Reports of Cases

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

17 July 2024*

(Common foreign and security policy – Restrictive measures taken in view of the situation in Syria – Freezing of funds and economic resources – Restriction on entry into the territory of the Member States – List of persons, entities and bodies subject to the freezing of funds and economic resources or subject to restrictions on entry into the territory of the Member States – Inclusion and maintenance of the applicant's name on the list – Heir of a person already subject to restrictive measures – Rights of the defence – Error of assessment – Non-contractual liability)

In Case T-209/22,

Shahla Makhlouf, residing in Fairfax, Virginia (United States), represented by G. Karouni and E. Assogba, lawyers,

applicant,

v

Council of the European Union, represented by A. Limonet and V. Piessevaux, acting as Agents,

defendant,

THE GENERAL COURT (Ninth Chamber, Extended Composition),

composed of L. Truchot, President, H. Kanninen, R. Frendo (Rapporteur), M. Sampol Pucurull and T. Perišin, Judges,

Registrar: L. Ramette, Administrator,

having regard to the written part of the procedure,

further to the hearing on 16 June 2023,

gives the following

* Language of the case: French.

Judgment

1 By her action, the applicant, Ms Shahla Makhlouf, seeks, first, under Article 263 TFEU, the annulment of (i) Council Implementing Decision (CFSP) 2022/242 of 21 February 2022 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2022 L 40, p. 26) and Council Implementing Regulation (EU) 2022/237 of 21 February 2022 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2022 L 40, p. 6) (together, 'the initial acts') and (ii) Council Decision (CFSP) 2023/1035 of 25 May 2023 amending Decision 2013/255/CFSP concerning restrictive measures in view of the situation in Syria (OJ 2023 L 139, p. 49) and Council Implementing Regulation (EU) 2023/1027 of 25 May 2023 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2023 L 139, p. 1) (together, 'the maintaining acts'), in so far as those acts concern the applicant (together, 'the contested acts'); and, second, under Article 268 TFEU, compensation in respect of the harm that she claims to have suffered as a result of the adoption of the contested acts.

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

2 The applicant is one of the daughters of Mr Mohammed Makhlouf, a businessman of Syrian nationality.

3 The present case arises in the context of restrictive measures adopted since 2011 by the Council of the European Union against Syria and persons responsible for the violent repression against the civilian population in Syria.

4 On 9 May 2011, the Council adopted Decision 2011/273/CFSP, concerning restrictive measures against Syria (OJ 2011 L 121, p. 11), 'strongly condemn[ing] the violent repression … of peaceful protest in various locations across Syria'. It introduced, inter alia, restrictions on entry into the territory of 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'. Considering that regulatory action at EU level was necessary in order to implement Decision 2011/273, the Council also 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).

5 The names of persons 'responsible for the violent repression against the civilian population in Syria' and of natural and legal persons and entities associated with them were mentioned in the Annex to Decision 2011/273 and in Annex II to Regulation No 442/2011.

6 On 1 August 2011, the Council adopted Implementing Decision 2011/488/CFSP implementing Decision 2011/273 (OJ 2011 L 199, p. 74), and Implementing Regulation (EU) No 755/2011 implementing Regulation No 442/2011 (OJ 2011 L 199, p. 33) in order to include, inter alia, the name of Mr Mohammed Makhlouf in the respective annexes listing the persons and entities subject to restrictive measures (see paragraph 5 above).

7 On 18 January 2012, the Council adopted Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011 (OJ 2012 L 16, p. 1) and, on 31 May 2013, Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2013 L 147, p. 14) (together, 'the basic acts'), in particular to impose restrictive

measures on persons benefiting from or supporting the Syrian regime and persons associated with them. Their names are now listed in Annex II to Regulation No 36/2012 and in the Annex to Decision 2013/255 ('the lists at issue').

8 In view of the gravity of the situation in Syria, as is clear from recital 5 thereof, on 12 October 2015, the Council adopted Decision (CFSP) 2015/1836 amending Decision 2013/255 (OJ 2015 L 266, p. 75) and Regulation (EU) 2015/1828 amending Regulation No 36/2012 (OJ 2015 L 266, p. 1) (together, 'the 2015 acts').

