JUDGMENT OF THE GENERAL COURT (Fifth Chamber)

12 June 2024 (*)

(Common foreign and security policy – Restrictive measures taken in view of the situation in Syria – Freezing of funds – Restrictions on admission to the territory of the Member States – Inclusion and maintenance of the applicant's name on the lists of persons, entities and bodies concerned – Criterion of 'leading businessperson operating in Syria' – Presumption of a link with the Syrian regime – Error of assessment – Rights of the defence – Right to effective judicial protection – Obligation to state reasons – Proportionality – Right to property – Freedom to choose an occupation and right to engage in work – Freedom to conduct a business – Admissibility of evidence)

In Case T-649/22,

Issam Shammout, residing in Damascus (Syria), represented by L. Cloquet, lawyer,

applicant,

v

Council of the European Union, represented by T. Haas, acting as Agent, and by B. Maingain and S. Remy, lawyers

defendant,

THE GENERAL COURT (Fifth Chamber),

composed of J. Svenningsen, President, C. Mac Eochaidh and J. Martín y Pérez de Nanclares (Rapporteur), Judges,

Registrar: M. Zwozdziak-Carbonne, Administrator,

having regard to the written part of the procedure,

further to the hearing on 10 January 2024,

gives the following

Judgment

1 By his action under Article 263 TFEU, the applicant, Mr Issam Shammout, seeks the annulment, first, of Council Implementing Decision (CFSP) 2022/1277 of 21 July 2022 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2022 L 194, p. 15) and Council Implementing Regulation (EU) 2022/1275 of 21 July 2022 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2022 L 194, p. 8) (together, 'the initial acts'), and, second, of Council Decision (CFSP) 2023/1035 of 25 May 2023 amending Decision 2013/255/CFSP concerning restrictive measures in view of the situation in Syria (OJ 2023 L 139, p. 49) and Council Implementing Regulation (EU) 2023/1027 of 25 May 2023 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2023 L 139, p. 1) (together, 'the maintaining acts'), in so far as those four acts include or maintain his name on the lists annexed to those acts (together, 'the contested acts').

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

2 The applicant is a Syrian businessman, involved in the airline company Cham Wings Airlines LLC ('Cham Wings') and in the Shammout Group.

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. Under Article 5(1) of that decision, the Council, acting upon a proposal by a Member State or the High Representative of the Union for Foreign Affairs and Security Policy, may amend that annex.

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) 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. Furthermore, under Article 14(4) of that regulation, the Council is to review the list in that annex at regular intervals and at least every 12 months.

6 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 found 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 and the additional measures were integrated 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 thereof, for the funds and economic resources of the persons and entities whose names are listed in Annexes I and II to be frozen.

7 Regulation No 442/2011 was replaced by Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011 (OJ 2012 L 16, p. 1).

8 Decision 2011/782 was replaced by Council Decision 2012/739/CFSP of 29 November 2012 concerning restrictive measures against Syria and repealing Decision 2011/782 (OJ 2012 L 330, p. 21), which was in turn replaced by Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria (OJ 2013 L 147, p. 14).

9 On 12 October 2015, the Council adopted (i) Decision (CFSP) 2015/1836 amending Decision 2013/255 (OJ 2015 L 266, p. 75) and (ii) Regulation (EU) 2015/1828 amending Regulation No 36/2012 (OJ 2015 L 266, p. 1).

10 According to recital 6 of Decision 2015/1836, ‘the Council has assessed that because of the close control exercised over the economy by the Syrian regime, an inner cadre of leading businesspersons operating in Syria [was] only able to maintain its status by enjoying a close association with, and the support of, the regime, and by having influence within it’ and ‘[it] considers that it should provide for restrictive measures to impose restrictions on admission and to freeze all funds and economic resources belonging to, owned, held or controlled by those leading businesspersons operating in Syria, as identified by [it] and listed in Annex I, in order to prevent them from providing material or financial support to the regime and, through their influence, to increase pressure on the regime itself to change its policies of repression’.

11 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 territories of the Member States and for the funds of ‘leading businesspersons operating in Syria’ to be frozen, 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’. Regulation 2015/1828 amended, inter alia, the wording of Article 15 of Regulation No 36/2012 in order to include the new listing criteria defined by Decision 2015/1836.

12 On 21 July 2022, the Council adopted the initial acts, by which the applicant’s name was included for the first time at line 326 of the list in Section A (‘Persons’) of Annex I to Decision 2013/255 and of the list in Section A (‘Persons’) of Annex II to Regulation No 36/2012 (together, ‘the lists at issue’). First, the different spellings of the applicant’s name were included, as was his name in Arabic script. The identifying information states the applicant’s date and place of birth and that he is male. Second, the reasons for including the applicant’s name on the lists at issue are worded as follows (‘the grounds at issue’):

‘[The applicant] is the owner and chairman of the board of directors of [Cham Wings] and head of the Shammout Group, active in the automotive, steel, aviation, freight forwarding, construction, and real estate sectors.

In this capacity, [the applicant] is a leading businessperson operating in Syria.’

13 On 22 July 2022, the Council published in the *Official Journal of the European Union* a Notice for the attention of persons subject to the restrictive measures provided for in Decision 2013/255 and in Regulation No 36/2012 (OJ 2022 C 281 I, p. 5).

14 On 5 September 2022, the applicant’s representative, inter alia, requested the Council to review the inclusion of the applicant’s name on the lists at issue and to grant him access to the documents which formed the basis for that listing. By emails of 19 and 27 September and of 5 and 7 October 2022, he repeated the request for access.

15 By letter of 27 October 2022, the Council replied to the applicant’s representative, rejecting his arguments. Next, it informed him that he could present observations before 20 February 2023. Lastly, it sent him the document with evidence supporting the inclusion of the applicant’s name on the lists at issue that bears reference number WK 9404/2022 INIT and is dated 29 June 2022 (‘document WK 9404/2022’).

16 By letter of 31 March 2023, the Council informed the applicant’s representative of its intention to maintain the applicant’s name on the basis of the grounds at issue, but supported by new evidence. In that regard, the Council sent him, first, the document that bears reference number WK 199/2023 INIT and is dated 9 January 2023 (‘document WK 199/2023’), second, the document that bears reference number WK 3114/2023 INIT and is dated 3 March 2023 (‘document WK 3114/2023’) and, third, the document that bears reference number WK 206/2023 EXT 13 and is dated 24 March 2023 (‘the horizontal evidence document’). Lastly, it informed him that he could submit observations by 17 April 2023.

17 By letter of 17 April 2023, the applicant’s representative submitted observations on document WK 199/2023, document WK 3114/2023 and the horizontal evidence document.

