Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber)

18 May 2022*

(Common foreign and security policy – Restrictive measures adopted against Syria – Freezing of funds – Error of assessment – Proportionality – Right to property – Right to pursue an economic activity – Misuse of powers – Obligation to state reasons – Rights of the defence – Right to a fair trial – Determination of listing criteria)

In Case T-296/20,

Amer Foz, residing in Dubai (United Arab Emirates), represented by L. Cloquet, lawyer,

applicant,

v

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

defendant,

THE GENERAL COURT (Fourth Chamber),

composed of S. Gervasoni, President, L. Madise and J. Martín y Pérez de Nanclares (Rapporteur), Judges,

Registrar: M. Zwozdziak-Carbonne, Administrator,

having regard to the written part of the procedure, including:

– the application lodged at the Court Registry on 12 May 2020,

– the first statement of modification lodged at the Court Registry on 13 August 2020,

– the defence and the observations on the first statement of modification lodged at the Court Registry on 8 October 2020,

– the reply lodged at the Court Registry on 27 November 2020,

– the rejoinder lodged at the Court Registry on 3 February 2021,

– the second statement of modification lodged at the Court Registry on 9 August 2021,

* Language of the case: English.

– the observations on the second statement of modification lodged at the Court Registry on 28 September 2021,

further to the hearing on 2 December 2021,

gives the following

Judgment [1]

1 By his action under Article 263 TFEU, the applicant, Mr Amer Foz, seeks the annulment of Council Implementing Decision (CFSP) 2020/212 of 17 February 2020 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2020 L 43 I, p. 6), Council Implementing Regulation (EU) 2020/211 of 17 February 2020 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2020 L 43 I, p. 1), Council Decision (CFSP) 2020/719 of 28 May 2020 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2020 L 168, p. 66), Council Implementing Regulation (EU) 2020/716 of 28 May 2020 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2020 L 168, p. 1), Council Decision (CFSP) 2021/855 of 27 May 2021 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2021 L 188, p. 90) and Council Implementing Regulation (EU) 2021/848 of 27 May 2021 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2021 L 188, p. 18), in so far as those acts include or maintain his name on the lists annexed to those acts.

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

…

12 By Implementing Decision 2020/212 and Implementing Regulation 2020/211 (together referred to as 'the initial measures'), the applicant's name was added at line 291 of the list in Section A (Persons) of Annex I to Decision 2013/255 and added at line 291 of the list in Section A (Persons) of Annex II to Regulation No 36/2012 (together, 'the lists at issue').

13 First, the 'identifying information' included in the lists at issue mentions that the applicant is male, has, inter alia, Syrian nationality and was born on 11 March 1976. It goes on to describe his position as 'General Manager of ASM International General Trading LLC'. Lastly, 'Samer Foz', 'Aman Holding [(Aman Dimashq JSC)]' and 'ASM International General Trading LLC' are identified there as being 'relatives/business associates/entities or partners/links' of the applicant.

14 Second, the grounds for including the applicant's name on the lists at issue are worded as follows:

'Leading businessperson with personal and family business interests and activities in multiple sectors of the Syrian economy, including through Aman Holding (formerly known as the Aman Group). Through Aman Holding, he benefits financially from access to commercial opportunities and supports the [regime of Bashar Al-Assad], including through involvement in the regime-backed development of Marota City. Since 2012, he has also been General Manager of ASM International [General] Trading LLC.

[1] Only the paragraphs of the present judgment which the Court considers it appropriate to publish are reproduced here.

He is also associated with his brother Samer Foz, who has been designated by the [European Union] since January 2019 as a leading businessperson operating in Syria and for supporting or benefiting from the regime.'

…

18 On 28 May 2020, the Council adopted Decision 2020/719, which extended the application of Decision 2013/255 until 1 June 2021, and Implementing Regulation 2020/716 (together, 'the 2020 maintaining acts'). The applicant's name was maintained at line 291 of the lists at issue on the basis of the same reasons as those given in the initial measures ('the 2020 reasons').