9 In that regard, considering that the restrictive measures adopted initially by Decision 2011/273 had not made it possible to put an end to the violent repression perpetrated by the Syrian regime against the civilian population, the Council decided, as is stated in recital 5 of Decision 2015/1836, that it was 'necessary to maintain and ensure the effectiveness of the restrictive measures in place, by further developing them while maintaining its targeted and differentiated approach and bearing in mind the humanitarian conditions of the Syrian population', considering that 'certain categories of persons and entities [were] of particular relevance for the effectiveness of these restrictive measures, given the specific context prevailing in Syria'.

10 Consequently, the wording of Articles 27 and 28 of Decision 2013/255 was amended by Decision 2015/1836. Those articles now provide for restrictions on entry into, or transit through, the territory of the Member States and the freezing of funds and economic resources of persons in the categories mentioned in paragraph 2(a) to (g), as listed in Annex I, except, in accordance with paragraph 3, if there is 'sufficient information that [those persons] are not, or are no longer, associated with the regime or do not exercise influence over it or do not pose a real risk of circumvention'.

11 In particular, since, as is stated in recital 7 of Decision 2015/1836, 'power in Syria traditionally [is] exercised on a family basis [and] power in the present Syrian regime is concentrated in influential members of the Assad and Makhlouf families', it was necessary to provide for restrictive measures on certain members of those families, both to directly influence the Syrian regime through members of those families to change its policies of repression, as well as to avoid the risk of circumvention of restrictive measures through family members.

12 Thus, following the adoption of the 2015 acts, Article 27(2)(b) and Article 28(2)(b) of Decision 2013/255 now also make 'members of the Assad or Makhlouf families' subject to restrictive measures ('the criterion of family membership'). Alongside this, Article 15 of Regulation No 36/2012 was supplemented by paragraph 1a(b), which provides for the freezing of the assets of members of those families (together with Article 27(2)(b) and Article 28(2)(b) of Decision 2013/255, 'the provisions establishing the criterion of family membership').

13 On 12 September 2020, Mr Mohammed Makhlouf died ('the deceased'). On that date, his name was still included on the lists at issue.

14 On 21 February 2022, by way of the initial acts, the Council inserted the applicant's name on line 320 of the lists at issue for the following reason:

'Daughter of Mohammed Makhlouf. Member of the Makhlouf family.'

15 In order to justify the inclusion of the applicant's name on the lists at issue, the Council relied on the decision dated 27 September 2020 opening the succession of the deceased issued by a Syrian court ('the decision opening the succession').

16 Three days after the adoption of the initial acts, on 24 February 2022, the Council adopted Decision (CFSP) 2022/306 implementing Decision 2013/255 (OJ 2022 L 46, p. 95), and Implementing Regulation (EU) 2022/299 implementing Regulation No 36/2012 (OJ 2022 L 46, p. 1), in order to delete the name of the deceased from the lists at issue.

17 On 12 April 2022, the applicant sent the Council a request seeking the removal of her name from the lists at issue.

18 The Council refused that request for reconsideration by a letter of 31 May 2022 ('the Council's response') on the ground that there were sufficient reasons to maintain the inclusion of the applicant's name on the lists at issue as a member of the Makhlouf family and an heir of the deceased. On that occasion, it sent to the applicant the decision opening the succession in support of the ground for including her name on those lists.

19 In its response, the Council informed the applicant of the adoption of Council Decision (CFSP) 2022/849 of 30 May 2022 amending Decision 2013/255 (OJ 2022 L 148, p. 52) and Council Implementing Regulation (EU) 2022/840 of 30 May 2022 implementing Regulation No 36/2012 (OJ 2022 L 148, p. 8), by which it had maintained her name on the lists at issue until 1 June 2023.