18 On 25 May 2023, the Council adopted the maintaining acts. Pursuant to Decision 2023/1035, the application of Decision 2013/255 was extended until 1 June 2024. The applicant’s name was maintained at line 326 of the lists at issue on the basis of the grounds at issue set out in paragraph 12 above.

19 On 26 May 2023, the Council informed the applicant’s representative of the extension of the initial acts. Next, it rejected the arguments relating to the request for removal of the applicant’s name from the lists at issue. Lastly, it informed him that he could submit observations before 16 February 2024.

Forms of order sought

20 The applicant claims that the Court should:

– annul the contested acts;

– order the Council to pay the costs of the proceedings.

21 The Council contends that the Court should:

– dismiss the action in its entirety;

– order the applicant to pay the costs;

– in the alternative, should the Court annul the contested measures, order that the effects of Decision 2023/1035 be maintained as regards the applicant until the partial annulment of Implementing Regulation 2023/1027 takes effect.

Law

22 In support of his action, the applicant raises five pleas in law alleging, in essence, (i) an error of assessment, (ii) infringement of the general principle of proportionality, (iii) infringement of the right to property and of the freedom to exercise an economic activity, (iv) failure to comply with the obligation to state reasons, and (v) infringement of the rights of the defence and of the right to a fair trial.

23 It is appropriate to examine, first of all, the pleas in law relating to the procedural legality of the contested acts, namely the fourth and fifth pleas, and subsequently examine those relating to their substantive legality, starting with the first plea in law and then examining the second and third pleas together.

The fourth plea in law, alleging failure to comply with the obligation to state reasons

24 The applicant submits that the statement of reasons for the contested acts does not satisfy the requirements of the second paragraph of Article 296 TFEU. First, according to him, that statement of reasons is disconnected from any factual background and is not the result of a proper assessment of facts. Second, he claims that it is purely formal and was not the object of any reflection on the part of the Council. Third, the applicant states that, according to the case-law, the reasons have to be communicated simultaneously after the decision is adopted in order for the listed person to be able to defend him or herself and for the courts to be able to review the legality of the contested acts.

25 The Council disputes the applicant’s arguments.

26 According to settled case-law, the purpose of the obligation to state the reasons on which an act adversely affecting an individual is based, which is the corollary of the principle of respect for the rights of defence, is, first, to provide the person concerned with sufficient information to make it possible to ascertain whether the act is well founded or whether it is vitiated by a defect which may permit its legality to be contested before the European Union Courts and, second, to enable those Courts to review the legality of that act (see judgment of 13 September 2013, *Makhlouf* v *Council*, T-383/11, EU:T:2013:431, paragraph 60 and the case-law cited).

27 It must be borne in mind that the statement of reasons required by Article 296 TFEU must be appropriate to the measure at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the court having jurisdiction to exercise its power of review. The statement of reasons for an act of the Council which imposes a measure freezing funds must enable the identification of the actual and specific reasons why the Council considers, in the exercise of its discretion, that that measure must be adopted in respect of the person concerned (see judgment of 13 September 2013, *Makhlouf* v *Council*, T-383/11, EU:T:2013:431, paragraphs 61 and 63 and the case-law cited).

28 However, the requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure may have in obtaining explanations. It is not necessary for the reasoning to go into

all the relevant facts and points of law, inasmuch as the question whether the statement of reasons for a measure meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question. In particular, the reasons given for a measure adversely affecting a person are sufficient if that measure was adopted in a context which was known to that person and which enables that person to understand the scope of the measure concerning him or her (see judgment of 13 September 2013, *Makhlouf* v *Council*, T-383/11, EU:T:2013:431, paragraphs 64 to 66 and the case-law cited).

29 In the first place, it is necessary to ascertain whether the Council set out, in a comprehensible and sufficiently precise manner, the reasons that led it to consider that the inclusion and maintenance of the applicant's name on the lists at issue were justified in the light of the legal criteria applicable. First, the general listing criterion set out in Article 27(2)(a), Article 27(3), Article 28(2)(a) and Article 28(3) of Decision 2013/255, as amended by Decision 2015/1836, and reproduced, as regards the freezing of funds, in Article 15(1a)(a) and Article 15(1b) of Regulation No 36/2012, as amended by Regulation 2015/1828, must be borne in mind. That criterion states 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 (criterion of a leading businessperson operating in Syria).

30 As stated in paragraph 18 above, the grounds at issue remained unchanged between the adoption of the initial acts and that of the maintaining acts. It must be inferred from those grounds, as the parties assert, that the applicant's name was included and maintained on the lists at issue on account of his status as a leading businessperson operating in Syria. In other words, the listing of the applicant's name is based on the listing criterion referred to in paragraph 29 above.

31 Second, the actual and specific reasons which led the Council to include and maintain the applicant's name on the lists at issue are set out in the contested acts in a sufficiently clear manner to enable the applicant to understand them. Moreover, the applicant does not state in what way the grounds at issue do not relate to clear facts. Furthermore, the pleas in law raised by the applicant in his written submissions indicate, first, that he was put in a position to ascertain the reasons for the measures taken against him so as to be able to challenge them effectively before the EU judicature and, second, that he was aware of the context in which those measures were adopted.

32 In the second place, it is important to recall that the obligation to state reasons on which an act is based is an essential procedural requirement, to be distinguished from the question whether the reasoning is well founded, which goes to the substantive legality of the contested act. The reasoning on which an act is based consists in a formal statement of the grounds on which that act is based. If those grounds are vitiated by errors, the latter will vitiate the substantive legality of the act, but not the statement of reasons in it, which may be adequate even though it sets out reasons which are incorrect (see judgment of 5 November 2014, *Mayaleh* v *Council*, T-307/12 and T-408/13, EU:T:2014:926, paragraph 96 and the case-law cited). In the present case, the applicant's arguments that, in essence, the statement of reasons for the contested acts is purely formal and the Council failed properly to assess the facts, seek, in reality, to challenge the merits of those acts. Since such arguments seek to call into question the substantive legality of those acts, they must be rejected as ineffective in so far as they have been put forward in support of the present plea in law and must be examined in the context of the first plea in law, alleging an error of assessment.

33 Consequently, the fourth plea in law must be rejected as unfounded.

The fifth plea in law, alleging an infringement of the rights of the defence, of the right to a fair trial and of the right to effective judicial protection

34 The applicant submits, in essence, that, by adopting the contested acts, the Council infringed his rights of defence, his right to a fair trial and his right to effective judicial protection, as provided for in Article 48(2) of the Charter of Fundamental Rights of the European Union ('the Charter') and Article 6(3) of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950.

35 The Council disputes the applicant's arguments.

36 It should be borne in mind that observance of the rights of the defence includes, inter alia, the right to be heard and the right to access the file, subject to legitimate interests in maintaining confidentiality, which are affirmed in Article 41(2)(a) and (b) of the Charter (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 99 and the case-law cited).