…

23 On 27 May 2021, the Council adopted Decision 2021/855, which extended the application of Decision 2013/255 until 1 June 2022, and Implementing Regulation 2021/848 (together, 'the 2021 maintaining acts'). The applicant's name was maintained at line 291 of the lists at issue. The Council justified the adoption of the restrictive measures against him by stating reasons different from those given in the initial measures and in the 2020 maintaining acts ('the 2021 reasons').

24 As regards, first, the 'identifying information' included in the lists at issue, the 2021 maintaining acts reproduce the information set out in paragraph 13 above. Furthermore, the applicant's position is now described there as being 'Founder of District 6 Company; Founding partner of Easy life Company', the reference to 'ASM International General Trading LLC' has been removed and the reference to 'Vice Chairman of Asas Steel Company' has been added under 'relatives/business associates/entities or partners/links' of the applicant.

25 Second, the 2021 reasons are worded as follows:

'Leading businessperson with personal and family business interests and activities in multiple sectors of the Syrian economy. He benefits financially from access to commercial opportunities and supports the Syrian regime. Between 2012 and 2019, he was General Manager of ASM International [General] Trading LLC.

He is also associated with his brother Samer Foz, who has been designated by the Council since January 2019 as a leading businessperson operating in Syria and for supporting or benefiting from the regime. Together with his brother, he implements a number of commercial projects, notably in the Adra al-Ummaliyya area ([suburbs of Damascus, Syria]). These projects include a factory that manufactures cables and cable accessories as well as a project to produce electricity using solar power. They also engaged in various activities with [the Islamic State of Iraq and the Levant (ISIL) (Da'esh)] on behalf of the [regime of Bashar Al-Assad], including the provision of weapons and ammunitions in exchange for wheat and oil.'

…

Forms of order sought

28 The applicant claims that the Court should:

– annul the initial measures, the 2020 maintaining acts and the 2021 maintaining acts (together, 'the contested measures') in so far as they concern the applicant;

– order the Council to pay the costs.

29 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 in so far as they concern the applicant, order that the effects of Decisions 2020/719 and 2021/855 be maintained in so far as they concern him until the annulment in part of Implementing Regulations 2020/716 and 2021/848 takes effect.

30 The wording of the Council's third head of claim set out in paragraph 29 above, which corrected a clerical error in the Council's observations on the second statement of modification, was accepted by the Council at the hearing, formal note of which was taken in the minutes of the hearing.

Law

…

First plea in law, alleging an error of assessment

Preliminary observations

…

79 In essence, first, the applicant claims that the Council itself had admitted that he was not a businessperson 'operating in Syria' within the meaning of Article 27(2)(a) and Article 28(2)(a) of Decision 2013/255, as amended by Decision 2015/1836. Second, he disputes that he is a 'businessperson with personal and family business interests and activities in multiple sectors of the Syrian economy'. Third, he asserts that he cannot be regarded as a 'leading' businessperson. Fourth, he claims that he is not associated with the regime of Bashar Al-Assad, does not exercise any influence over that regime and does not pose a risk of circumvention of the sanctions directed at the regime. Fifth, he submits that he is no longer involved in ASM International General Trading since that company has been liquidated and dissolved. Sixth, he submits that he is not linked to or involved in companies established in Syria or involved in Aman Holding JSC. Seventh, he submits that he is not professionally linked with Samer Foz. Eighth, he states that the fact that he is linked to Samer Foz does not call into question the complete absence of any link between him and the regime of Bashar Al-Assad, as Samer Foz himself is absolutely not associated with that regime and contests the inclusion of his own name on the lists at issue

before the General Court. Ninth, he claims that he is not involved in the Marota City project at all, which means that he could not have developed lands expropriated from persons displaced by the conflict in Syria, which prevented those persons from being able to return to their homes. Tenth, he asserts that that project is not backed by the Syrian regime.

