Reports of Cases

JUDGMENT OF THE GENERAL COURT (Seventh Chamber)

26 October 2016*

(Common foreign and security policy — Restrictive measures against Syria — Freezing of funds — Annulment of previous acts by judgment of the General Court — New acts including the applicants' names in the lists — Action for annulment — Article 76(d) of the Rules of Procedure — Content of the application — Admissibility — Obligation to state reasons — Burden of proof — Right to property — Freedom to conduct a business)

In Case T-153/15,

Mohamad Hamcho, residing in Damascus (Syria),

Hamsho International, established in Damascus,

represented by A. Boesch, D. Amaudruz and M. Ponsard, lawyers,

applicants,

v

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

defendant,

APPLICATION under Article 263 TFEU for annulment of Council Implementing Decision 2015/117/CFSP of 26 January 2015 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2015 L 20, p. 85) and of Council Implementing Regulation (EU) No 2015/108 of 26 January 2015 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2015 L 20, p. 2), in so far as the applicants' names were included on the list of persons and entities to whom the restrictive measures apply,

THE GENERAL COURT (Seventh Chamber),

composed, during the deliberations, of M. van der Woude, President, I. Ulloa Rubio (Rapporteur) and A. Marcoulli, judges,

Registrar: E. Coulon,

gives the following

* Language of the case: French.

Judgment

Background to the dispute

1 Mr Mohamad Hamsho, a businessman of Syrian nationality, is the President of Hamsho International (together 'the applicants'), a Syrian company specialising in the fields of telecommunications, tourism, vehicle rental and the representation of foreign, essentially European, companies.

2 Strongly condemning the violent repression of peaceful protest in various locations across Syria and calling on the Syrian authorities to abstain from the use of force, the Council of the European Union on 9 May 2011 adopted Decision 2011/273/CFSP concerning restrictive measures against Syria (OJ 2011 L 121, p. 11). In view of the seriousness of the situation, the Council imposed an arms embargo, a ban on exports of internal repression equipment, and restrictions on the 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 civilian population in Syria.

3 The names of the persons responsible for the violent repression against the civilian population in Syria and of the persons, natural or legal, and entities associated with them are listed in the annex to Decision 2011/273. Under Article 5(1) of that decision, the Council, acting upon a proposal by a Member State or the High Representative of the Union for Foreign Affairs and Security Policy, may amend that annex. The applicants' names were not on that list.

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

1. *Previous procedure concerning the applicants*

5 By Implementing Decision 2011/302/CFSP of 23 May 2011 implementing Decision 2011/273 (OJ 2011 L 136, p. 91), the Council amended Decision 2011/273 in order, in particular, to apply the restrictive measures in question to other persons and entities. Mr Hamsho's name was placed on the list in the annex to that decision, in line 19 of the table constituting that annex. That line contained various references, including the date of his listing, 23 May 2011, his date of birth and passport number, and also the following reasons:

'Brother-in-law of Maher Al-Assad; businessman and local agent for several foreign companies; provides funding to the regime allowing the crackdown on demonstrators.'

6 On the same day, the Council, acting on the basis of Article 215(2) TFEU and Decision 2011/273, adopted Implementing Regulation (EU) No 504/2011 implementing Regulation No 442/2011 (OJ 2011 L 136, p. 45). Mr Hamsho's name was added to the list in Annex II to that regulation, with the same references and reasons as those set out in Implementing Decision 2011/302.

7 By Implementing Decision 2011/367/CFSP of 23 June 2011 implementing Decision 2011/273 (OJ 2011 L 164, p. 14), the Council applied the restrictive measures in question to other persons and entities, whose names were added to the list annexed to the latter decision. Hamsho International's name was placed on the that list, in line 3 of Table B in that annex, which contained various references, including to the date of listing, 23 June 2011, and its address and the following reasons:

'Controlled by Mohammad Hamcho or Hamsho; provides funding to the regime.'

8 On the same day, the Council adopted Implementing Regulation (EU) No 611/2011 implementing Regulation No 442/2011 (OJ 2011 L 164, p. 1). Hamsho International's name was placed on the list in Annex II to Regulation No 442/2011 with the same references and reasons as those set out in the annex to Implementing Decision 2011/367.

9 By Decision 2011/782/CFSP of 1 December 2011 concerning restrictive measures against Syria and repealing Decision 2011/273 (OJ 2011 L 319, p. 56), the Council considered it necessary to impose additional restrictive measures in view of the gravity of the situation in Syria. For the sake of clarity, the measures imposed by Decision 2011/273/CFSP and the additional measures were integrated into a single legal instrument. That decision states that the restrictive measures are also to apply to 'persons benefiting from or supporting the regime'. The applicants' names appeared on the list in Annex I to Decision 2011/782, in line 19 of Table A in Mr Hamsho's case and in line 3 of Table B in the case of Hamsho International, respectively, with the same information and reasons as those set out in the annex to Decision 2011/273, as implemented by Implementing Decisions 2011/302 and 2011/367.

10 Regulation No 442/2011 was replaced by Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation No 442/2011 (OJ 2012 L 16, p. 1). The applicants' names appeared in the list in Annex II to Regulation No 36/2012, with the same information and reasons as those set out in Annex II to Regulation No 442/2011, as implemented by Implementing Regulations No 504/2011 and No 611/2011.

11 On 30 January 2012, the applicants brought an action before the General Court for annulment of Decision 2011/273, Decision 2011/782, Regulation No 442/2011 and Regulation No 36/2011, as implemented or amended up to the date on which the action was brought, in so far as those measures concerned the applicants. That action was registered at the Court Registry as Case T-43/12.

12 By Council Implementing Decision 2012/172/CFSP of 23 March 2012 implementing Decision 2011/782 (OJ 2012 L 87, p. 103), and by Council Implementing Regulation (EU) No 266/2012 of 23 March 2012 implementing Article 32(1) of Regulation No 36/2012 (OJ 2012 L 87, p. 45), the reasons relating to Mr Hamsho, set out in Annex II to Decision 2011/782 and Regulation No 36/2012, were replaced by the following reasons:

'Syrian businessman and local agent for several foreign companies; associate of Maher al-Assad, managing a part of his financial and economic interests and as such provides funding to the regime.'

13 By Council Decision 2012/739/CFSP of 29 November 2012 concerning restrictive measures against Syria and repealing Decision 2011/782 (OJ 2012 L 330, p. 21), the restrictive measures at issue were integrated into a single legal instrument. The applicants' names appeared on the list in Annex I to Decision 2012/739, Mr Hamsho's in line 18 of Table A and Hamsho International's in line 3 of Table B, with the same information and reasons as those set out in Decision 2011/782, as implemented by Implementing Decision 2012/172.

