to freeze the funds held by the applicant in France that the Council sought to obtain further information.

252 Moreover, as a result of the adoption of that decision by the French authorities, the Council cannot reasonably maintain that the error which it committed was, in so far as no restrictive measure produced its effects until the adoption of the 2021 measures, favourable to the applicant. Not only is that partly inaccurate, since the French authorities in fact froze the funds held by the applicant in France on the basis of the 2019 measures, but, above all, the error made by the Council – which maintained a legitimate expectation on the part of the applicant that he was not the person referred to in entry 36 of the lists at issue – did not lead him to bring actions during the 10-year period preceding the adoption of the 2021 measures in order to obtain the annulment of the various measures listing and retaining his name. Moreover, the possibility that the applicant would have brought actions if he had been aware that he had been the subject of

the measures prior to those of 2021 is not merely hypothetical in the present case, since the applicant had brought an action against the 2011 measures and duly wrote to the Council in order to obtain confirmation that he was not the person referred to in entry 36 of the lists at issue.

253 The Council's argument must therefore be rejected.

254 Consequently, it must be held that there has been breach of the applicant's legitimate expectations and breach of the principle of legal certainty and, accordingly, the second and third pleas must be upheld.

E. The fifth plea, alleging breach of the principle of res judicata

255 The applicant claims, in essence, that the question of the identity of the person referred in entry 36 of the lists at issue was settled by the order of 24 May 2012, *Assaad* v *Council* (T-550/11, not published, EU:T:2012:266). Furthermore, he states that it was at the express request of the Council that the Court reached that decision, when the applicant had sought access to the Court to clarify to third parties that he was not subject to restrictive measures. According to the applicant, the Council cannot subvert that by adopting the contested measures.

256 The Council considers that the status of a decision of the EU Courts dismissing an earlier action as *res judicata* can only bar the admissibility of a second action. Accordingly, the applicant's arguments in relation to *res judicata* of a decision on admissibility in the 2011 proceedings, by which he seeks to prevent the Court from examining the substance of the present case, should be rejected.

257 It is necessary to bear in mind the importance, both in the legal order of the European Union and in the national legal orders, of the principle of *res judicata*. In order to ensure both stability of the law and legal relations and the sound administration of justice, it is important that judicial decisions which have become definitive after all rights of appeal have been exhausted or after expiry of the time limits provided for in that connection can no longer be called into question (judgment of 30 September 2003, *Köbler*, C-224/01, EU:C:2003:513, paragraph 38).

258 The main objective pursued is to prevent decisions which are contrary or even incompatible in terms of their effects from coexisting in the legal order of the European Union. That is why a judgment's status as *res judicata* is such as to bar the admissibility of an action if the proceedings disposed of by the judgment in question were between the same parties, had the same purpose and the same legal basis (judgments of 19 September 1985, *Hoogovens Groep* v *Commission*, 172/83 and 226/83, EU:C:1985:355, paragraph 9; of 5 June 1996, *NMB France and Others* v *Commission*, T-162/94, EU:T:1996:71, paragraph 37; and of 25 June 2010, *Imperial Chemical Industries* v *Commission*, T-66/01, EU:T:2010:255, paragraph 197).

259 In that sense, *res judicata* extends not only to the operative part of the judicial decision but also to the grounds which led to that decision 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 (see, to that effect, judgments of 3 October 2000, *Industrie des poudres sphériques* v *Council*, C-458/98 P, EU:C:2000:531, paragraph 81, and of 1 July 2009, *ThyssenKrupp Stainless* v *Commission*, T-24/07, EU:T:2009:236, paragraphs 113 and 140).

260 In the present case, the parties disagree on the scope to be attached to the force of *res judicata* of the order of 24 May 2012, *Assaad* v *Council* (T-550/11, not published, EU:T:2012:266).

261 It should be observed that, in the present case, it is not a question of determining whether an action brought against measures the legality of which was, in whole or in part, examined by the Court is inadmissible, but whether the Council was bound by the order of 24 May 2012, *Assaad* v *Council* (T-550/11, not published, EU:T:2012:266), when it adopted the contested measures.

262 In that regard, as has been noted in paragraph 58 above, the present action concerns not the annulment of the 2011 measures, but only the annulment of the contested measures, which were adopted on 6 May 2021 and 30 May 2022.

263 However, since the 2021 measures have retroactive effect and the 2022 retention measures continue to indicate that the date of initial inclusion of the applicant's name on the lists at issue is 23 August 2011, there is a contradiction, since, on the one hand, there is a judicial decision which has become final recognising that the applicant is not the person referred to in the 2011 measures and, on the other hand, there are Council measures, adopted subsequently, which indicate the contrary.

264 By stating, in the contested measures, that the applicant was subject to the 2011 measures, the Council has infringed the principle of *res judicata* of the order of 24 May 2012, *Assaad* v *Council* (T-550/11, not published, EU:T:2012:266). In doing so, it has caused a decision and measures which are contrary, or even incompatible in terms of their effects, to coexist in the EU legal order.

265 That finding cannot be called into question by the Council's line of argument, in support of which it relies on the judgment of 13 February 2003, *Meyer* v *Commission* (T-333/01, EU:T:2003:32).

266 It is clear from paragraphs 25 and 27 of the judgment of 13 February 2003, *Meyer* v *Commission* (T-333/01, EU:T:2003:32), that the Court held that, in the case which gave rise to the order of 10 April 2000, *Meyer* v *Commission and EIB* (T-361/99, EU:T:2000:107), which had not dealt with the substance of the case, it had not ruled on any point of fact or law by which it could be bound in the proceedings in question, with the result that the argument based on *res judicata* had to be rejected.