80 The Council disputes the applicant's arguments.

Determination of the elements of the reasons for listing in respect of each of the listing criteria

81 As mentioned in paragraph 46 above, it must be inferred from the 2020 and 2021 reasons that the applicant's name was included and maintained on the lists at issue because he satisfied three criteria, namely that of being a leading businessperson operating in Syria, that of association with the Syrian regime and that of association with a person or entity subject to restrictive measures. In order to assess whether the application of those criteria in the present case is well founded, it is necessary to determine, at the outset, the factual elements of the reasons for listing in respect of each of those criteria.

82 In that regard, it cannot be excluded that, for a specific person, the reasons for inclusion 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 is apparent, specifically, from the fact that, as is established in recital 6 of Decision 2015/1836, close association with the Syrian regime and support to it by that category of persons are one of the reasons for which the Council decided to establish that category. The fact remains that, even in such a situation, these are separate criteria (judgment of 23 September 2020, *Kaddour* v *Council*, T-510/18, EU:T:2020:436, paragraph 77).

83 Where the Council decides to include a person's name on the lists in question on account of his or her status as a leading businessperson operating in Syria, it is not required to specify, in the grounds for including that person on the lists in question, that that person benefits from or provides support to the Syrian regime. If the Council does so, it is because it also intends to apply the criterion laid down in Article 27(1) and Article 28(1) of Decision 2013/255, as amended by Decision 2015/1836, to that person. That interpretation is the most appropriate for guaranteeing the effectiveness of each of Article 27(1) and (2) and Article 28(1) and (2) of Decision 2013/255, as amended by Decision 2015/1836, and for allowing listed persons to determine precisely the criteria on the basis of which their name has been included or retained on the lists in question (judgment of 23 September 2020, *Kaddour* v *Council*, T-510/18, EU:T:2020:436, paragraph 79).

84 The finding made in paragraph 82 above applies, by analogy, to the criterion of association with a person or entity subject to restrictive measures. A person may be classified as a leading businessperson operating in Syria and be regarded as being associated, in particular by business links, to another person who is subject to restrictive measures through such operating (see, to that effect, judgment of 31 May 2018, *Kaddour* v *Council*, T-461/16, EU:T:2018:316, paragraph 127). Similarly, that person may be associated with the Syrian regime while being associated, for the same reasons, to a person covered by the restrictive measures.

…

The applicant's association with a person or entity subject to restrictive measures

– *The scope of the listing criterion*

113 It is apparent, in essence, from the 2020 and 2021 reasons, set out in paragraphs 14 and 25 above, that the applicant's name was included and maintained on the lists at issue because of, inter alia, his family business interests and his association with his brother, Samer Foz, who has been included on those lists since January 2019.

114 In the first place, according to the applicant, his brother, Samer Foz, has challenged the inclusion and maintaining of his name on the lists at issue in Case T-258/19. Samer Foz also brought the action in Case T-481/21, seeking the annulment of the 2021 maintaining acts in so far as they relate to him.

115 In that regard, it must be borne in mind that the review carried out by the Court in the present case can relate only to whether the inclusion of the applicant's name on the lists in question is well founded and cannot therefore call into question the lawfulness of the decisions by which the Council included the name of his brother, Samer Foz, on those lists (see, to that effect, judgment of 11 May 2017, *Barqawi* v *Council*, T-303/15, not published, EU:T:2017:328, paragraph 42). In the present instance, the latter's name was included and maintained on those lists by Council Implementing Decision (CFSP) 2019/87 of 21 January 2019 implementing Decision 2013/255 (OJ 2019 L 18 I, p. 13), Council Decision (CFSP) 2019/806 of 17 May 2019 amending Decision 2013/255 (OJ 2019 L 132, p. 36), and Decisions 2020/719 and 2021/855 and by Council Implementing Regulation (EU) 2019/85 of 21 January 2019 implementing Regulation No 36/2012 (OJ 2019 L 18 I, p. 4), Council Implementing Regulation (EU) 2019/798 of 17 May 2019 implementing Regulation No 36/2012 (OJ 2019 L 132, p. 1) and Implementing Regulations 2020/716 and 2021/848. In particular, he was listed because of his status as a leading businessperson operating in Syria and his association with the Syrian regime.