14 On 31 May 2013, the Council adopted Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2013 L 147, p. 14). The applicants' names appeared on the list in Annex I to that decision, in line 18 of Table A in Mr Hamsho's case and Line 3 of Table B in the case of Hamsho International, respectively, with the same information and reasons as those set out in the annex to Decision 2012/739.

15 By pleadings amending the form of order sought, lodged at the Court Registry on 22 June 2012, 7 January and 24 June 2013, the applicants also sought annulment of, in particular, Implementing Decision 2012/712, Implementing Regulation No 266/2012, Decision 2012/739, Council Implementing Decision 2013/185/CFSP of 22 April 2013 implementing Decision 2012/739 (OJ 2013 L 111, p. 77), Council Implementing Regulation (EU) No 363/2013 of 22 April 2013 implementing Regulation No 36/2012 (OJ 2013 L 111, p. 1) and Decision 2013/255.

16 By judgment of 13 November 2014, *Hamsho and Hamsho International* v *Council* (T-43/12, not published, 'the judgment in *Hamsho and Hamsho International I*', EU:T:2014:946), the Court allowed in part the applicants' action for annulment and annulled Regulation No 36/2012, Implementing Regulation No 266/2012, Implementing Regulation No 363/2013 and Decision 2013/255, in so far as those measures concerned the applicants, with effect from 23 January 2015.

17 The Council did not appeal against the judgment in *Hamsho and Hamsho International I*.

2. *Procedure for relisting the applicants*

18 By letter of 19 December 2014, the Council informed the applicants' lawyers that it intended to reinstate their names on the lists of persons and entities subject to restrictive measures in Annex I to Decision 2013/255 and Annex I to Regulation No 36/2012 ('the lists at issue'). It stated the reasons on which it proposed to rely in support of the relisting and enclosed a copy of the documents and information (with the references RELEX MD 342/14 and RELEX MD 343/14) on which it proposed to rely in order to support the relisting proposal. The Council set a time limit within which the applicants could submit any observations.

19 By letter of 15 January 2015, the applicants' lawyers asked the Council not to relist the applicants' names and challenged all the information and documents which, according to the Council, supported the relisting.

20 On 26 January 2015, the Council adopted Implementing Decision 2015/117/CFSP implementing Decision 2013/255 (OJ 2015 L 20, p. 85). On the same day, it adopted Implementing Regulation (EU) No 2015/108 implementing Regulation No 36/2012 (OJ 2015 L 20, p. 2). By those measures, the applicants' names were reinstated on the lists at issue.

21 In particular, Mr Hamsho was relisted in line 18 of the table containing the lists at issue, under the heading 'A. Persons', for the following reasons:

'Prominent Syrian businessman, owner of Hamsho International, close to key figures of the Syrian regime, including President Bashar al-Assad and Maher al-Assad. Since March 2014, he has held the position of Chairman for China of the Bilateral Business Councils following his appointment by the Minister of Economy, Khodr Orfali. Mohammed Saber Hamsho benefits from and provides support to the Syrian regime and is associated with persons benefiting from and supporting the regime.'

22 Hamsho International was relisted in line 3 of the table containing the lists at issue, under the heading 'B. Entities', for the following reasons:

'Hamsho International is a large Syrian holding company owned by Mohammed Hamsho. Hamsho International benefits from and provides support to the regime and is associated with a person benefiting from and supporting the regime.'

23 By letter of 27 January 2015 to the applicants and their lawyers, the Council replied to their letter of 15 January 2015 and served on them a copy of Implementing Decision 2015/117 and Implementing Regulation No 2015/108 ('the contested measures') and also new information supporting those measures (under the reference RELEX MD 66/15).

Procedure and forms of order sought

24 By application lodged at the Court Registry on 27 March 2015, the applicants brought the present action for annulment of the contested measures.

25 By separate document lodged at the Court Registry on 27 March 2015, the applicants submitted an application for an expedited procedure pursuant to Article 76a(2) of the republic of the General Court of 2 May 1991.

26 By separate document lodged at the Court Registry on 15 May 2015, the applicants submitted an application for interim measures, seeking suspension of operation of the contested measures, in so far as they concerned the applicants, pending the Court's decision on the action in the main proceedings.

27 By order of 20 May 2015, *Hamsho and Hamsho International* v *Council* (T-153/15 R, not published, EU:T:2015:298), the President of the General Court dismissed that application as inadmissible.

28 By decision of 3 June 2015, the Court refused the application for an expedited procedure.

29 The Court (Seventh Chamber) decided, in application of Article 106(3) of the Rules of Procedure, to rule on the action without an oral part of the procedure.

30 The applicants claim that the Court should:

— order 'the production of the file in Case T-43/12';

— reserve to the applicants the right to reply and, on this occasion, to produce new documents and call witnesses;

— annul the contested measures;

— order the Council to pay the costs.

31 The Council contends that the Court should:

— dismiss the action;

— order the applicants to pay the costs.

Law

1. *The first head of claim*

32 By their first head of claim, the applicants ask the Court to order 'the production of the file in Case T-43/12'. In essence, they wish the Court to order that the file relating to the case that gave rise of the judgment of 13 November 2014, *Hamsho and Hamsho International I* (T-43/12, not published, EU:T:2014:946), be placed on the file relating to the present case.

33 In that regard, it should be borne in mind that each case brought before the Court has its own file, containing in particular the procedural documents produced by the parties in that case, and that each of those files is entirely independent. The latter point is illustrated by the Practice rules for the implementation of the Rules of Procedure (OJ 2015 L 152, p. 1), which state that 'a procedural document and annexes thereto which are produced in a case and placed on the file of that case may not be taken into account for the purposes of preparing another case for hearing' (order of 15 October 2009, *Hangzhou Duralamp Electronics* v *Council*, T-459/07, EU:T:2009:403, paragraph 12).

34 Moreover, it is settled case-law that, under the rules which govern procedure in cases before the General Court, the parties are entitled to protection against the misuse of pleadings and evidence and that, therefore, the parties to a case have the right to use the pleadings of other parties to which they have been granted access solely for the purpose of defending their own legal position in the context of that case (see order of 15 October 2009, *Hangzhou Duralamp Electronics* v *Council*, T-459/07, EU:T:2009:403, paragraph 13 and the case-law cited).