20 On 25 May 2023, the Council adopted the maintaining acts, which essentially extended the application of the basic acts and the lists at issue, including in respect of the applicant, until 1 June 2024.

Forms of order sought

21 Following the modification of the application pursuant to Article 86 of the Rules of Procedure of the General Court, the applicant claims that the Court should:

– annul the contested acts;

– order the Council to pay her, first, compensation of EUR 30 000 in respect of non-material damage suffered as a result of the adoption of the initial acts and, second, compensation of EUR 30 000 in respect of non-material damage suffered as a result of the maintaining acts;

– order the Council to pay the costs.

22 The Council contends that the Court should:

– dismiss the action in its entirety;

– in the alternative, in the event that the initial acts are annulled in so far as they concern the applicant, maintain the effects of Implementing Decision 2022/242 in respect of her until the annulment of Implementing Regulation 2022/237 takes effect;

– order the applicant to pay the costs.

Law

Admissibility of the modification of the application

23 By her statement of modification, the applicant seeks leave to extend the scope of her action pursuant to Article 86 of the Rules of Procedure, in order that it should cover the annulment of the maintaining acts in so far as they concern her.

24 At the hearing, the Council challenged the admissibility of the modification of the application, claiming that the applicant had not challenged Decision 2022/849 or Implementing Regulation 2022/840, by which the inclusion of her name on the lists at issue had been maintained prior to the adoption of the maintaining acts.

25 It should be noted in this regard that, under Article 86(1) of the Rules of Procedure, 'where a measure the annulment of which is sought is replaced or amended by another measure with the same subject matter, the applicant may, before the oral part of the procedure is closed …, modify the application to take account of that new factor'.

26 In the present case, first, it should be observed that the purpose of both the initial acts and the maintaining acts, in so far as they concern the applicant, is to impose individual restrictive measures on her, consisting in restrictions on entry and the freezing of all her funds and economic resources.

27 Second, under the regime introducing restrictive measures against Syria, the individual restrictive measures take the form of the inclusion of the names of the targeted persons, entities or bodies on the lists at issue set out in the annexes to Decision 2013/255 and Regulation No 36/2012.

28 In that context, the initial acts amended the annexes to Decision 2013/255 and Regulation No 36/2012 in order to include the applicant's name on the lists at issue. As regards the maintaining acts, it should be noted, first, that Decision 2023/1035 – which extended the applicability of Decision 2013/255, including Annex I, as amended by Implementing Decision 2022/242, until 1 June 2024 – mentions the applicant's name and, second, that Implementing Regulation 2023/1027 amended Annex II to Regulation No 36/2012, while maintaining – at the very least implicitly – the inclusion of her name in the latter annex. Consequently, the maintaining acts must be regarded as having replaced the initial acts within the meaning of Article 86(1) of the Rules of Procedure.

29 It follows that, in accordance with the objective of procedural economy underlying Article 86 of the Rules of Procedure (see, to that effect, judgment of 13 September 2018, *Almaz-Antey* v *Council*, T-515/15, not published, EU:T:2018:545, paragraphs 43 and 44), the applicant, having sought annulment of the initial acts in the application, was entitled, in the context of the present proceedings, to modify the application in order to seek annulment of the maintaining acts as well, even though she had not previously modified the application in order to seek annulment of Decision 2022/849 and Implementing Regulation 2022/840.

30 It must therefore be held that the modification of the application is admissible.

The claim for annulment

31 In support of her claim for annulment, the applicant raises four pleas in law, alleging in essence:

– first, infringement of procedural safeguards;

– second, an error of assessment;

– third and fourth, an unlawful and disproportionate interference with the applicant's fundamental right to property.

32 The Court considers it useful to begin its examination of the action by examining the second plea in law.

The second plea in law, alleging an error of assessment

33 In the present plea in law, formally alleging a manifest error of assessment, the applicant challenges the lawfulness of the contested acts and, consequently, the merits of the inclusion of her name on the lists at issue. In her view, the mere fact that she is a member of the Makhlouf family cannot justify the adoption of restrictive measures against her.