37 Furthermore, the right to effective judicial protection, affirmed in Article 47 of the Charter, requires that the person concerned must be able to ascertain the reasons upon which the decision taken in relation to him or her is based, either by reading the decision itself or by requesting and obtaining disclosure of those reasons, without prejudice to the power of the court having jurisdiction to require the authority concerned to disclose that information, so as to make it possible for him or her to defend his or her rights in the best possible conditions and to decide, with full knowledge of the relevant facts, whether there is any point in applying to the court having jurisdiction, and in order to put the latter fully in a position to review the lawfulness of the decision in question (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 100 and the case-law cited).

38 Article 52(1) of the Charter nevertheless allows limitations on the exercise of the rights enshrined in the Charter, subject to the conditions that the limitation concerned respects the essence of the fundamental right in question and, subject to the principle of proportionality, that it is necessary and genuinely meets objectives of general interest recognised by the European Union (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 101 and the case-law cited).

39 Lastly, the question whether there is an infringement of the rights of the defence must be examined in relation to the specific circumstances of each particular case, including the nature of the act at issue, the context of its adoption and the legal rules governing the matter in question (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 102 and the case-law cited).

40 The EU authorities cannot be required to communicate the grounds of those measures before the name of a person or entity is placed on the lists imposing restrictive measures for the first time (see, to that effect, judgment of 21 January 2015, *Makhlouf* v *Council*, T-509/11, not published, EU:T:2015:33, paragraph 34 and the case-law cited).

41 So that its effectiveness may not be jeopardised, such a measure must be able to take advantage of a surprise effect and to apply immediately. In such a case, it is as a rule enough if the institution notifies the person or entity concerned of the grounds and affords it the right to be heard at the same time as, or immediately after, the decision is adopted (judgment of 21 December 2011, *France* v *People's Mojahedin Organization of Iran*, C-27/09 P, EU:C:2011:853, paragraph 61).

42 In the first place, as regards the complaint by which the applicant alleges infringement of the rights of the defence and of the right to a fair trial, it must be borne in mind, as a preliminary point, that, following a question asked at the hearing, the applicant abandoned the argument that he had not been heard before the maintaining acts were adopted. Next, as regards the initial acts, the communication of the grounds for the inclusion of the applicant's name on the lists at issue was published in a notice in the *Official Journal* on 22 July 2022, as is apparent from paragraph 13 above. In addition, by a letter of 5 September 2022, the applicant requested, in essence, that the Council send him the documents supporting that listing, which the Council did by a letter of 27 October 2022, and also objected to that listing. Therefore, the Court considers that the fact that the applicant was not heard prior to the listing in question did not infringe his rights of defence.

43 In the second place, it is appropriate to examine the applicant's complaint relating to access to document WK 9404/2022 that formed the basis for the inclusion of his name on the lists at issue. In that regard, the applicant submits that the Council could have provided him with that document promptly, notwithstanding the disclosure procedures to be respected. He concludes from that that the Council voluntarily refused to communicate it to him before the expiry of the period prescribed in the fifth paragraph of Article 263 TFEU for

bringing an action against the initial acts, in order to prevent him from exercising his rights of defence under fair conditions.

44 Thus, by that complaint, the applicant alleges, in essence, infringement of his right to effective judicial protection.

45 As a preliminary point, the applicant's argument that, since document WK 9404/2022 was communicated after the present action was brought, that document could have been artificially made up for the purposes of the present proceedings, must be rejected. Since that document bears a date prior to that of the adoption of the initial acts and since the applicant does not submit any evidence in support of his claim, the Court considers that the document in question, which was sent to him, was indeed prepared prior to that adoption.

46 First of all, it should be recalled that, at the request of the party concerned, the Council is required to provide access to all non-confidential official documents within a reasonable period (see judgment of 24 November 2021, *Aman Dimashq* v *Council*, T-259/19, EU:T:2021:821, paragraph 73 and the case-law cited).

47 In that regard, it must be noted, first, that, on 5 September 2022, the applicant requested that the Council grant him access to document WK 9404/2022 that formed the basis for the inclusion of his name on the lists at issue. Since the initial acts were adopted on 21 July 2022 and published the following day in the *Official Journal*, the applicant waited approximately one month and two weeks after that adoption before making his request.

48 Thus, it must be noted that the applicant waited until a part of the time limit, as laid down in the fifth paragraph of Article 263 TFEU, for bringing an action against the initial acts had elapsed before sending the request for access to the file. It is true that that time limit had not completely elapsed as at the date of the first request (see, to that effect, judgment of 3 July 2014, *Sorinet Commercial Trust Bankers* v *Council*, T-157/13, not published, EU:T:2014:606, paragraph 66, and of 24 November 2021, *Aman Dimashq* v *Council*, T-259/19, EU:T:2021:821, paragraph 92).

49 When questioned at the hearing, the applicant failed, however, to explain why he had not made his request for access to document WK 9404/2022, on the basis of which his name had been included on the lists at issue, before 5 September 2022. Moreover, there is nothing in the file to indicate that the applicant would not have been able to submit such a request before, had he wished to do so. Thus, the applicant himself contributed to shortening the period of time that the Council had available to it to disclose document WK 9404/2022 to him before the expiry of the time limit prescribed in the fifth paragraph of Article 263 TFEU for bringing an action against the initial acts. Consequently, the Council cannot justifiably be criticised for not having dealt with that request, within a very brief period (see, to that effect, judgments of 15 June 2017, *Kiselev* v *Council*, T-262/15, EU:T:2017:392, paragraph 150, and of 18 September 2017, *Uganda Commercial Impex* v *Council*, T-107/15 and T-347/15, not published, EU:T:2017:628, paragraph 104).

50 Second, there are internal deadlines within the Council for obtaining approval from various bodies in order to send documents. Those internal deadlines must allow the evidence which has been produced and which seeks to support the restrictive measures against a person or entity to be disclosed to that person or entity in sufficient time to enable that person to assert his, her or its rights before the EU judicature (see, to that effect, judgments of 5 February 2013, *Bank Saderat Iran* v *Council*, T-494/10, EU:T:2013:59, paragraph 77, and of 24 November 2021, *Aman Dimashq* v *Council*, T-259/19, EU:T:2021:821, paragraph 91).

51 In the present case, it is true that the Council communicated document WK 9404/2022 one month and two weeks after the request for access to the file and that, moreover, the applicant had to repeat his request four times.

52 However, the failure to communicate document WK 9404/2022 before the present action was brought had no effect on the applicant's right to effective judicial protection. The applicant had access to that document before the Council lodged the defence, which enabled him, in the reply, to express his views on it and to submit evidence and arguments that were new as compared to those submitted in the application. He was also able to put

forward arguments in that regard at the hearing. Lastly, that document was sent to him in good time and within a reasonable period to enable him to submit observations in the procedure for reviewing the initial acts.

