# Judgment of the General Court (Seventh Chamber) of 9 September 2016. — Mohamed Farahat v Council of the European Union. — Common foreign and security policy — Restrictive measures taken against Syria — Freezing of funds — Error of assessment. — Case T-830/14.

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JUDGMENT OF THE GENERAL COURT (Seventh Chamber)9 September 2016 (*)(Common foreign and security policy — Restrictive measures taken against Syria — Freezing of funds — Error of assessment)In Case T-830/14,Mohamed Farahat, residing in Cairo (Egypt), represented by B. Kennelly, Barrister, P. Saini QC, and N. Sheikh, Solicitor,applicantvCouncil of the European Union, represented by B. Driessen and A. Vitro, acting as Agents,defendant,ACTION under Article 263 TFEU for the annulment of Council Implementing Decision 2014/730/CFSP of 20 October 2014 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2014 L 301, p. 36) and of Council Implementing Regulation (EU) No 1105/2014 of 20 October 2014 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2014 L 301, p. 7), in so far as those measures concern the applicant,THE GENERAL COURT (Seventh Chamber),composed of M. van der Woude, President, I. Wiszniewska-Białecka and I. Ulloa Rubio (Rapporteur), Judges, Registrar: S. Spyropoulos, Administrator,having regard to the written part of the procedure and further to the hearing on 25 February 2016,gives the followingJudgment Background to the dispute1 This case arises as a result of the restrictive measures adopted by the European Union against the Syrian Arab Republic in order that the latter should cease using force against its civilian population.2 The applicant, Mohamed Farahat, is the Vice-President of Finance and Administration of Tri Ocean Energy. Tri Ocean Energy is an Egyptian company. It operates in the Middle East in the sphere of oil and gas shipping.3 On 9 May 2011 the Council of the European Union adopted, on the basis of Article 29 TEU, Decision 2011/273/CFSP concerning restrictive measures against Syria (OJ 2011 L 121, p. 11). 4 Article 3(1) of that decision provides that Member States are to take the necessary measures to prevent the entry into, or transit through, their territories of persons responsible for violent repression against the civilian population in Syria, and persons associated with them, as listed in the annex to that decision. 5 Article 4(1) of that decision provides that all funds and economic resources belonging to, owned, held or controlled by persons responsible for the violent repression against the civilian population in Syria, and natural or legal persons, and entities associated with them, are to be frozen. The detailed rules for the freezing of those funds are set out in the other paragraphs of that article. 6 On the same date, the Council adopted, on the basis of Article 215(2) TFEU and Decision 2011/273, Regulation (EU) No 442/2011 concerning restrictive measures in view of the situation in Syria (OJ 2011 L 121, p. 1). Article 4(1) of that regulation provides for the freezing of all funds and economic resources belonging to, owned, held or controlled by the natural or legal persons, entities and bodies listed in Annex II to that regulation.7 Decision 2011/273 was replaced by Council Decision 2011/782/CFSP of 1 December 2011 concerning restrictive measures against Syria and repealing Decision 2011/273 (OJ 2011 L 319, p. 56). 8 Article 18(1) and Article 19(1) of Decision 2011/782 correspond to Article 3(1) and Article 4(1) of Decision 2011/273 respectively, with the added provision that the restrictive measures set out therein apply also to persons and entities benefiting from or supporting the regime.9 Regulation No 442/2011 was replaced by Council Regulation

(EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011 (OJ 2012 L 16, p. 1). That regulation lays down new restrictive measures applying in particular to persons benefiting from the policies of the regime or supporting it.10 On 29 November 2012, the Council adopted Decision 2012/739/CFSP concerning restrictive measures against Syria and repealing Common Decision 2011/782 (OJ 2012 L 330, p. 21). 11 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). The latter decision was subsequently extended until 1 June 2015 by Council Decision 2014/309/CFSP of 28 May 2014 amending Decision 2013/255 (OJ 2014 L 160, p. 37). It was subsequently extended until 1 June 2016 by Council Decision (CFSP) 2015/837 of 28 May 2015 amending Decision 2013/255 (OJ 2015 L 132, p. 82).12 On 22 July 2014, the Council adopted Implementing Decision 2014/488/CFSP implementing Decision 2013/255 (OJ 2014 L 217, p. 49) and Implementing Regulation (EU) No 793/2014 implementing Regulation No 36/2012 (OJ 2014 L 217, p. 10). Those acts contain for the first time, in the annexes thereto, the name of Tri Ocean Energy's subsidiary, spelt Tri Oceans Trading, together with the following grounds:'Providing support to the Syrian regime and benefiting from the regime by organising covert shipments of oil to the Syrian regime.'13 On 26 September 2014, the Council adopted Implementing Decision 2014/678/CFSP implementing Decision 2013/255 (OJ 2014 L 283, p. 59) and Implementing Regulation (EU) No 1013/2014 implementing Regulation No 36/2012 (OJ 2014 L 283, p. 9).14 In those measures, the Council altered Tri Ocean Energy's subsidiary's name, now spelt Tri Ocean Trading or Tri-Ocean Energy, without altering the grounds given in Implementing Decision 2014/488 and Implementing Regulation No 793/2014.15 On 3 October 2014, Tri-Ocean Trading brought an action for annulment against the measures referred to in paragraph 12 above, registered at the Registry of the General Court under reference number T-709/14. 16 On 10 October 2014, Tri Ocean Energy brought an action for annulment against the measures referred to in paragraph 13 above, registered at the Registry of the General Court under number T-719/14.17 On 20 October 2014, the Council adopted Implementing Decision 2014/730/CFSP implementing Decision 2013/255 (OJ 2014 L 301, p. 36) and Implementing Regulation (EU) No 1105/2014 implementing Regulation No 36/2012 (OJ 2014 L 301, p. 7). Those measures list the applicant's name in the annexes thereto together with the following grounds:'Vice-President of Finance and Administration at Tri-Ocean Energy, which has been listed by the Council for benefiting from and supporting the Syrian regime. [The applicant] is therefore associated with a listed entity. In view of his senior position in Tri-Ocean Energy, he is responsible for the activities of the entity in supplying oil to the regime.'18 On 21 October 2014, the Council published in the Official Journal of the European Union the Notice for the attention of the persons subject to the restrictive measures provided for in Decision 2013/255 and Regulation No 36/2012 (OJ 2014 C 373, p. 7).19 According to that notice, the persons and entities concerned might submit to the Council a request for review of the decision whereby their names had been included in the lists annexed to the acts mentioned in paragraph 17 above, with supporting documentation. The attention of the persons and entities concerned was drawn too to the possibility of challenging the Council's decision before the General Court, in accordance with the conditions laid down in Article 275, second paragraph, TFEU and Article 263, fourth and sixth paragraphs, TFEU.20 By letter of 5 November 2014, the applicant asked the Council, under Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43), for access to the documents or information concerning him. The Council says it found no trace of having received that letter before it was annexed to the application. The Council made a record of the letter on 21 January 2015 and replied to the request for access on 9 February 2015. By letter of 5 March 2015, the Council granted access to a