267 The Council infers from this that, similarly, the order of 24 May 2012, *Assaad* v *Council* (T-550/11, not published, EU:T:2012:266) should not be taken into consideration, since it dealt only with the admissibility of the action brought by the applicant against the 2011 measures.

268 The mere fact that the question of the applicant's identity was ruled upon in the context of the examination of the admissibility of the action, and not in the context of the substance of the case, is irrelevant. In the context of the assessment of the force of *res judicata* attaching to a decision of the Courts of the European Union, what matters is solely whether a final answer was given by the Court to a specific question. Thus, the force of *res judicata* attaching to the order of 24 May 2012, *Assaad* v *Council* (T-550/11, not published, EU:T:2012:266), cannot be excluded merely because it is an order of inadmissibility.

269 By contrast, it should be noted that the Council infringed the principle of *res judicata* of the order of 24 May 2012, *Assaad* v *Council* (T-550/11, not published, EU:T:2012:266), only in so far as concerns the 2011 measures. It was only with regard to those measures that the Court held that the applicant was not the person referred to in entry 36 of the lists at issue.

270 It should be recalled that, as the Council rightly maintains, the principle of *res judicata* cannot be extended so that an order settles questions relating to another set of legal acts, adopted on the basis of other evidence and relating to different basic acts (see, to that effect, judgments of 29 November 2018, *Bank Tejarat* v *Council*, C-248/17 P, EU:C:2018:967, paragraph 76, and of 23 September 2020, *Kaddour* v *Council*, T-510/18, EU:T:2020:436, paragraph 92).

271 Consequently, the applicant has no basis for maintaining that the contested measures were adopted in breach of the principle of *res judicata*, aside from the 2011 measures.

272 In that regard, while it is true, as the applicant submits, that the question of a person's identity can, in principle, have only one answer and cannot change over time, it should be recalled, as has been mentioned in paragraph 244 above, that, in relation to restrictive measures against Syria, the Council may establish the identity of persons and entities in respect of whom or which it adopts restrictive measures to the requisite legal standard. Since, moreover, it has been established, in paragraph 219 above, that the Council had the opportunity to correct the error which it had committed with regard to a person's identity, it must be confirmed that the force of *res judicata* attaching to the order of 24 May 2012, *Assaad* v *Council* (T-550/11, not published, EU:T:2012:266), cannot be extended to measures supported by items of evidence which were not in the Council's possession when the 2011 measures were adopted.

273 In the light of the foregoing, it must be concluded that the fifth plea in law is upheld in so far as the contested measures establish that the applicant was subject to the 2011 measures.

274 Since the first, second and third pleas have also been upheld, the contested measures must be annulled, without there being any need to examine the fourth plea, alleging 'misuse of powers'.

F. The temporal effects of the annulment of the contested measures

275 In that regard, the Council requested, in the context of its third head of claim, that, in the event that the Court should annul the contested measures in so far as they concern the applicant, the Court should order that the effects of Decision 2022/849 be maintained with regard to the applicant until the partial annulment of Implementing Regulation 2022/840 takes effect.

276 First of all, as regards Implementing Regulation 2022/840, it must be stated that under the second paragraph of Article 60 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 are to 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 of that Statute or, if an appeal has been brought within that period, as from the date of dismissal of that appeal.

277 In those circumstances, in the absence of an appeal, the Council has a period of two months, extended on account of distance by a period of 10 days, as from the notification of the present judgment, to remedy the infringements established by adopting, if appropriate, new restrictive measures with respect to the applicant.

278 By contrast, as regards Decision 2022/849, it should be noted that, in principle, the annulment thereof should lead to the removal of the applicant's name from the list in Annex I to Decision 2013/255.

279 Nevertheless, a difference between the date when the annulment of Implementing Regulation 2022/840 takes effect and that of Decision 2022/849 would be liable seriously to jeopardise legal certainty, since both measures impose identical measures on the applicant (see, to that effect, judgment of 28 September 2022, *LAICO* v *Council*, T-627/20, not published EU:T:2022:590, paragraph 106).

280 It follows that the effects of the Decision 2022/849 must be maintained with regard to the applicant, until the date of expiry of the period for bringing an appeal or, if an appeal is brought within that period, until any dismissal of the appeal.

Costs

281 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

282 In the present case, as the Council has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the applicant.

On those grounds,

THE GENERAL COURT (Fourth Chamber, Extended Composition)

hereby:

1. **Annuls Council Implementing Decision (CFSP) 2021/751 of 6 May 2021 implementing Decision 2013/255/CFSP concerning the restrictive measures against Syria, Council Implementing Regulation (EU) 2021/743 of 6 May 2021 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria, Council Decision (CFSP) 2022/849 of 30 May 2022 amending Decision 2013/255/CFSP concerning restrictive measures against Syria, and Council Implementing Regulation (EU) 2022/840 of 30 May 2022 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria, in so far as they concern Mr Nizar Assaad;**

2. **Orders that the effects of Decision 2022/849 be maintained with regard to Mr Assaad until the date of expiry of the period for bringing an appeal or, if an appeal is brought within that period, until any dismissal of the appeal;**

3. **Orders the Council of the European Union to pay the costs.**

Gervasoni Madise Nihoul

Frendo Martín y Pérez de Nanclares

Delivered in open court in Luxembourg on 8 March 2023.

E. Coulon M. van der Woude
Registrar President

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