34 The Council disputes the applicant's arguments.

– *Preliminary observations*

35 It should be noted at the outset that the present plea in law must be regarded as alleging error of assessment, and not manifest error of assessment. While it is true that the Council has a degree of discretion to determine, on a case-by-case basis, whether the legal criteria on which the restrictive measures at issue are based are satisfied, the fact remains that the Courts of the European Union must ensure the review, in principle the full review, of the lawfulness of all EU acts (judgment of 26 October 2022, *Ovsyannikov* v *Council*, T-714/20, not published, EU:T:2022:674, paragraph 61 and the case-law cited).

36 The effectiveness of the judicial review guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union requires that the Courts of the European Union ensure that the decision by way of which restrictive measures were adopted or maintained, which affects the person or entity concerned individually, is taken on a sufficiently solid factual basis. That involves assessing the facts alleged in the statement 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).

37 It is for the Courts of the European Union, in order to carry out that examination, to request the competent European Union authority, when necessary, to produce information or evidence, confidential or not, relevant to such an examination (judgment of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 120).

38 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 (judgment of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 121).

39 For that purpose, there is no requirement that that authority produce before the Courts of the European Union all the information and evidence underlying the reasons alleged in the act in respect of which annulment is sought. It is, however, necessary that the information or evidence produced should support the reasons relied on against the person or entity concerned (judgment of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 122).

40 If the competent European Union authority provides relevant information or evidence, the Courts of the European Union must then determine whether the facts alleged are made out in the light of that information or evidence and assess the probative value of that information or evidence in the circumstances of the particular case and in the light of any observations submitted in relation to them by, among others, the person or entity concerned (judgment of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 124).

41 The assessment of the merits of a listing must be carried out by examining the evidence not in isolation, but in the context in which it fits (see judgment of 16 March 2022, *Sabra* v *Council*, T-249/20, EU:T:2022:140, paragraph 41 and the case-law cited).

42 Lastly, in carrying out the assessment of the importance of what was at stake, which forms part of the review of the proportionality of the restrictive measures at issue, account may be taken of the context of those measures, of the fact that there was an urgent need to adopt such measures intended to put pressure on the Syrian regime in order for it to stop the violent repression against the population, and of the difficulty in obtaining more specific evidence in a State at civil war and having an authoritarian regime (see judgment of 16 March 2022, *Sabra* v *Council*, T-249/20, EU:T:2022:140, paragraph 42 and the case-law cited).

43 Thus, according to the case-law, in the absence of investigative powers in third countries, the assessment of the European Union authorities must rely on publicly available sources of information, reports, articles in the press or other similar sources of information (see judgment of 16 December 2020, *Haswani* v *Council*, T-521/19, not published, EU:T:2020:608, paragraph 142 and the case-law cited).

44 It is in the light of these principles that the present plea in law must be examined.

– *The merits of the inclusion of the applicant's name on the lists at issue*

45 The applicant's name was included on the lists at issue on the ground that she was a 'daughter of Mohammed Makhlouf[; m]ember of the Makhlouf family' (see paragraph 10 above). Therefore, the Council applied the criterion of family membership to justify taking restrictive measures against the applicant in the contested acts, relying on the decision opening the succession (see paragraph 17 above), from which it is apparent that the applicant was one of the heirs of the deceased.

46 It should be noted, first, that the applicant disputes neither the authenticity nor the probative value of the decision opening the succession. Second, she also does not dispute her parent-child relationship with the deceased and, thus, her membership of the Makhlouf family.

47 In those circumstances, the Council was able to rely on the decision opening the succession to substantiate the grounds for including the applicant's name on the lists at issue.

48 The applicant claims, however, that the provisions establishing the criterion of family membership preclude any systematic inclusion based merely on membership of the Makhlouf family. She observes that, pursuant to Decision 2015/1836, only an influential member of that family may be subject to restrictive measures on account of the situation in Syria.