series of documents. Procedure and forms of order sought21 By application lodged at the Registry of the General Court on 29 December 2014, the applicant applied for annulment of Implementing Decision 2014/730 and Implementing Regulation 1105/2014. 22 The parties presented oral argument and answered questions put to them by the Court at the hearing on 25 February 2016.23 The applicant claims that the Court should:– annul Implementing Decision 2014/730 and Implementing Regulation No 1105/2014 ('the contested measures'), in so far as they concern him;– order the Council to pay the costs of the proceedings.24 The Council contends that the Court should:– dismiss the action as manifestly unfounded;– order the applicant to pay the costs. Law25 In support of his application, the applicant relies, in essence, on four pleas in law. The first plea alleges errors of fact and an error of assessment; the second, infringement of the rights of the defence and of the right to effective judicial protection; the third, failure to state reasons; and the fourth, infringement of the right to property and of the applicant's right to reputation.26 In the first plea, alleging errors of fact and an error of assessment, the applicant disputes the grounds for including his name in the lists at issue as those grounds are set out in the annexes to the contested measures. More specifically, he argues in particular that the listing of his name may not be based on his links with Tri Ocean Energy, for the latter's name was not validly included in the lists set out in the annexes to Implementing Decision 2014/678 and Implementing Regulation No 1013/2014.27 As a preliminary point, as the Court of Justice noted in a review of restrictive measures, the Courts of the European Union must, in accordance with the powers conferred on them by the FEU Treaty, ensure the review, in principle the full review, of the lawfulness of all Union acts in the light of the fundamental rights forming an integral part of the EU legal order. That obligation is expressly laid down by the second paragraph of Article 275 TFEU (see judgment of 28 November 2013, Council v Fulmen and Mahmoudian, C-280/12 P, EU:C:2013:775, paragraph 58 and the case-law cited).28 According to the case-law, the effectiveness of the judicial review guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union requires, in particular, as part of the review of the lawfulness of the grounds which are the basis of the decision to include a given entity in the lists of entities subject to sanctions, the Courts of the European Union to satisfy themselves that that decision rests on a sufficiently solid factual basis. That entails checking the factual allegations in the summary of reasons underlying that decision, with the consequence that judicial review is not to be restricted to assessment of the cogency in the abstract of the reasons relied upon, but must deal with the question whether those reasons, or, at the very least, one of them, deemed sufficient in itself to support that decision, have or has been 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).29 To that end, it is for the Courts of the European Union to carry out that examination, requesting the competent EU authority, when necessary, to produce information or evidence, confidential or not, relevant to such an examination. That is because it is the task of the competent EU authority to establish, in the event of challenge, that the reasons relied upon against the person concerned are well founded, and not the task of that person to adduce evidence to the contrary, showing that those reasons are not well founded. There is no requirement that that authority should produce before the Courts of the European Union all the information and evidence inherent in the reasons alleged in the measures whose annulment is sought. It is, however, necessary that the information or evidence produced should support the reasons relied upon against the person concerned (see judgment of 28 November 2013, Council v Fulmen and Mahmoudian, C-280/12 P, EU:C:2013:775, paragraphs 65 to 67).30 The arguments put forward by the applicant in support of the first plea in law will be examined by the Court in the light of those considerations.31 By Implementing Decision 2014/730 and Implementing Regulation No 1105/2014, the Council included the applicant's name in the lists at issue on the following grounds:'Vice-President of Finance and Administration at Tri-Ocean Energy,

which has been listed by the Council for benefiting from and supporting the Syrian regime. [The applicant] is therefore associated with a listed entity. In view of his senior position in Tri-Ocean Energy, he is responsible for the activities of the entity in supplying oil to the regime.’32 Those grounds essentially concern the applicant’s position in Tri Ocean Energy.33 Therefore, the grounds for inclusion of the applicant’s name in the lists at issue must be assessed in relation to the grounds for the listing of Tri Ocean Energy to which that plea refers. In that regard, it must be stated that the validity of the listing of the applicant is based on the inclusion of Tri Ocean Energy in the lists at issue and depends on the validity of that registration.34 It should be noted that in its judgment of 9 September 2016, Tri Ocean Energy v Council (T-719/14), the Court found that the Council erred in law by including Tri Ocean Energy in the lists set out in the Annexes to Implementing Decision 2014/678 and Implementing Regulation No 1013/2014. It follows that the inclusion of the applicant’s name cannot legitimately be justified by the grounds set out in Implementing Decision 2014/730 and Implementing Regulation No 1105/2014, relating to the functions performed by the applicant in Tri Ocean Energy, as an entity recognised as benefiting from or supporting the Syrian regime. 35 The first plea must therefore be upheld, without it being necessary to consider the other arguments in support of that plea. 36 In the light of the foregoing, the action must be upheld in its entirety and the contested measures annulled without it being necessary to consider the other arguments raised by the applicant. Costs37 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party’s pleadings. Since the applicant has applied for costs and the Council has been unsuccessful, the latter must be ordered to bear its own costs and to pay those incurred by the applicant.On those grounds,THE GENERAL COURT (Seventh Chamber)hereby:1. Annuls Council Implementing Decision No 2014/730/CFSP of 20 October 2014 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria and Council Implementing Regulation (EU) No 1105/2014 of 20 October 2014 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria in so far as they apply to Mohamed Farahat;2. Orders the Council of the European Union to bear its own costs and to pay the costs incurred by Mr Farahat. Van der Woude Wiszniewska-Białecka Ulloa RubioDelivered in open court in Luxembourg on 9 September 2016. [Signatures]** Language of the case: English.

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