53 Accordingly, the Court concludes that, by sending document WK 9404/2022 to the applicant on 27 October 2022, the Council did not infringe the applicant's right to effective judicial protection.

54 That conclusion cannot be called into question by the applicant's argument relating to the low number of items contained in document WK 9404/2022, since that has no bearing on the question whether or not the Council sent that document in good time and within a reasonable period.

55 The complaint alleging an infringement of the right to effective judicial protection must therefore be rejected.

56 In the light of all the foregoing, the fifth plea in law must be rejected.

The first plea in law, alleging an error of assessment

57 In the first place, the applicant submits that the burden of proof lies with the Council, which should establish that the grounds at issue are well founded. In the second place, he disputes, in essence, the admissibility of the evidence in Annexes B.2 to B.8 to the defence. In the third place, he disputes the relevance of the documents contained in the horizontal evidence document inasmuch as they do not refer to him personally. In addition, he calls into question the relevance of the website of Shammout United. In the fourth place, he maintains that document WK 9404/2022 contains doubtful sources. He alleges that many of the items of evidence presented in documents WK 199/2023 and WK 3114/2023 and in the horizontal evidence document are unreliable and utterly erroneous. He disputes the reliability of several websites, such as Twitter, *Al-Mashhad Online*, *Middle East Eye* and 'alsouria.net'. In the fifth place, he asserts that the Council failed to demonstrate that he was part of the inner cadre of leading businesspersons or how his involvement in Cham Wings and in the Shammout Group allowed him to be classified as a 'leading businessperson' within the meaning of the listing criterion referred to in paragraph 29 above. In the sixth place, the applicant submits that he does not provide any financial or other support to the Syrian regime, that he does not benefit from it in any way and that he is not linked to that regime.

58 The Council disputes the applicant's arguments.

Preliminary observations

59 According to the case-law, the effectiveness of judicial review requires, in particular, that the Courts of the European Union ensure that the decision by which restrictive measures were adopted or maintained, which affects the person or entity concerned individually, is taken on a sufficiently solid factual basis. That entails a verification of the factual allegations in the summary of reasons underpinning that decision, with the consequence that judicial review cannot be restricted to an assessment of the cogency in the abstract of the reasons relied on, but must concern whether those reasons, or, at the very least, one of those reasons, deemed sufficient in itself to support that decision, is substantiated (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 119 and the case-law cited).

60 It is for the Courts of the European Union, in order to carry out that examination, to request the competent European Union authority, when necessary, to produce information or evidence, confidential or not, relevant to such an examination (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).

61 That is because it is the task of the competent European Union authority to establish, in the event of challenge, that the reasons relied on against the person or entity concerned are well founded, and not the task of that person or that 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).

62 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 acts whose 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).

63 If the competent European Union authority provides relevant information or evidence, the Courts of the European Union must then determine whether the facts alleged are made out in the light of that information or evidence and assess the probative value of that information or evidence in the circumstances of the particular case and in the light of any observations submitted in relation to them by, among others, the person 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).

64 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).

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

66 It must be borne in mind, as regards the grounds at issue and as is apparent from paragraph 30 above, that the inclusion and maintenance of the applicant's name on the lists at issue are based, in the contested acts, on the criterion for listing a leading businessperson operating in Syria, as recalled in paragraph 29 above.

The relevance of the evidence

67 First of all, in order to justify the inclusion of the applicant's name on the lists at issue, the Council provided document WK 9404/2022, containing publicly accessible information, namely links to websites, press articles and screenshots of the websites *Intelligence online*, Twitter, *Al-Mashhad Online*, *Middle East Eye* and *Enab Baladi*.

68 In addition, as regards the maintaining acts, the Council also provided three other documents, namely document WK 199/2023, document WK 3114/2023 and the horizontal evidence document containing links, press articles, reports and screenshots of:

– media websites of foreign or local origin, such as 'alsouria.net', 'alaraby.co.uk', *The Syria Report* and 'almashareq.com';

– European, English or American newspaper websites, such as *Deutsche Welle*, *Orient Net*, *Atlantic Council*, *The Guardian* and *Middle East Eye*;

– collaborative websites, such as 'Wikimapia.org' and Wikipedia;

– websites relating to undertakings, such as the websites of Cham Wings and of Shammout United, or to economic organisations, such as the website of the Syrian Enterprise and Business Centre (ESCB);

– websites of foundations, such as the Heritage Foundation, Brookings Institute, the Harmoon Center and the Dayan Center for Middle Eastern and African Studies;

– the website of the United Nations High Commissioner for Human Rights;

– websites such as LinkedIn, 'people.bayt.com', 'ifmat.org', 'pro-justice.org' and 'transparency.org'.

69 First, as regards the applicant's argument that the evidence contained in the horizontal evidence document does not refer to him personally, it must be noted that although it does not refer individually to the applicant, or to undertakings with which he is linked, it provides the context in which the person concerned was designated, in

particular having regard to the category of leading businesspersons operating in Syria, as shown by the first page of that document, to which he belongs. It is apparent in particular from that document that the historical links between the elite of businessmen and the Bashar Al-Assad regime persist. Thus, in accordance with the case-law referred to in paragraph 64 above, and although those items of evidence, taken individually, are insufficient in themselves to justify the maintenance of the applicant's name on those lists as well founded, that fact does not mean that they are entirely irrelevant for the purpose of examining the lawfulness of those measures, to the extent that they provide contextual information to supplement and support the other items of evidence that mention the applicant specifically (see, to that effect, judgments of 16 December 2020, *Haikal* v *Council*, T-189/19, not published, EU:T:2020:607, paragraph 120, and of 18 May 2022, *Foz* v *Council*, T-296/20, EU:T:2022:298, paragraph 101 (not published)). Accordingly, all the evidence contained in the document in question is relevant for the purpose of assessing the legality of those acts.

70 Second, as regards the applicant's argument that the entity Shammout United Traded Company, referred to in the extract from that undertaking's website, does not correspond to the Shammout Group referred to in the grounds at issue, inasmuch as it is owned by a different family and has nothing to do with that group, since the general manager of that entity is a third party, it is indeed apparent from the analysis of that document that that entity is owned by a person other than the applicant and is now managed by that person's sons. Accordingly, that evidence cannot be taken into consideration in order to determine whether the applicant may be classified as a leading businessperson operating in Syria, within the meaning of the listing criterion referred to in paragraph 29 above.

The reliability of the evidence produced by the Council

71 The applicant maintains that the evidence contained in document WK 9404/2022 comes from dubious sources. He alleges that many of the items of evidence presented in documents WK 199/2023 and WK 3114/2023 and in the horizontal evidence document are unreliable and utterly erroneous.