35 Furthermore, it is also settled case-law that, apart from exceptional cases in which disclosure of a document might adversely affect the proper administration of justice, the parties to proceedings are free to disclose their own written submissions to parties not involved in those proceedings. Likewise, a party to proceedings may, subject to the same proviso, consent to a pleading which it presented in the context of those proceedings being used by another party thereto in the context of separate proceedings (see order of 15 October 2009, *Hangzhou Duralamp Electronics* v *Council*, T-459/07, EU:T:2009:403, paragraph 14 and the case-law cited).

36 Last, it is only if the Court were to take the view that the contents of the file relating to the case that gave rise to the judgment of 13 November 2014, *Hamsho and Hamsho International I* (T-43/12, not published, EU:T:2014:946) might be of use in resolving the present dispute that it could order production of that file by way of a measure of organisation of procedure under Article 89 of the Rules of Procedure (see, to that effect, order of 15 October 2009, *Hangzhou Duralamp Electronics* v *Council*, T-459/07, EU:T:2009:403, paragraph 15).

37 The Court notes in the present case that, in the version of the application lodged at the Court Registry on 27 March 2015, the applicants already joined, as annexes to that document, the main pleadings forming part of the file relating to the case that gave rise to the judgment of 13 November 2014, *Hamsho and Hamsho International I* (T-43/12, not published, EU:T:2014:946), namely the applicants' application and reply (Annexes A.1 and A.3) and the Council's defence and rejoinder (Annexes A.2 and A.4).

38 On the basis of the case-law cited in paragraphs 34 and 35 above, the Court Registry, by letter of 9 April 2015, asked the applicants whether they had been authorised by the Council to produce, as Annexes A.2 and A.4 to their application, its defence and rejoinder in the case that gave rise to the judgment of 13 November 2014, *Hamsho and Hamsho International I* (T-43/12, not published, EU:T:2014:946). As the applicants' reply was in the negative, those annexes were removed from the file relating to the present case by decision of the President of the Seventh Chamber of 4 May 2015.

39 It follows that the request submitted by the applicants by their first head of claim must be understood as referring to all the documents in the file relating to the case that gave rise to the judgment of 13 November 2014, *Hamsho and Hamsho International I* (T-43/12, not published, EU:T:2014:946), apart from the application and the reply, which are already part of the file in the present case.

40 Notwithstanding that both the case that gave rise to the judgment of 13 November 2014, *Hamsho and Hamsho International I* (T-43/12, not published, EU:T:2014:946) and the present case concern the inclusion of the applicants' names on the lists in the restrictive measures adopted by the Council vis-à-vis the Syrian Arab Republic, it must be stated that the two cases relate to different measures and that the reasoning stated by the Council in each case and the evidence adduced in order to support those listings are specific to each of those cases. Furthermore, it should be observed that the applicants have not specified the actual items in the file that would enable them to exercise their rights of defence. It must therefore be considered that the inclusion of the file relating to the case that gave rise to the judgment of 13 November 2014, *Hamsho and Hamsho International I* (T-43/12, not published, EU:T:2014:946), as requested by the applicants, is not capable of adding any information that would be relevant in assessing the merits of the measures challenged in the present case. No measure of organisation of procedure is therefore warranted in the light of the case-law cited in paragraph 36 above.

41 In the light of the foregoing, it is not appropriate to order that the file relating to the case that gave rise to the judgment of 13 November 2014, *Hamsho and Hamsho International I* (T-43/12, not published, EU:T:2014:946), be placed on the file relating to the present case.

42 The first head of claim must therefore be rejected.

2. *The second head of claim*

43 By their second head of claim, the applicants ask the Court to 'reserve to [them] the right to reply and, on this occasion, to produce new documents and call witnesses'.

44 As regards, in the first place, the request for leave to submit a reply in the present case, it should be borne in mind that the applicants were invited by the Court, in accordance with Article 83 of the Rules of Procedure, to submit a reply by no later than 10 September 2015. They subsequently requested further time within which to submit that pleading, which the Court granted on 26 August 2015. The applicants lodged the reply on 9 October 2015. It follows that the part of the second head of claim relating to the possibility of submitting a reply no longer has any purpose.

45 As regards, in the second place, the request for leave to produce new documents when submitting the reply, Article 85(2) and (3) of the Rules of Procedure provides that an applicant may, exceptionally, be authorised to produce or offer evidence after the first exchange of pleadings, provided that the delay in the submission of evidence is justified.

46 In this instance the production of new evidence cannot be authorised, since it results from a purely speculative request and concerns the introduction of future hypothetical evidence not yet provided by the applicants. Furthermore, contrary to the requirements of Article 85(2) and (3) of the Rules of Procedure, the applicants have not provided reasons to justify the submission out of time of evidence to supplement the application.

47 As regards, in the third place, the part of the application relating to the summoning of witnesses, it should be borne in mind that, in accordance with Article 88(2) of the Rules of Procedure, where such application is made after the first exchange of pleadings, the party submitting that application must state the reasons for which he was unable to submit it earlier.

48 It must again be observed that the applicants have not stated the reasons for any delay in summoning a witness, and on that ground their request must also be refused and the second head of claim must be rejected in its entirety.

3. *The third head of claim*

49 By their third head of claim, the applicants seek annulment of the contested measures.

Admissibility

50 Although the Council does not raise a formal plea of inadmissibility pursuant to Article 130(1) of the Rules of Procedure, it expresses doubt as to the admissibility of the applicants' application for annulment, alleging breach of Article 76(d) of the Rules of Procedure. In particular, it claims that the application is imprecise and insufficiently detailed, and takes issue with the fact that the applicants merely refer systematically to the annexes to their action and to the case having given rise to the judgment of 13 November 2014, *Hamsho and Hamsho International I* (T-43/12, not published, EU:T:2014:946). In the Council's submission, those references cannot offset the procedural and substantive defects in the application.

51 The applicants put forward no arguments against the Council's claims of inadmissibility.

52 It should be pointed out that, pursuant to Article 76(d) of the Rules of Procedure, an application is to contain the subject matter of the proceedings and a summary of the pleas in law relied on. Those particulars must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the application, if necessary without any further information. In order to guarantee legal certainty and the sound administration of justice it is necessary, in order for an action to be admissible, that the basic legal and factual particulars relied on be indicated, at least in summary form, coherently and intelligibly in the application itself (order of 11 January 2013, *Charron Inox and Almet* v *Commission and Council*, T-445/11 and T-88/12, not published, EU:T:2013:4, paragraph 57).