49 It should be noted in that regard, first of all, that the general listing criterion of association with the Syrian regime under Article 27(1) and Article 28(1) of Decision 2013/255, as amended by Decision 2015/1836, which corresponds, in so far as concerns the freezing of funds, to Article 15(1)(a) of Regulation No 36/2012, as amended by Regulation 2015/1828, permits the inclusion on the lists at issue of persons or entities benefiting from or supporting the Syrian regime and persons associated with them.

50 Second, in 2015, specific listing criteria were added to supplement the general criterion of association with the Syrian regime. These are now set out in Article 27(2) and Article 28(2) of Decision 2013/255, as amended by Decision 2015/1836, and in Article 15(1a)(b) of Regulation No 36/2012, as amended by Regulation 2015/1828. According to the case-law, those provisions establish, with respect to seven categories of persons who belong to certain groups, a rebuttable presumption that they are associated with the Syrian regime. Those categories include 'members of the Assad or Makhlouf families' (see, to that effect, judgment of 1 October 2020, *Makhlouf* v *Council*, C-157/19 P, not published, EU:C:2020:777, paragraph 98).

51 Lastly, it has been held that the specific listing criteria in respect of the seven categories of persons referred to in paragraph 50 above are autonomous of the general criterion of association with the Syrian regime such that merely belonging to one of those seven categories of persons is a sufficient basis for taking the restrictive measures provided for in those articles, without there being any need also to provide evidence of the support that the persons concerned provide to the existing Syrian regime or the benefit that they derive from it (see, to that effect, judgment of 1 October 2020, *Makhlouf* v *Council*, C-157/19 P, not published, EU:C:2020:777, paragraph 83).

52 It must be inferred that the criterion of family membership, introduced by the 2015 acts, establishes a criterion that is objective, autonomous and sufficient in itself to justify taking restrictive measures against 'members of the … Makhlouf [family]' by the inclusion of their names on the lists of persons subject to such measures solely for the reason that they are members of that family. Contrary to the applicant's claims in paragraph 48 above, the criterion is not confined to 'influential' members of that family.

53 The fact remains that Article 27(3) and Article 28(3) of Decision 2013/255, as amended by Decision 2015/1836, and Article 15(1b) of Regulation No 36/2012, as amended by Regulation 2015/1828, provide in essence that persons covered by the provisions establishing the listing criteria are not to be included on the lists at issue if there is sufficient information that they are not associated with the Syrian regime, or do not exercise influence over it or do not pose a real risk of circumvention of the restrictive measures.

54 Thus, in the light of the considerations set out in paragraphs 50 to 52 above, the Council could a priori, taking into account the decision opening the succession, include the applicant's name on the lists at issue on the basis of the rebuttable presumption of association with the Syrian regime stemming from the criterion of family membership.

55 It was then for the applicant, in the context of a challenge to the contested acts, to adduce evidence to rebut the presumption of association with the Syrian regime on which the Council relied.

56 In that regard, it has been held in the case-law, as has been stated in paragraph 38 above, that, in so far as the burden of proof for establishing the merits of the grounds underpinning the restrictive measures lies, in principle, with the Council, an excessive standard of proof may not be imposed on the applicant in order to rebut the presumption of a link with the Syrian regime (see, to that effect, judgment of 16 March 2022, *Sabra* v *Council*, T-249/20, EU:T:2022:140, paragraphs 132 and 133 and the case-law cited).

57 Therefore, an applicant must be considered to have succeeded in rebutting the presumption of a link to the regime, introduced, in particular, by the provisions establishing the criterion of family membership, if he or she puts forward arguments or evidence capable of seriously calling into question the reliability of the evidence submitted by the Council or the Council's assessment or if he or she produces before the EU judicature a body of specific, precise and consistent evidence establishing that he or she was not, or is no longer, associated with the Syrian regime, that he or she did not exercise influence over the regime and that he or she did not pose a real risk of circumvention of the restrictive measures, in accordance with Article 27(3) and Article 28(3) of Decision 2013/255, as amended by Decision 2015/1836, and Article 15(1b) of Regulation No 36/2012, as amended by Regulation 2015/1828 (see judgment of 16 March 2022, *Sabra* v *Council*, T-249/20, EU:T:2022:140, paragraph 133 and the case-law cited).