72 The Council disputes the applicant's arguments. In response to the measure of organisation of procedure adopted by the Court, it reproduced general, publicly accessible information concerning the websites *Middle East Eye*, *Enab Beladi*, *Al-Mashhad Online* and 'alsouria.net'.

73 It must be noted that the Council relied, inter alia, on information from the website Wikipedia in order to describe the websites *Middle East Eye* and *Enab Baladi*. According to the case-law, facts alleged on the basis of information taken from the website Wikipedia must be disregarded since, as they are based on an article from a collective encyclopaedia established on the internet, whose content may be amended at any time and, in certain cases, by any visitor, even anonymously, such alleged facts are based on information which lacks certainty (see, to that effect, judgment of 16 October 2014, *Novartis* v *OHIM – Tenimenti Angelini (LINEX)*, T-444/12, not published, EU:T:2014:886, paragraph 47 and the case-law cited). In the present case, asked specifically about the inferences that it drew from that case-law, the Council stated that it did not insist on the possibility of relying on the website Wikipedia as a source to describe the websites *Middle East Eye* and *Enab Baladi*. That said, the applicant has stated that he does not call into question the objective content of the descriptions of those websites. Consequently, it must be accepted that it is common ground that those descriptions are correct.

74 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 judgments of 14 March 2018, *Kim and Others* v *Council and Commission*, T-533/15 and T-264/16, EU:T:2018:138, paragraph 224 and the case-law cited, and of 14 April 2021, *Al-Tarazi* v *Council*, T-260/19, not published, EU:T:2021:187, paragraph 72 and the case-law cited).

75 In addition, it must be borne in mind that the state of war in Syria makes it difficult in practice, if not impossible, to gather witness evidence from persons who agree to be identified. The investigative difficulties which this creates and the danger faced by those who provide information make it impossible to adduce detailed

evidence of personal conduct in support of the regime (see, to that effect, judgment of 21 April 2015, *Anbouba* v *Council*, C-605/13 P, EU:C:2015:248, paragraph 46, and Opinion of Advocate General Bot in *Anbouba* v *Council*, C-605/13 P and C-630/13 P, EU:C:2015:2, point 204).

76 In the first place, the applicant asserts in a general manner that all or almost all of the evidence contained in documents WK 9404/2022, WK 199/2023 and WK 3114/2023 as well as in the horizontal evidence document is unreliable, but he puts forward specific arguments only as regards the screenshot of the website Twitter (renamed 'X' since 24 July 2023), of the article from the website *Enab Beladi* and of the article from the website 'alsouria.net', which are included in the first two abovementioned documents.

77 Since the evidence submitted by the Council, communicated to the applicant, comes from publicly accessible sources, he was able to indicate which items of evidence, in his view, were dubious. In particular, having regard to the case-law referred to in paragraph 63 above, while it is for the Council to provide evidence in support of the grounds for listing, it is for the applicant to indicate which items of evidence 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).

78 Consequently, general and declaratory allegations which the applicant does not support with any concrete evidence cannot call into question the soundness and reliability of the evidence contained in the four items of documentary evidence.

79 In the second place, as regards the screenshot of the website Twitter, included in document WK 9404/2022, first, the applicant maintains that the author of the tweet is an unknown person. That document is accompanied by an image with a caption in Arabic. The applicant is identified therein as being one of the two owners of almost 100% of the 225 million shares in Cham Wings. The tweet was published on 13 December 2019 at 16.19 by the user A. Thus, it is apparent from that screenshot that the author of the tweet is identified. In addition, Annex D.1 to the rejoinder, a screenshot of A's LinkedIn page on which he summarises his professional experience, presents him as an investigative journalist and a former reporter at *Orient Today*. Therefore, the applicant's argument has no factual basis and cannot call into question the reliability of that document.

80 Second, the applicant refers to a discrepancy between the number of shares he allegedly has in Cham Wings, as referred to in the tweet in question, and the number mentioned in the accompanying image. It must be noted that, in the image, the number in question is mentioned in the caption, written in Arabic. However, in the present case, even if the image accompanying the tweet at issue does not refer to the same number of shares held by the applicant in Cham Wings as that tweet, that fact is not such as to give rise to doubts regarding the likelihood and veracity of the other information which appears in that tweet and on which the Council principally relied in order to include and maintain the applicant's name on the lists at issue.

81 In the third place, according to the applicant, the content of the article on the website *Enab Beladi*, included in document WK 9404/2022, is false. According to that article, published on 12 December 2021 and accessed on 24 April 2022, entitled 'Syrian private airlines company "Cham Wings" increases activity despite sanctions', Cham Wings, managed by the applicant, played, inter alia, a major role in recent months in the migrant crisis at the Belarusian-Polish border. The applicant claims, however, that the Council removed, by Council Implementing Decision (CFSP) 2022/1243 of 18 July 2022 implementing Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine (OJ 2022 L 190, p. 139) and Council Implementing Regulation (EU) 2022/1231 of 18 July 2022 implementing Regulation (EC) No 765/2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine (OJ 2022 L 190, p. 5), the name of Cham Wings from the lists of restrictive measures taken in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine. Nevertheless, the date of the article and the date on which that article was accessed, as produced by the Council, predate the adoption of the abovementioned measures, so that the mere fact that Cham Wings was in fact removed from the abovementioned lists is not sufficient to call into question that article's soundness and reliability.

82 In the fourth place, the applicant maintains that the article from the website ‘alsouria.net’, included in document WK 199/2023, contains neither dated facts nor reliable or serious sources. In addition, the applicant submits that the author of the article published on that website states that he relied on contradictory sources. In that regard, it must be noted that that website published an article on 25 July 2022 which states that the applicant is a leading Syrian businessperson, close to the Syrian regime. In addition, according to that article, in essence, Cham Wings and the applicant cooperate with the Bashar Al-Assad regime. Furthermore, it states that the development of the applicant’s relationship with Mr Rami Makhlouf is the subject of disagreement and controversy, as evidenced by contradictory sources, the different stances of which are expanded upon in the article. Contrary to what the applicant claims, it is not apparent from the content of that article that the author acknowledges that he relied on contradictory sources. The author merely reports those aspects and draws no conclusions from them. Consequently, the applicant’s reading of that article is selective, with the result that, by his argument, he does not call into question the soundness and reliability of that article.

83 In the light of the foregoing, in the absence of any material in the file capable of calling into question the reliability of the sources used by the Council, they must be regarded as sound and reliable, within the meaning of the case-law referred to in paragraph 74 above.

Admissibility of the evidence in Annexes B.2 to B.8 to the defence

84 The applicant disputes, in essence, the admissibility of the evidence contained in Annexes B.2 to B.8 to the defence. According to him, those documents, collected by the Council after the adoption of the initial acts, cannot, a posteriori, repair the absence of a solid factual basis in accordance with the settled case-law resulting from the judgments of 26 October 2012, *Oil Turbo Compressor* v *Council* (T-63/12, EU:T:2012:579, paragraph 29), and of 9 June 2021, *Borborudi* v *Council* (T-580/19, EU:T:2021:330, paragraph 50 (not published)).