116 In any event, first, it is apparent from the judgment of 24 November 2021, *Foz* v *Council* (T-258/19, not published, EU:T:2021:820, paragraph 154), that, as regards Implementing Decision 2019/87, Decisions 2019/806 and 2020/719 and Implementing Regulations 2019/85, 2019/798 and 2020/716, Samer Foz did not establish before the Court that those measures which included and maintained his name on the lists at issue had to be annulled. Second, with regard to the 2021 maintaining acts, according to settled case-law, the presumption that acts of the institutions of the European Union are lawful means that those acts produce legal effects until such time as they are withdrawn, annulled in an action for annulment or declared invalid following a reference for a preliminary ruling or a plea of illegality (see, to that effect, judgment of 21 December 2011, *France* v *People's Mojahedin Organization of Iran*, C-27/09 P, EU:C:2011:853, paragraph 74 and the case-law cited). Furthermore, the effects of the 2021 maintaining acts with regard to Samer Foz were not suspended following an application for interim measures. Accordingly, all the acts including or maintaining Samer Foz's name on those lists continue to produce legal effects.

117 In the second place, in response to a measure of organisation of procedure adopted by the Court, the applicant submits that, in order to establish his association with Samer Foz within the meaning of the criterion of association with a person subject to restrictive measures, only a business association should be accepted, which does not include brotherhood links. In addition, he states that association with Samer Foz does not constitute one of the listing criteria set out in Article 28(2)(a) to (g) of Decision 2013/255, as amended by Decision 2015/1836, since neither the

name of Samer Foz nor that of any other member of the Foz family appears there. The Council submits that it is apparent from the file that the applicant and Samer Foz are professionally closely associated.

118 In that regard, the 2020 and 2021 reasons on the basis of which the Council concluded that there was an association between the applicant and his brother, Samer Foz, are not confined exclusively to their family links, but relate also to their business links. Moreover, the Council does not claim that being a member of the Foz family is an autonomous listing criterion, unlike being a member of the Al-Assad or Makhlouf families, which is an autonomous criterion, laid down as such by Article 27(2)(b) and Article 28(2)(b) of Decision 2013/255, as amended by Decision 2015/1836, reproduced, as regards the freezing of funds, in Article 15(1a)(b) of Regulation No 36/2012, as amended by Regulation 2015/1828. Therefore, when examining the criterion of association with a person or entity subject to restrictive measures, the existence of that brotherhood link must be examined as a matter of fact.

119 That said, it is at this stage necessary to ascertain whether all the evidence adduced by the Council discharges the burden of proof borne by it, in accordance with the case-law referred to in paragraph 73 above, and thus constitutes a set of indicia that is sufficiently specific, precise and consistent to substantiate the reasons for including the applicant's name on the lists at issue.

120 In that regard, it is apparent from the 2020 and 2021 reasons that the Council concluded that the applicant was associated with his brother, Samer Foz, due to their activities in Aman Holding and ASM International General Trading. Furthermore, as regards the 2021 reasons, the applicant's name was also maintained on the lists at issue because he had business links to a number of commercial projects and to various activities with ISIL carried out on behalf of the Syrian regime. It is therefore necessary to examine each of those elements separately.

…

– *Conclusions on association with a person or entity subject to restrictive measures*

165 In the first place, it is clear from the foregoing that the applicant and his brother, Samer Foz, have links in the context of business. First of all, the Council has demonstrated that, at the time when the initial measures were adopted, the applicant and Samer Foz had business links through the family business Aman Holding and ASM International General Trading. Next, as regards the 2020 maintaining acts, the Council demonstrated that the two brothers had business links through that family undertaking. Finally, as regards the 2021 maintaining acts, the Council has demonstrated that the applicant and his brother had business links, since they carried out activities with ISIL on behalf of the Syrian regime.