53 In this case, it should be observed that the pleas in law submitted by the applicants are indicated in a sufficiently comprehensible fashion in the application itself. The applicants claim that the reasons stated and documents produced by the Council in the present case are the same as those supplied in the previous case and that the documents produced in support of the contested measures are vague and abstract, as is the source of its information. Furthermore, the applicants maintain that their right to property and their freedom to conduct a business have been breached by the mere fact that there has been a breach of their rights of defence. In addition, the fact that the defendant was able to prepare its defence confirms that the application is sufficiently clear and precise to enable the Court to rule on the application.

54 Therefore, the present action is admissible and must be examined as to its substance.

Substance

55 In support of their action, the applicants rely essentially on three pleas in law. The first alleges breach of the obligation to state reasons. The second alleges breach of the rules governing the taking of evidence and an error of assessment of the merits of the reasons for including their names on the lists at issue. The third plea alleges breach of their right to property and interference with their freedom to conduct a business.

First plea, alleging breach of the obligation to state reasons

56 By their first plea, the applicants claim that the Council has provided no reasons or document materially different or new by comparison with the reasons and documents already considered by the Court for the purposes of the judgment of 13 November 2014, *Hamsho and Hamsho International I* (T-43/12, not published, EU:T:2014:946).

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

58 It should also 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 that measure in such a way as to enable the persons concerned to ascertain the reasons for it and to enable the competent court to exercise its power of review (see judgment of 13 September 2013, *Makhlouf* v *Council*, T-383/11, EU:T:2013:431, paragraph 61 and the case-law cited).

59 As for the restrictive measures adopted under the Common Foreign and Security Policy, it is worth underlining that, where the person concerned is not afforded the opportunity to be heard before the adoption of an initial decision to freeze funds, compliance with the obligation to state reasons is all the more important because it constitutes the sole safeguard enabling the person concerned, at least after that decision has been adopted, to make effective use of the legal remedies available to him in order to challenge the lawfulness of that decision (see judgment of 13 September 2013, *Makhlouf* v *Council*, T-383/11, EU:T:2013:431, paragraph 62 and the case-law cited).

60 Therefore, the statement of reasons for an act of the Council which imposes a measure freezing funds must identify the actual and specific reasons why the Council considers, in the exercise of its discretion, that such a 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, paragraph 63 and the case-law cited).

61 However, the requirement of a statement of reasons must be assessed in the context of the circumstances of the case, and in particular the content of the measure in question, the nature of the reasons relied on and the interest which the addressee may have in obtaining explanations (see judgment of 13 September 2013, *Makhlouf* v *Council*, T-383/11, EU:T:2013:431, paragraph 64 and the case-law cited).

62 It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons on which a measure is based meets the requirements of Article 296 TFEU 190 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 (see judgment of 13 September 2013, *Makhlouf* v *Council*, T-383/11, EU:T:2013:431, paragraph 65 and the case-law cited).

63 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 the party concerned and which enables him to understand the scope of the measure concerning him (see judgment of 13 September 2013, *Makhlouf* v *Council*, T-383/11, EU:T:2013:431, paragraph 66 and the case-law cited).

64 In the present case, the reasons which the Council provided for relisting Mr Hamsho were as follows:

'Prominent Syrian businessman, owner of Hamsho International, close to key figures of the Syrian regime, including President Bashar al-Assad and Maher al-Assad. Since March 2014, he has held the position of Chairman for China of the Bilateral Business Councils following his appointment by the Minister of Economy, Khodr Orfali. Mohammed Hamsho benefits from and provides support to the Syrian regime and is associated with persons benefiting from and supporting the regime.'

65 In addition, the reasons which the Council provided for relisting Hamsho International were as follows:

'Hamsho International is a large Syrian holding company owned by Mohammed Hamsho. Hamsho International benefits from and provides support to the regime and is associated with a person benefiting from and supporting the regime.'

66 In the first place, as regards the applicants' argument that the reasoning used by the Council in order to justify listing them in the contested measures is the same as that forming the basis of the measures annulled by the judgment of 13 November 2014, *Hamsho and Hamsho International I* (T-43/12, not published, EU:T:2014:946), it should be observed that such an argument must be rejected as inoperative. It is apparent from paragraph 108 of the judgment of 13 November 2014, *Hamsho and Hamsho International I* (T-43/12, not published, EU:T:2014:946), that the Council, in the context of a fresh examination, may include the applicants' names on the lists of restrictive measures on the basis of reasons substantiated to the requisite legal standard. Accordingly, a relisting decision adopted for the same reasons as those stated when the applicants were first listed may suffice to justify their relisting provided that the evidence adduced by the Council supports those reasons to the requisite legal standard.

67 Furthermore, and in any event, it should be observed that, contrary to the applicants' contention, the reasons stated in the lists at issue in the present case are quite distinct from the reasons used by the Council in the measures annulled by the judgment of 13 November 2014, *Hamsho and Hamsho International I* (T-43/12, not published, EU:T:2014:946). The applicants' names had initially been included on the lists annexed to Decision 2011/273 and Regulation No 442/2011 because they provided financial support to the regime. Conversely, the new reasons are based, first, on the fact that Mr Hamsho is a prominent Syrian businessman; second, on the fact that he is close to key figures of the Syrian regime; and, third, on the fact that he acts as Chairman for China of the Bilateral Business Councils, representing the Syrian Arab Republic. It follows that the applicants benefit from and provide support to the regime and are associated with persons benefiting from and supporting the regime.

68 In the second place, it must be considered that the statement of reasons provided by the Council in the contested measures in the present case satisfies the rule referred to in paragraphs 57 to 63 above. In particular, it is beyond dispute that such a statement of reasons is capable of allowing the applicants to understand the reasons why their names were relisted because of their significant role in the Syrian business world, particularly because, owing to their first listing, they were already aware of the context and scope of the measures against them.

69 In addition, as is clear from their arguments, the statement of reasons provided by the Council was quite obviously sufficient to allow them to bring the present action and the Courts of the European Union to exercise their powers of review (see, to that effect, judgment of 13 September 2013, *Makhlouf* v *Council*, T-383/11, EU:T:2013:431, paragraph 72).

70 In the present case, the applicants deny that the documents produced in support of the statement of reasons for the contested measures in the context of the present case are new. They also dispute the probative value of those documents and maintain that they do not substantiate the contested measures to the requisite legal standard.