85 The Council contends that the evidence contained in Annexes B.2 to B.8 is intended to support document WK 9404/2019 and is not intended to give a posteriori reasons for the initial acts, but to demonstrate, in the light of the context in which those acts were adopted, that the reasons for those acts were sufficient. It states that the applicant does not contest the factual elements justifying his inclusion on the lists at issue.

86 Annexes B.2 to B.8 to the defence consist of (i) a page from the website Wikipedia, dedicated to Cham Wings and describing the applicant as the founder of that undertaking, (ii) pages from the websites of Cham Wings and Shammout United, (iii) two pages from the website LinkedIn that are dedicated to the Shammout Group and all related companies and to Damask Metals Co., (iv) a page from the website ‘pro-justice.org’, which presents the applicant as one of the most prominent businessmen in Syria, and (v), a page from the website ‘ifmat.org’ referring to the applicant.

87 It should be recalled that, according to settled case-law, the legality of an EU measure must be assessed on the basis of the facts and the law as they stood at the time when the measure 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). Consequently, in order to justify the initial acts on the merits, the Council cannot rely, before the Court, first, on factors on which it did not rely when adopting the contested acts (see, to that effect, judgments of 14 April 2021, *Al-Tarazi* v *Council*, T-260/19, not published, EU:T:2021:187, paragraph 69, and of 16 March 2022, *Sabra* v *Council*, T-249/20, EU:T:2022:140, paragraphs 49 and 56 and the case-law cited) or, second, on information which was brought to the Council’s knowledge after the adoption of those acts, even if it takes the view that that information could legitimately be the basis for the adoption of that decision (see judgment of 9 June 2021, *Borborudi* v *Council*, T-580/19, EU:T:2021:330, paragraph 50 (not published) and the case-law cited).

88 In the present case, as the Council acknowledges, that evidence does not appear in document WK 9404/2022. Consequently, the Council was not aware of that evidence at the time of the adoption of the initial acts and that evidence cannot, therefore, be used to substantiate the grounds at issue. Moreover, the Council accepts that it was not produced for that purpose. Accordingly, the entirety of that evidence is inadmissible for

the purpose of determining whether, at the time of the adoption of the initial acts, the Council had a body of sufficiently concrete, precise and consistent evidence to support those acts.

89 By contrast, as the Council confirmed at the hearing, Annexes B.2 to B.8 to the defence are reproduced, in essence, in document WK 3114/2023, with the result that they will necessarily be taken into consideration for the purpose of assessing whether the maintaining acts are well founded.

Examination of the criterion of a leading businessperson operating in Syria

90 As a preliminary point, it must be noted that the applicant acknowledges that he is involved in Cham Wings and in the Shammout Group. In that regard, it must be stated that the applicant does not put forward any argument or evidence intended to deny that, as is apparent from the grounds at issue, he is the owner of Cham Wings and the chairman of its board of directors, as well as head of the Shammout Group, active in the automotive, steel, aviation, freight forwarding, construction, and real estate sectors.

91 Consequently, the applicant does not dispute that he is a businessperson operating in Syria.

92 By contrast, the applicant disputes that the Council has demonstrated how his involvement in Cham Wings and in the Shammout Group is of such a nature as to entail him being classified as a ‘leading businessperson operating in Syria’, within the meaning of the listing criterion referred to in paragraph 29 above. According to the applicant, there is absolutely no association between him and the Syrian regime.

93 In particular, the applicant submits that he does not provide any financial or other support to the Syrian regime and does not benefit from it in any way. Furthermore, he claims that the Council failed to demonstrate that he was part of the inner cadre of ‘leading businesspersons’.

94 In that regard, it must be noted that Decision 2015/1836 introduced, inter alia, as an objective, autonomous and sufficient listing criterion, that of ‘leading businesspersons operating in Syria’, with the result that the Council is no longer required to demonstrate the existence of a link between that category of persons and the Syrian regime, as understood under Decision 2013/255 prior to its amendment, or between that category of persons and the support provided to, or the benefit derived from, the regime, since being a leading businessperson operating in Syria is sufficient for the restrictive measures in question to be applied to a person. Thus, it in no way follows from Decision 2013/255, as amended by Decision 2015/1836, that it is for the Council to prove that both the condition of being a leading businessperson and having sufficient links with the Syrian regime are satisfied (see, to that effect, judgments of 9 July 2020, *Haswani* v *Council*, C-241/19 P, EU:C:2020:545, paragraphs 71 to 74; of 4 April 2019, *Sharif* v *Council*, T-5/17, EU:T:2019:216, paragraphs 55 and 56 (not published), and order of 11 September 2019, *Haswani* v *Council*, T-231/15 RENV, not published, EU:T:2019:589, paragraph 56).

95 To that effect, a rebuttable presumption of a link with the Syrian regime may be inferred from the criterion relating to the status of ‘leading businesspersons operating in Syria’ (see, to that effect, judgment of 4 April 2019, *Sharif* v *Council*, T-5/17, EU:T:2019:216, paragraph 106, and order of 11 September 2019, *Haswani* v *Council*, T-231/15 RENV, not published, EU:T:2019:589, paragraph 60). That presumption applies where the Council has been able to show that the person is not only a businessperson operating in Syria, but can also be described as ‘leading’. As is clear from the wording of recital 6 of Decision 2015/1836, it is the influence that that category of persons is likely to exercise on the Syrian regime that the Council aims to exploit by urging them, through the restrictive measures it adopts in their regard, to put pressure on the Syrian regime to change its policies of repression. Thus, once the Council has succeeded in demonstrating the influence that a businessperson may have on that regime, the link between that person and the Syrian regime is presumed in the absence of proof to the contrary.

96 Furthermore, it should be recalled that compliance with the rules on the burden of proof and evaluation of evidence in the area of restrictive measures by the General Court implies that the latter abide by the principle stated in the settled case-law referred to in paragraph 61 above and set out by the Court of Justice in the judgment of 11 September 2019, *HX* v *Council* (C-540/18 P, not published, EU:C:2019:707, paragraphs 48 to

50), according to which, in essence, the burden of proof lies with the institution in the event of a challenge to the merits of the grounds for listing.