58 In order to rebut the presumption of a link with the Syrian regime, the applicant asserts that she spent her childhood and teenage years alongside her mother in Lebanon and that she has never lived in Syria. She states in that regard that she was born into a marriage which lasted only a few months between the deceased and his former wife, Mrs Nawal Jazaeri, and adds that she did not meet her father until she was aged 11 and visited him very infrequently thereafter. Lastly, she states that she is a Syrian national but in 1990 emigrated with her mother to the United States, where she acquired US nationality and pursued higher education. She asserts that she lives in the United States with her husband, a Saudi national whom she married in 1999, and with their two children, who are also US nationals.

59 In support of her arguments, the applicant produces the following evidence:

– a copy of her passport issued by the US authorities;

– a copy of her diploma of secondary education obtained in 1984 in Lebanon;

– a copy of two diplomas, one issued in 1992 by the University of Utah (United States) and the other in 2016 by George Mason University (Virginia, United States);

– a copy of her certificate of marriage to a national of Saudi Arabia, entered into in Fairfax, Virginia (United States) in 1999;

– a copy of the US passports of her two minor children, born, respectively, in Saudi Arabia in 2007 and in the United States in 2009;

– a copy of the academic transcripts of her children, produced by schools in Fairfax;

– a copy of two housing tax bills issued for a dwelling located in Fairfax for the years 2017 and 2021;

– a car insurance policy issued in the applicant's name and sent to the same address in Fairfax;

– a copy of a water meter reading in the applicant's name for the period from 8 August 2017 to 3 November 2022, showing the same address in Fairfax;

– the death notice.

60 As a preliminary point, it should be noted that the evidence adduced by the applicant, some of which originates from governmental and administrative authorities and private undertakings that are not, in principle, capable of being manipulated or influenced by the applicant, was drawn up *in tempore non suspecto* outside of its use in these proceedings or in the administrative procedure which preceded it.

61 Furthermore, the applicant's claim that she has never lived in Syria is confirmed by the copy of her passport showing Lebanon as her place of birth and by a diploma of secondary education issued by a Lebanese school.

62 The other evidence demonstrates that the applicant has lived in the United States for decades, that she married a national of Saudi Arabia and that their children are citizens of the United States, where they attend school.

63 According to case-law, the fact of living outside Syria does not in itself constitute sufficient circumstance to assert that a person is not linked to the Syrian regime (judgments of 12 March 2014, *Al Assad* v *Council*, T-202/12, EU:T:2014:113, paragraph 104, and of 14 April 2021, *Al-Tarazi* v *Council*, T-260/19, not published, EU:T:2021:187, paragraph 149) and the Council, which does not contest any of the evidence put forward by the applicant, maintains that the evidence is not capable of rebutting the presumption of a link with the regime, as established by the criterion of family membership.

64 However, at the stage of the reply, the applicant produced her father's death notice, published in Arabic ('the death notice'), of which, according to her, she became aware only after it was forwarded to third parties in the course of other court proceedings. She explains that it was not in her possession when the action was brought, as she lived far removed from the Syrian context and was not involved in the funeral of the deceased.

65 That statement is confirmed by the fact that the death notice mentions the names of five sons and two daughters of the deceased, but not the name of the applicant.

66 In addition, the death notice mentions the names of two wives of the deceased, namely Mrs Ghada Mhana and Mrs Hala Tarif Almaghout, but does not refer to the applicant's mother, Mrs Nawal Jazaeri. That omission is all the more striking as the notice mentions other relatives of the deceased who died before him.

67 The failure to mention the name of the applicant's mother in the death notice is thus such as to substantiate the applicant's claim regarding the short duration of the relationship between her mother and the deceased.

68 Against that background, it should be noted that the applicant was born in 1967, while the lists at issue indicate that Mr Rami Makhlouf, the eldest son of the deceased and his second wife, was born in 1969, which is also such as to confirm the short duration of the union between the applicant's parents.