71 In that regard, it should be borne in mind that the obligation to state reasons is an essential procedural requirement, as distinct from the question whether the reasons given are correct, which goes to the substantive legality of the contested measure. The reasoning in a measure consists in a formal statement of the grounds on which that measure is based. If those grounds are vitiated by errors, the latter will vitiate the substantive legality of the decision, but not the statement of reasons in it, which may be adequate even though it sets out reasons which are incorrect (see, to that effect, judgment of 15 November 2012, *Council* v *Bamba*, C-417/11 P, EU:C:2012:718, paragraph 60).

72 In the light of the foregoing considerations, the plea alleging breach of the obligation to state reasons must be rejected. As regards the merits of the reasons on which the Council relied vis-à-vis the applicants, the arguments put forward in that regard must be evaluated in the context of a separate plea.

Second plea, alleging breach of the rules governing the taking of evidence and a manifest error of assessment of whether the reasons stated in the contested measures are well founded

73 In the context of this plea, the applicants rely, in essence, on two distinct claims. In the first place, they maintain that the Council has put forward no document that is materially different or new by comparison with the documents already considered by the Court in the judgment of 13 November 2014, *Hamsho and Hamsho International I* (T-43/12, not published, EU:T:2014:946). In order to develop their argument, they refer to their letter of 15 January 2015 (see Annex A.10 to the application). Furthermore, they take issue with the Council on the ground that the documents produced in support of their relisting in the contested measures are vague, abstract and wholly lacking in probative value. In the second place, the applicants claim that their relisting is manifestly abusive and prompted by the Council's desire to maintain their names on the lists at issue.

74 The Council disputes the applicants' arguments.

75 According to consistent 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, that as part of the review of the lawfulness of the reasons which are the basis of the decision to list or to maintain the listing of a given person on the lists of persons subject to sanctions, the Courts of the European Union are to ensure that that decision is taken on a sufficiently solid factual basis. That entails a verification of the factual allegations in the summary of reasons underpinning that decision, with the consequence that judicial review cannot be restricted to an assessment of the cogency in the abstract of the reasons relied on, but must concern whether those reasons, or, at the very least, one of those reasons, deemed sufficient in itself to support that decision, is substantiated (judgment of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 119).

76 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 concerned are well founded, and not the task of that person to adduce evidence of the negative, that those reasons are not well founded. It is necessary that the information or evidence produced by the authority in question should support the reasons relied on against the person concerned. If that material is insufficient to allow a finding that a reason is well founded, the Courts of the European Union are to disregard that reason as a possible basis for the contested decision to list or maintain a listing (judgment of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraphs 121 to 123).

77 In the present case, it is necessary to examine, first of all, whether the Council discharged its burden of proof under Article 47 of the Charter of Fundamental Rights, particularly in the light of the arguments put forward by the applicants in paragraphs 50 and 51 of their application.

– First part, alleging breach of the rules governing the taking of evidence

78 In the first place, in so far as, in paragraph 49 of the application, the applicants refer to their letter of 15 January 2015 in its entirety in order to develop their argument relating to the documents newly produced by the Council, such a reference must be rejected as inadmissible. Although specific points in the text of the application can be supported and completed by references to specific passages in the documents attached, a general reference to other documents, even those annexed to the application, cannot compensate for the lack of essential information in the application. Furthermore, it is not for the Court to seek and identify in the annexes the pleas and arguments on which it may consider the action to be based, since the annexes have a purely evidential and instrumental function (see order of 19 May 2008, *TF1* v *Commission*, T-144/04, EU:T:2008:155, paragraph 29 and the case-law cited, and judgment of 25 October 2012, *Arbos* v *Commission*, T-161/06, not published, EU:T:2012:573, paragraph 23).

79 In the second place, as regards the criticisms which they set out in in paragraphs 50 and 51 of their application, first, it should be observed that the applicants take issue with the lack of relevance of the documents on the basis of which the Council persists in maintaining that Mr Hamsho is the brother-in-law of Mr Maher el-Assad. They maintain that that aspect has already been rejected by the Council itself.

80 However, while it is indeed the case that the Council provided the applicants with a press cutting which shows that Mr Hamsho is the brother-in-law of Mr Maher el-Assad, although the Council no longer retains that reason as a ground for relisting him, the fact nonetheless remains that that document contains other information that also serves to substantiate the new reasons applied vis-à-vis the applicants, namely that Mr Hamsho is a prominent Syrian businessman, close to key figures of the regime such as Mr Maher el-Assad, and that he is the owner of Hamsho International, a large holding company active in several sectors of Syrian industry. Furthermore, the Council points out in paragraph 12 of its defence that it did not rely on the information that Mr Hamsho is the brother-in-law of Mr Maher el-Assad as the basis for the reasons set out in the contested measures.

81 Consequently, it must be considered that, contrary to the applicants' contention, that press cutting is relevant for the purposes of substantiating the reasons for their relisting.

82 Second, the applicants take issue with the Council on account of the vague and abstract nature of the newly produced documents and question their probative force, since, in the applicants' submission, those documents do not identify the primary source of the information which they contain.

83 In that regard, it must be observed that, in order to justify the applicants' relisting, the Council provided them with the documents bearing the references RELEX MD 342/14, RELEX MD 343/14 and RELEX MD 66/15, dated 17 December 2014 and 23 January 2015 respectively (see Annexes A.9 and A.11 to the application). The three documents in question, containing publicly accessible information, were, according to the Council, intended to clarify the general and person context in relation to the applicants. In particular, the document bearing the reference RELEX MD 342/14 contains a summary of the reasons taken into account vis-à-vis the applicants and the information provided in support of that reasoning. That information consists, in particular, of links and extracts from press articles published on the websites 'Wordcrunch', 'The Washington Institute', 'The Middle East Research and Information Project (MERIP)', 'The Syria Report, Syriandays', 'Le Commerce du Levant' and 'Al Arabiya'. In addition, that document also contains extracts from two books published in 2006 and 2014 and information taken from Hamsho International's website. The document bearing the reference RELEX MD 343/14 contains an article published in the journal *Le Commerce du Levant*, entitled 'La guerre a transformé la communauté syrienne des affaires' ('The war has transformed the Syrian business community'), describing the development of the Syrian economic elite and its relationship with the current regime. Last, the document bearing the reference RELEX MD 66/15

contains an article published on 12 January 2015 on the website 'The Syria Report', according to which Mr Hamsho was appointed Secretary-General of the Chamber of Commerce of Damascus (Syria) by the Minister for the Economy of the Syrian Arab Republic.