97 Consequently, an excessive standard of proof may not be imposed on the applicant in order to rebut the presumption of a link with the Syrian regime. Thus, the applicant must be considered to have succeeded in rebutting the presumption of a link to the Syrian regime if he or she puts forward arguments or evidence capable of seriously calling into question the reliability of the evidence submitted by the Council or the Council's assessment, in particular in the light of the conditions laid down in Articles 27(3) and 28(3) of Decision 2013/255, as amended by Decision 2015/1836, or if he or she produces before the Courts of the European Union a set of indicia establishing that he or she is not, or is no longer associated, with the Syrian regime, or that he or she does not exercise influence over it, or that he or she does not pose a real risk of circumvention of the restrictive measures, in accordance with Articles 27(3) and 28(3) of that decision (see, to that effect, judgments of 8 July 2020, *Zubedi* v *Council*, T-186/19, EU:T:2020:317, paragraph 71, and of 16 March 2022, *Sabra* v *Council*, T-249/20, EU:T:2022:140, paragraph 133).

98 Thus, since, in the present case, the applicant's status as a leading businessperson operating in Syria is based on the pursuit, on his part, of activities as described in the grounds at issue, which the applicant does not call into question, it is necessary to ascertain whether the applicant has succeeded in rebutting the presumption of a link with the Syrian regime.

99 In that regard, first, it must be stated that the applicant claims to have distanced himself from the Syrian regime and from any wrongdoings on the part of that regime as well as to have no links with that regime that might lead to EU sanctions, without, however, adducing any evidence to support his assertion.

100 Second, the applicant maintains that, as borne out by the website *Al-Mashhad Online*, an extract of which appears in document WK 9404/2022, his movable and immovable funds were seized by the Syrian Ministry of Transport, against his interests. It is apparent from that website that the reason for the seizure of the movable and immovable property is the non-payment of debts to Syrian Airlines, amounting to 14.5 million United States dollars (USD) (approximately EUR 14.94 million). Consequently, and in the absence of any other evidence produced by the applicant to support that evidence, the seizure of movable and immovable property to which he may have been subject does not manifestly reveal an action taken by the Syrian regime in retaliation for actions which the applicant allegedly took against that regime. Accordingly, that argument alone is not sufficient to rebut the presumption of a link with the Syrian regime.

101 Third, the applicant claims that, contrary to what the Council maintains, Cham Wings has not moved mercenaries, weapons and equipment for the Syrian regime. In that regard, he maintains that the Council erred in claiming, in the defence, that the word 'militant', mentioned both in the tweet published on the website Twitter and in the article from the website *Middle East Eye*, both included in document WK 9404/2022, referred to the concept of 'mercenary'. Consequently, according to the applicant, the Council erred in relying on those two items of evidence to support the fact that Cham Wings moved mercenaries for the Syrian regime.

102 In that regard, it is true that the tweet published on the website Twitter refers to the transport of 'militants', not mercenaries, on the part of Cham Wings. Similarly, the term 'mercenaries' is used in the description of the article from the website *Middle East Eye*, summarising the following sentence: 'the US Treasury placed sanctions on Cham Wings for cooperating "with Government of Syria officials to transport militants to Syria to fight on behalf of the Syrian regime …"'. The subheading of that article also states that 'Cham Wings [is] accused of ferrying mercenaries and aiding Iran's Revolutionary Guard …'. Thus, although it normally covers different realities, the terms 'mercenary' and 'militant' are used as synonyms in that article.

103 Furthermore, the applicant merely disputes that he moved mercenaries, weapons and equipment for the Syrian regime, without adducing any evidence to show that he had no link with the regime. In any event, even though the tweet published on the website Twitter refers to the transport of 'militants' and not 'mercenaries', it is apparent from the website *Middle East Eye* that Cham Wings moved weapons and equipment for the Syrian regime, without the applicant disputing the latter evidence.

104 Consequently, the applicant has not submitted any evidence from which it may be concluded that he was not, or was no longer, associated with the Syrian regime, or that he did not exercise influence over that regime or that he did not pose a real risk of circumvention of the restrictive measures within the meaning of Article 28(3) of Decision 2013/255, as amended by Decision 2015/1836.

105 Furthermore, the applicant submits that Cham Wings did not play a major role in the migrant crisis at the Belarusian-Polish border. In his view, if Cham Wings had carried out those actions, as attributed to it by the Council, they would have been carried out unknowingly by him and without the intention or even the awareness of contributing to any infringement of a rule of EU law. He adds that Cham Wings has stopped flying to Belarus as from 13 November 2021.

106 It should be noted that, by his argument, the applicant refers to the grounds for the listing of Cham Wings adopted by the Council in Council Implementing Decision (CFSP) 2021/2125 of 2 December 2021 implementing Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus (OJ 2021 L 430 I, p. 16) and Council Implementing Regulation (EU) 2021/2124 of 2 December 2021 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus (OJ 2021 L 430 I, p. 1). In the meantime, by Implementing Decision 2022/1243 and Implementing Regulation 2022/1231, the Council removed Cham Wings' name from the lists annexed to those acts, and subsequently the action brought by Cham Wings was removed from the register by order of 9 November 2023, *Cham Wings Airlines* v *Council* (T-255/22, not published, EU:T:2023:711). When questioned at the hearing about the consequences of those events for the present case, the applicant stated, in essence, that Cham Wings' objective had been achieved and that Cham Wings should not have been included on those lists, whereas the Council maintained its position that there was no impact on the present case.

107 First, the review carried out by the Court in the present case can relate only to whether the inclusion and maintenance of the applicant's name on the lists at issue is well founded and cannot therefore call into question the lawfulness of the acts referred to in paragraph 106 above (see, to that effect, judgment of 11 May 2017, *Barqawi* v *Council*, T-303/15, not published, EU:T:2017:328, paragraph 42).

108 Second, it should be noted that the grounds at issue do not refer to any role played by Cham Wings at the Belarusian-Polish border. Moreover, as is apparent from paragraph 30 above, the applicant's name was included and maintained on the lists at issue solely on the basis of the criterion of a leading businessperson operating in Syria. In that regard, the applicant was not included on those lists on account of his links with Cham Wings, pursuant to the criterion laid down in the last part of the sentence in Article 27(2), Article 27(3), the last part of the sentence in Article 28(2), and Article 28(3) of Decision 2013/255, as amended by Decision 2015/1836, and reproduced, as regards the freezing of funds, in the last part of the sentence in Article 15(1a) and in Article 15(1b) of Regulation No 36/2012, as amended by Regulation 2015/1828, which states that persons and entities associated with the persons, entities and bodies covered by one of the listing criteria referred to in Article 27(2) and Article 28(2) of Decision 2013/255, as amended, and in Article 15(1a) of Regulation No 36/2012, as amended, are to be subject to restrictive measures. In any event, that criterion is not applicable in the present case, since Cham Wings' name was included on lists forming part of a scheme of restrictive measures that is different from that of the scheme at issue. Accordingly, the applicant's argument is irrelevant in the context of the present action and must be rejected as ineffective.