166 The business links between the applicant and his brother, Samer Foz, are also reflected in a form of concertation in how their share portfolios are managed. First, it is apparent from the letter of 22 November 2020 and the registration certificate, attesting to the new distribution of the shareholding of Aman Holding, produced by the applicant, that he and Samer Foz both transferred their shares in Aman Holding during the same period (between 22 November 2020 and 3 December 2020). In that regard, the applicant's argument that the disposal of his shares before the expiry of a period of three years was unlawful under Article 96(1) of the Syrian law on 'Preventing the trade of shares' is not sufficiently borne out by evidence. Nor is that argument well founded, since, despite the applicant's claim that he intended to divest himself rapidly of his shareholding, he establishes only that he signed the sale contract of 2 April 2020, namely more

than one month and three weeks after the end of the period prescribed by Article 96(1) of that law. In any event, that circumstance in no way diminishes the fact that the disposal of the shares held by the applicant and Samer Foz took place within a very short period of time. Second, the decision to liquidate ASM International General Trading shows that there was some form of concertation, as the Council maintains. In that regard, it is apparent from the evidence produced by the applicant that the decision was taken on 26 March 2019 by the shareholders comprising the extraordinary assembly of that company, including Samer Foz and the applicant, in reaction to the inclusion of Samer Foz's name on the lists at issue in January 2019.

167 Finally, in his written pleadings, the applicant does not claim to have broken off his relations with Samer Foz or distanced himself from him. Consequently, the links between the applicant and his brother continue.

168 In the second place, the applicant submits that the evidence annexed to the application shows that he is not associated with the regime, or that he does not exercise influence over it, and that he poses no risk of circumvention.

…

173 Furthermore, it should be recalled that, according to Article 27(3) and Article 28(3) of Decision 2013/255, as amended by Decision 2015/1836, the persons, entities and bodies within one of the categories referred to in Article 27(2) and Article 28(2) of that decision are not to be included or retained on the lists of persons and entities set out in Annex I to Decision 2013/255 if there is sufficient information indicating, inter alia, that they do not pose a real risk of circumvention. That criterion was reproduced, with regard to the freezing of funds, in Article 15(1b) of Regulation No 36/2012, as amended by Regulation 2015/1828.

174 In that respect, as regards persons associated with persons providing support to the government in question, it should be noted that, when the funds of the latter are frozen, there is a non-negligible risk that they may exert pressure on persons associated with them in order to circumvent the effect of the measures to which they are subject (see, to that effect, judgment of 28 April 2021, *Sharif* v *Council*, T-540/19, not published, EU:T:2021:220, paragraph 159, and, by analogy, judgment of 4 September 2015, *NIOC and Others* v *Council*, T-577/12, not published, EU:T:2015:596, paragraph 139).

175 In the present case, the applicant's brother, Samer Foz, who is included on the lists at issue, occupies a privileged position in the Syrian economy. To that effect, the information from the websites of the Atlantic Council and The Syria Report indicates that he is one of the most powerful businessmen in Syria. He is described as 'the new Rami Makhlouf' by the websites of the Brookings Institution and The Syria Report. Furthermore, the article from the website of The Times adds that Samer Foz's businesses continue to operate despite the EU fund-freezing sanctions imposed on him in January 2019.

176 In view of Samer Foz's privileged position in the Syrian economy and his influence, the current or past business links between the applicant and Samer Foz, the fact that they are brothers, the significance of the family business in which they held shares and occupied positions of responsibility and the fact that it is impossible to rule out concertation between the applicant and Samer Foz in the disposal of their shares in Aman Holding and the dissolution and liquidation of ASM International General Trading, it is reasonable to think that the applicant poses a real risk of circumvention of the restrictive measures.

177 Consequently, in the light of all the foregoing, the Court finds that the reason for including the applicant's name on the lists at issue due to his association with a person subject to restrictive measures is sufficiently substantiated, with the result that, in the light of that criterion, the inclusion of his name on the lists at issue is well founded.

…

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

1. Dismisses the action;

2. Orders Mr Amer Foz to pay the costs.

Gervasoni Madise Martín y Pérez de Nanclares

Delivered in open court in Luxembourg on 18 May 2022.

[Signatures]