84 In the present case, it should be observed that it is clear on reading the extracts provided by the Council, in particular those taken from the documents bearing the references RELEX MD 342/14 and RELEX MD 66/15, that the information which they contain is not vague or abstract, as the applicants claim, but that, on the contrary, it is specific and concrete. That material shows actual data on the basis of which Mr Hamsho can properly be described as a prominent businessman linked to key persons in the Syrian regime, including Mr Maher el-Assad. Likewise, the information specifies the economic and representative functions which he performs and which link him to the Syrian regime, namely his positions as Chairman for China of the Bilateral Business Councils, Secretary-General of the Damascus Chamber of Commerce and President of Hamsho International, a large holding company active in most sectors of the Syrian economy.

85 In particular, the following points should be noted:

— first of all, several articles having different dates and coming from different sources clearly and specifically describe the applicant's relationship with the regime. In the first place, the book published in 2006 entitled *Governance in the Middle East and North Africa* described Mr Hamsho, in the context of the closure of the private television channel 'the Cham Satellite channel', as 'a close friend of the President's, who was about to launch his own television station'. In the second place, the two articles published in February 2012 on the websites 'The Middle East Research and Information Project (MERIP)' stated that 'Mr Hamsho [was] a businessman close to Mr Maher el-Assad' and that 'families associated with the regime in one way or another [had come] to dominate the private sector, in addition to exercising considerable control over public economic assets [and that] these claims include[d] the … Hamsho [family]'. In the third place, the article published in November 2013 in the journal *Le Commerce du Levant* stated that 'the interests of the most powerful businessmen, including Mr Mohammad Hamsho, [were] so dependent on the power that they [were] regarded as an integral part of the system in place' and that, 'although small in number, these businessmen [had] a wide financial base';

— next, the article published on 30 June 2014 on the website 'Woldcrunch' also describes the applicant's business activities as follows: 'Mr Hamsho, a servant of the Syrian oligarch Mr Maher el-Assad, owns the very profitable market of VOIP (Voice Over Internet Protocol) towards Syria [and] is about to be awarded a permit by the country's Tourism Ministry to develop an artificial island project near Tartus';

— furthermore, the two articles published on 3 and 30 March 2014 respectively on the websites 'The Syria Report' and 'Syriandays' describe the applicant's appointment to the post of Chairman for China of the Syrian Bilateral Business Councils by the Minister for the Economy, Mr Khodr Orfali, and his participation with the Prime Minister, Mr Wael al-Halqi, and the Minister for the Economy, among others, in the first general meeting of the Bilateral Business Councils on 29 March 2014;

— last, the article published on 12 January 2015 on the website 'The Syria Report' states that the applicant was appointed Secretary-General of the Damascus Chamber of Commerce in early December 2014 by the Minister for the Economy and that he is close to Mr Maher el-Assad and the main shareholder of Hamsho International, a group which is actively operating in the IT sector. The article asserts that the reason for the radical change in the board of directors of that Chamber of Commerce is the consequence of several factors, such as the political stance taken by some businessmen vis-à-vis the regime.

86 It follows that the applicants' argument that the documents submitted by the Council contain only vague and abstract assertions cannot be upheld.

87 As regards, moreover, the failure to identify the primary sources of the information in the press articles submitted by the Council, which, in the applicants' submission, thus lack probative force, it should be borne in mind that, in accordance with settled case-law, the activity of the Court of Justice and of the General Court is governed by the principle of the unfettered evaluation of evidence, and that it is only the reliability of the evidence before the Court that is decisive when it comes to the assessment of its value. In addition, when evaluating the probative value of a document, it is necessary to have regard to the credibility of the information which it contains and also to have regard, in particular, to the person from whom the document originates, the circumstances in which it came into being, the person to whom it was addressed and whether, on its face, the document appears to be sound and reliable (see, to that effect, judgment of 27 September 2012, *Shell Petroleum and Others* v *Commission*, T-343/06, EU:T:2012:478, paragraph 161 and the case-law cited).

88 In the present case, it should be stated, first of all, that the material the probative force of which is disputed by the applicants comes from different sources of digital information and academic studies, and thus from a variety of geographic origins, not only local, such as 'The Syria Report' and 'Syriandays', but also foreign, such as 'The Washington Institute', 'Woldcrunch', 'The Middle East Research and Information Project (MERIP)', 'Le Commerce du Levant' and 'Al Arabiya'. Next, it should be noted that, as the Council contends, the press articles cited were published on different dates, even before the onset of the Syrian crisis, and that they already linked the applicants to the regime. Last, it should be observed that each source of information provides different information, notwithstanding that all of those sources agree, in essence, as to the description of Mr Hamsho as a businessman linked to the regime, having regard to the commercial activities and representative functions which he carries out and to the fact that the applicants benefit from the Syrian regime, in particular in the context of the present war.

89 The Court therefore considers that the various pieces of information provided by the Council, taken as a whole, may be regarded as reliable within the meaning of the case-law cited in paragraph 87 above. In that regard, it should be observed that, although the various pieces of information in question do not expressly state the primary source of their information, the state of war in Syria makes it difficult, and indeed impossible, in practice, to gather testimony from persons who would agree to be identified. The ensuing difficulties in carrying out investigations and the danger to which those providing information are exposed constitute a barrier to the production of the precise sources of personal conduct in support of the regime (see, to that effect, Opinion of Advocate General Bot in *Anbouba* v *Council*, C-605/13 P, EU:C:2015:2, point 204). Last, it should be observed that, although in their application the applicants generally dispute the probative force of the extracts submitted by the Council, they do not put forward the slightest evidence that would call their credibility in question.

90 It follows that the applicants' argument that the information provided by the Council lacks probative force, on the ground that the Council gives no indication of the primary sources of the information, must be rejected.

91 Third, the applicants refer to the article submitted by the Council in the context of the document bearing the reference RELEX MD 343/14, published in November 2013 in the journal *Le Commerce du Levant*, in order to maintain that that article 'invalidates' the Council's presumption that the applicants' commercial success can be explained only by their proximity to and support for the Syrian regime.

92 In that regard, it should be observed that the applicants are once again unable to explain how that article might 'invalidate' the impugned presumption. Furthermore, and in any event, it must be considered that, as the Council contends, not only does the article published in the document bearing the reference RELEX MD 343/14 not call that presumption in question, but it is capable of supporting that presumption, in that, among other aspects, it highlights the fact that the interests of the most

powerful Syrian businessmen, including Mr Hamsho, 'are so dependent on the power that they are regarded as an integral part of the system in place' (see, in that regard, page 227 *in fine*). The applicants' argument must therefore be rejected.