109 In the light of the foregoing, the Court finds that the applicant has not succeeded in calling into question the grounds at issue based on his status as a leading businessperson operating in Syria, with the result that, in the light of the listing criterion referred to in paragraph 29 above, the inclusion and maintenance of his name on the lists at issue, resulting from the contested acts, are well founded. Accordingly, the first plea in law, alleging an error of assessment, must be rejected as unfounded.

The second and third pleas in law, alleging infringement of the general principle of proportionality, of the right to property and of the freedom to exercise an economic activity

110 First, with regard to the initial acts, the applicant submits, in the context of his second plea in law, that the restrictive measures taken against him are disproportionate compared to the purposes that those acts are

supposed to achieve. According to him, his life and career are ruined. He considers that, in practice, the restrictive measures prevent him from exercising any professional activity or from carrying out, in essence, any economic operation in his professional or private life. In the context of the third plea in law, he submits, in essence, that those acts infringe his right to property and his freedom to exercise an economic activity and refers to the arguments set out in the context of the second plea in law. Second, with regard to the maintaining acts, the arguments put forward in the context of the second plea in law in relation to the initial acts apply *mutatis mutandis*. As regards the third plea in law, the applicant submits that the extension until 1 June 2024 of the restrictive measures imposed on him under the maintaining acts aggravates the disproportionate consequences arising from those measures.

111 The Council disputes the applicant's arguments.

112 It must be borne in mind that according to the case-law, the fundamental rights relied on by the applicant, namely, the right to property, enshrined in Article 17 of the Charter, and the freedom to pursue an economic activity, enshrined in Articles 15 and 16 of the Charter, are not absolute rights, and their exercise may be subject to restrictions justified by objectives of public interest pursued by the European Union. Thus, any restrictive economic or financial measure entails, *ex hypothesi*, consequences affecting the right to property and the freedom to pursue an economic activity of the person or entity subject to that measure, so causing harm to that person or entity. The importance of the aims pursued by the restrictive measures at issue is, however, such as to justify negative consequences, even of a substantial nature, for the persons or entities concerned (see, to that effect, judgment of 25 March 2015, *Central Bank of Iran* v *Council*, T-563/12, EU:T:2015:187, paragraph 115).

113 Furthermore, while respect for fundamental rights is a condition for the legality of EU acts, according to settled case-law, those fundamental rights do not enjoy absolute protection under EU law, but must be viewed in relation to their function in society. Consequently, the exercise of those rights may be restricted, provided that the restrictions correspond to objectives of public interest pursued by the European Union and do not constitute, in relation to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of the rights thus guaranteed (see judgment of 13 September 2013, *Makhlouf* v *Council*, T-383/11, EU:T:2013:431, paragraph 97 and the case-law cited).

114 Moreover, according to settled case-law, the principle of proportionality, which is one of the general principles of EU law and is reflected in Article 5(4) TEU, requires that measures implemented through provisions of EU law be appropriate for attaining the legitimate objectives pursued by the legislation at issue and must not go beyond what is necessary to achieve them (see, to that effect, judgments of 15 November 2012, *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa*, C-539/10 P and C-550/10 P, EU:C:2012:711, paragraph 122; of 25 June 2015, *Iranian Offshore Engineering & Construction* v *Council*, T-95/14, EU:T:2015:433, paragraph 60 (not published), and of 14 March 2017, *Bank Tejarat* v *Council*, T-346/15, not published, EU:T:2017:164, paragraph 149).

115 As regards the applicant's right to property and freedom to pursue an economic activity, it should, admittedly, be noted that those rights are curtailed by the restrictive measures adopted against him due to the fact that he cannot, in particular, dispose of any of his funds that may be situated within the territory of the European Union or transfer them to the European Union, except with special authorisation.

116 However, in the present case, the adoption of restrictive measures against the applicant is appropriate, since it is compatible with an objective of general interest as fundamental to the international community as the protection of civilian populations. The freezing of the funds, financial assets and other economic resources, and the prohibition of entry into the territory of the European Union of persons identified as being involved in supporting the Syrian regime cannot, in themselves, be regarded as inappropriate (see judgment of 13 September 2013, *Makhlouf* v *Council*, T-383/11, EU:T:2013:431, paragraph 100 and the case-law cited).

117 As regards the allegedly disproportionate nature of the inclusion and maintenance of the applicant's name on the lists at issue, it must be recalled that Article 28(6) of Decision 2013/255, as amended by Decision 2015/1836, and Article 16 of Regulation No 36/2012, as amended by Regulation 2015/1828, provide for the possibility, first, of authorising the use of frozen funds to meet essential needs or to meet certain commitments

and, second, of granting specific authorisations to unfreeze funds, other financial assets or other economic resources (see, by analogy and to that effect, judgment of 3 September 2008, *Kadi and Al Barakaat International Foundation* v *Council and Commission*, C-402/05 P and C-415/05 P, EU:C:2008:461, paragraph 364, and of 15 November 2012, *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa*, C-539/10 P and C-550/10 P, EU:C:2012:711, paragraph 127).

118 It follows that, given the overriding importance of the protection of civilian populations in Syria, any restrictions on the applicant's rights caused by the contested acts are justified by an objective of general interest and are not disproportionate to the aims pursued.

119 Lastly, as regards the extension of the temporal application of the restrictive measures adopted in respect of the applicant under the maintaining acts, which is alleged to aggravate the disproportionate consequences of those measures for him, the Court notes that, in the context of the adoption of such restrictive measures, the Council is required to carry out a periodic examination, in accordance with the second and third sentences of Article 34 of Decision 2013/255, as amended by Decision 2015/1836, and Article 32(4) of Regulation No 36/2012, as amended by Regulation 2015/1828, which entails, each time, the possibility for the person or entity concerned to put forward arguments and submit facts supporting his, her or its assertions. Consequently, the decision to maintain the applicant's name on the lists at issue cannot be classified as disproportionate in itself (see, to that effect, judgment of 9 July 2020, *Haswani* v *Council*, C-241/19 P, EU:C:2020:545, paragraphs 106 and 107). Since the Council was entitled, on the basis of the review of the inclusion of the applicant's name on the lists at issue, to find that the grounds at issue were substantiated, it could decide to extend those restrictive measures until 1 June 2024.

120 In the light of all of the foregoing, the second and third pleas in law, taken together, must be rejected and, consequently, the action must be dismissed in its entirety.

Costs

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

122 Since the applicant has been unsuccessful, he must be ordered to bear his own costs and to pay those incurred by the Council, in accordance with the form of order sought by the Council.

On those grounds,

THE GENERAL COURT (Fifth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders Mr Issam Shammout to pay the costs.**

Svenningsen Mac Eochaidh Martín y Pérez de Nanclares

Delivered in open court in Luxembourg on 12 June 2024.

V. Di Bucci S. Papasavvas

Registrar President

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* Language of the case: English.