93 It follows from the foregoing that the arguments set out by the applicants in paragraphs 50 and 51 of their application must be rejected, as must, consequently, the first part of the second plea.

– Second part, alleging an error of assessment of the merits of the inclusion of the applicants' names on the lists at issue

94 The applicants assert, in paragraph 52 of the application, that the relisting of their names was 'manifestly abusive' and prompted by the Council's desire to maintain their names on the lists at issue 'at least during the period inherent in the appeal procedure'.

95 In that regard, first, it should be observed that, as already stated in paragraph 66 above, it follows from the judgment of 13 November 2014, *Hamsho and Hamsho International I* (T-43/12, not published, EU:T:2014:946), that the Council, in the context of a fresh examination, may maintain the applicants' names on the lists of restrictive measures on the basis of reasons substantiated to the requisite legal standard. In those circumstances, the fact that the Council relisted the applicants on the lists at issue cannot in itself reveal any abusive and illegal intention on its part vis-à-vis the applicants.

96 Second, if the Court were to take the view that, by their argument, the applicants are in fact seeking to challenge wished to challenge the assertion that their relisting was sufficiently substantiated and justified, it should be borne in mind that, in accordance with the case-law of the Court of Justice, whether a listing is well founded must be determined by examining the evidence, not in isolation, but in its context (see, to that effect, judgments 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 of 28 November 2013, *Council* v *Manufacturing Support & Procurement Kala Naft*, C-348/12 P, EU:C:2013:776, paragraph 70).

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

98 In the present case, as is apparent from the letter of December 2014, the Council decided to relist the applicants' names on the basis of the criterion of a link with the Syrian regime, in particular their economic and political links with the heads of the current regime and also by the benefit which they might obtain from those close links. Such a criterion follows from Article 28(1) of Decision 2013/255 and from Article 15(1) of Regulation No 36/2012. The Council's reasoning contains, moreover, as regards Mr Hamsho, three factors: first, Mr Hamsho is a prominent Syrian businessman, and the owner of Hamsho International; second, he is close to key figures of the Syriana regime, including the President, Mr Bashar el-Assad, and Mr Maher el-Assad; and, third, he held the position of Chairman for China of the Syrian Bilateral Business Councils. It follows that he benefits from and provides support to the regime and is associated with persons benefiting from and supporting the regime. Furthermore, Hamsho International's name was listed by the Council on the ground that it is a large Syrian holding company owned by Mr Hamsho and that it therefore benefits from and provides support to the Syrian regime and is associated with a person benefiting from and supporting the regime.

99 It is appropriate to examine, first of all, whether each of the reasons for Mr Hamsho's relisting is substantiated.

100 As regards the third reason, concerning the functions carried out by Mr Hamsho as Chairman for China of the Syrian Bilateral Business Councils, it should be noted at the outset that the applicants put forward scarcely more than a single argument against the Council's assertion. In fact, they merely assert in their reply that 'this institution was quickly closed down, if indeed it actually operated' and that '[these institutions] were merely Chambers of Commerce'. However, they put forward no specific argument designed to call in question the substance of the reason stated by the Council.

101 Furthermore, it has been held, concerning a decision adopting restrictive measures, having regard to their preventive nature, if the Courts of the European Union consider that, at the very least, one of the reasons mentioned is sufficiently detailed and specific, that it is substantiated and that it constitutes in itself sufficient basis to support that decision, the fact that the same cannot be said of other such reasons cannot justify the annulment of that decision (see judgment of 28 November 2013, *Council* v *Manufacturing Support & Procurement Kala Naft*, C-348/12 P, EU:C:2013:776, paragraph 72 and the case-law cited).

102 In any event, the Court considers that, in the light of the information that may be gleaned from the documents analysed in paragraphs 83 to 88 above and from the particular political and economic context in Syria, the Court was entitled to consider that Mr Hamsho was one of the main businessmen in Syria and that, owing to his economic and representative functions, he could not have prospered unless he was linked to the regime.

103 In effect, it should be observed that, as is apparent from the documents submitted by the Council and, in particular, from the two articles published on 3 and 30 March 2014, respectively, on the websites 'The Syria Report' and 'Syriandays', the applicant was appointed Chairman for China of the Bilateral Business Councils by the Minister for the Economy, Mr Khodr Orfali, in March 2014. In addition, it is clear from the article published on 12 January 2015 on the website 'The Syria Report' that in December 2014 he was also appointed Secretary-General of the Damascus Chamber of Commerce by the Minister for the Economy. While it is indeed the case that those articles do not in themselves enable a direct relationship to be established between the applicant and the Minister for the Economy or the regime in place, the fact nonetheless remains that they constitute sufficiently concrete, specific and consistent indicia that must be taken into consideration together with the applicant's prominent position in the Syrian economy, notably because of his ownership of Hamsho International and his economic activities.

104 Furthermore, it should be observed that the applicant's function within economic councils such as the Syrian Bilateral Business Councils for China, whose objective is to promote the Syrian economy and the development of its undertakings, its commercial activities and investment, can be explained only by a certain proximity to the regime in place and constitutes an undisputed factor which demonstrates a certain link between the applicant and the regime of Mr Bashar el-Assad. That link is corroborated by the fact that he was appointed Secretary-General of the Damascus Chamber of Commerce by the Minister for the Economy in December 2014. The article published on the website 'The Syria Report' on 12 January 2015 states in that respect that the reason for the radical change in the composition of the board of directors of the Damascus Chamber of Commerce is the consequence of several factors, including the political stance taken vis-à-vis the regime by certain businessmen.

105 In addition, it should be observed that, if the Courts of the European Union wish to undertake a realistic review of the restrictive measures taken against the applicant by the Council, they are bound to take into consideration in their assessment the context of the Syrian Arable Republic (see, to that effect, Opinion of Advocate General Bot in *Anbouba* v *Council*, C-605/13 P, EU:C:2015:2, point 205).

106 In the present case, the Council communicated to the applicants, via the document bearing the reference RELEX MD 343/14, the article published in the journal *Le Commerce du Levant*. That article describes the general context in which prominent Syrian businessmen, of whom Mr Hamsho is one, must be placed. In particular, that article states, inter alia, that the interests of the most powerful

businessmen are so dependent on the power in Syria that they are regarded as an integral part of the system in place. As the Council stated in the letter of 19 December 2014, addressed to the applicants, that aspect is also illustrated by the authoritarian nature of the Syrian regime, which closely controls the Syrian economy and those involved in it.

107 Furthermore, it should be observed that the Syrian business community has been the subject of numerous other press articles, from different sources, which were produced by the Council in the annexes to its defence. Those articles assert that the Syrian economic elite was largely composed of entrepreneurs chosen by Mr Bashar el-Assad and his extended family and that this elite prospered by being awarded favours granted by the regime. In this instance, it should be observed that, as the Council contends, those documents are admissible, since they are intended, not to provide ex post reasons for the measures at issue, but to show, in the light of the context in which those measures were adopted, that the statement of reasons in those measures was sufficient (see, to that effect, judgment of 15 November 2012, *Council* v *Bamba*, C-417/11 P, EU:C:2012:718, paragraph 62).

108 Last, it must be stated that the Council in its defence, explains precisely not only how the applicant is part of the leading economic class in Syria, but also the undeniable nature of his links with the Syrian regime, since by his representative functions, his business activities and his ownership of Hamsho International, he exercises decisive influence on the entire highest circle of the heads of that regime, thus benefiting that regime.

109 It follows from the foregoing that the Council was correct to consider that Mr Hamsho was one of the prominent businessmen in Syria and that he had links with the regime of Mr Bashar el-Assad because he exercised functions as a representative of the Syrian Arab Republic. It must therefore be concluded that the reasons stated for relisting Mr Hamsho's name are sufficiently substantiated.

110 In addition, it follows from Article 28(1) of Decision 2013/255 that all funds and economic resources belonging to entities associated with persons supporting the regime are to be frozen. In the present case, it is clear from paragraph 109 above that Mr Hamsho was correctly included on the lists at issue. Furthermore, it should be pointed out that Hamsho International is a holding company mainly owned by Mr Hamsho, as is apparent from the annexes to the parties' pleadings, which, moreover, has not been disputed by the applicants themselves.

111 Consequently, without there being any need to evaluate the evidence adduced by the Council, it must be stated that the name of Hamsho International, a holding company owned by Mr Hamsho, was correctly included on the lists at issue.

112 The second part of the second plea must therefore be rejected, as must the second plea in its entirety.

Third plea, alleging breach of the right to property and interference with freedom to conduct a business for the simple reason that there has been a breach of their rights of defence.

113 The applicants claim that there has been a breach of their right to property and an interference with their freedom to conduct a business for the simple reason that there has been a breach of their rights of defence.

114 The Council disputes the applicants' arguments.

115 As a preliminary point, it should be borne in mind that respect for the rights of the defence, enshrined in Article 41(2) of the Charter of Fundamental Rights of the European Union ('the Charter'), includes the right to be heard and the right to have access to the file, subject to legitimate interests in maintaining confidentiality (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).

116 It has consistently been held in connection with restrictive measures that the effectiveness of judicial review, which it must be possible to apply to the lawfulness of the reasons stated for including the name of a person or an entity on the lists of addressees of those measures, means that the EU authority is bound to communicate those reasons to the person or entity concerned, so far as possible, either when that inclusion is decided or, at the very least, as swiftly as possible after that decision in order to enable that person or entity to exercise, within the periods prescribed, their right to bring an action (see, 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 336).

117 Compliance with that obligation to communicate those reasons is necessary in order to enable the persons to whom restrictive measures are addressed to defend their rights in the best possible conditions and to decide, in particular, with full knowledge of the relevant facts, whether there is any point in bringing proceedings before the Courts of the European Union (see, to that effect, judgments of 15 October 1987, *Heylens and Others*, 222/86, EU:C:1987:442, paragraph 15, and of 4 February 2014, *Syrian Lebanese Commercial Bank* v *Council*, T-174/12 and T-80/13, EU:T:2014:52, paragraph 132).

118 In the present case, it should be observed that, as is apparent from paragraphs 18, 19 and 23 above, the Council communicated to the applicants in advance, by letter of 19 December 2014, the reasons and the evidence provided in support of the relisting of their names on the lists at issue and prescribed a period within which they were to submit any observations. The applicants challenged their relisting on 15 January 2015. The Council subsequently decided to relist them and communicated to them its decision, the contested measures and new information relating to them by letter of 27 January 2015. The Council cannot therefore be accused of having breached the applicants' rights of defence.

119 Next, it should be borne in mind that the right to property is one of the general principles of EU law and is enshrined in Article 17 of the Charter of Fundamental Rights (see judgment of 13 September 2013, *Makhlouf* v *Council*, T-383/11, EU:T:2013:431, paragraph 96 and the case-law cited).

120 According to settled case-law, however, that fundamental right does not enjoy absolute protection under EU law, but must be viewed in relation to its function in society. Consequently, the exercise of that right may be restricted, provided that those restrictions correspond to objectives of public interest pursued by the Community and do not constitute, in relation to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of the right 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).

121 It follows that, given the overriding importance of the protection of the civilian populations in Syria and the derogations provided for by the contested measures, the restrictions on the applicant's right to property are not disproportionate (see, to that effect, judgment of 13 September 2013, *Makhlouf* v *Council*, T-383/11, EU:T:2013:431, paragraph 106), *a fortiori* because the contest measures provide for certain exceptions that allow the persons and entities subject to the restrictive measures to meet essential expenditure.

122 In fact, the contested measures provide for the possibility to authorise the use of frozen funds to meet essential needs or to satisfy certain commitments, to grant specific authorisation to unfreeze funds, other financial assets or other economic resources and to review periodically the composition of the lists with the aim of ensuring that the persons who, and entities which, no longer meet the necessary criteria for inclusion are removed from the list at issue (see, to that effect, judgment of 13 September 2013, *Makhlouf* v *Council*, T-383/11, EU:T:2013:431, paragraphs 102 and 105).

123 Last, as regards the alleged restrictions of the applicants' freedom to conduct a business, which is enshrined in Article 16 of the Charter of Fundamental Rights, they cannot be regarded as disproportionate, for the same reasons as those set out in paragraphs 119 and 120 above.

124 It follows that the Council has not breached the applicants' right to property or interfered with their freedom to conduct a business.

125 Consequently, the third plea must be rejected, as must the action in its entirety.

Costs

126 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the applicants have been unsuccessful, they must be ordered to pay the costs of the present proceedings and those relating to the proceedings for interim measures, in accordance with the form of order sought by the Council.

On those grounds,

THE GENERAL COURT (Seventh Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders Mr Mohamad Hamsho and Hamsho International to bear their own costs and to pay the costs incurred by the Council of the European Union in these proceedings and in the proceedings for interim measures.**

Van der Woude Ulloa Rubio Marcoulli

Delivered in open court in Luxembourg on 26 October 2016.

[Signatures]