69 That information from the death notice is, more generally, such as to support the applicant's claim regarding her distance, since her childhood, not only from the Syrian context, but also from the family of the deceased, to which she appears to be an outsider.

70 That conclusion is all the more compelling in the light of the evidence produced by the applicant which shows that, since she moved in 1990, the centre of her interests has been in the United States. That is confirmed by two diplomas issued by American universities, the first from 1992 and the second from 2016.

71 The applicant also submits various bills relating to the establishment of her domicile in Fairfax.

72 In the light of the considerations set out in paragraph 60 above, it must be held that the evidence produced by the applicant is consistent and credible and that, taken as a whole, it supports to the requisite legal standard her claims regarding her distance from the Makhlouf family.

73 Accordingly, the evidence adduced by the applicant constitutes a body of sufficiently specific, precise and consistent evidence establishing that she was not, or is no longer, associated with the Syrian regime, that she did not exercise influence over the regime and that she did not pose a real risk of circumvention of the restrictive measures within the meaning of the case-law cited in paragraph 57 above, with the result that the applicant must be considered to have validly rebutted the presumption of a link with the Syrian regime stemming from the criterion of family membership.

74 In that regard, in its written pleadings, the Council merely asserts that the purpose of the contested acts was not only to avoid the devolution of the estate of the deceased to his heirs, including the applicant, as is apparent from recital 3 of the initial acts, but also to prevent the four sons of the deceased, who were already subject to restrictive measures, from making an arrangement with the applicant in order to avoid their share of the inheritance being subject to the freezing of funds. Subsequently, at the hearing, it argued that the physical distance of the applicant, that is, her residence in the United States, does not mean that the applicant distanced herself from the Syrian regime or from the rest of the Makhlouf family.

75 However, such a general, even hypothetical argument, which is not substantiated at all, does not call into question the credibility of the evidence produced by the applicant to rebut the presumption of a link with the Syrian regime.

76 It follows that the Council has not discharged the burden of proof incumbent on it in order to establish that the contested acts are well founded, following the challenge to the contested acts by the applicant, with supporting evidence, for the purposes of the case-law cited in paragraphs 38 to 40 above.

77 In those circumstances, the contested acts are vitiated by an error of assessment.

78 In the light of all the foregoing considerations, the second plea in law must be upheld and, therefore, the contested acts must be annulled, without there being any need to examine the first, third and fourth pleas in law.

The temporal effects of the annulment of the contested acts

79 As regards the claim made by the Council in the alternative in its defence, asking the Court to maintain the effects of Implementing Decision 2022/242 until the partial annulment of Implementing Regulation 2022/237 takes effect in respect of the applicant, it should be recalled that, by that decision, the Council included, as from 21 February 2022, the applicant's name on the list of persons subject to restrictive measures in Annex I to Decision 2013/255. Following the adoption of Decision 2022/849 (see paragraph 19 above), the inclusion of the applicant on the lists at issue was extended until 1 June 2023.

80 In addition, by Decision 2023/1035, the Council updated Annex I to Decision 2013/255, maintaining the applicant's name on the list until 1 June 2024 (see paragraph 20 above).

81 By Council Decision (CFSP) 2024/1510 of 27 May 2024 amending Decision 2013/255 (OJ L, 2024/1510), the Council updated the list of persons subject to restrictive measures in Annex I to Decision 2013/255, maintaining the applicant's name on the list until 1 June 2025.

82 Therefore, although the annulment of Implementing Decision 2022/242 and Decision 2023/1035, in so far as they concern the applicant, entails the annulment of the inclusion of her name on the list in Annex I to Decision 2013/255 for the period from 21 February 2022 to 1 June 2024, such annulment does not, however, extend to Decision 2024/1510, which is not the subject matter of the present action.

83 Consequently, because the applicant is currently subject to new restrictive measures, the claim made by the Council in the alternative relating to the temporal effects of the partial annulment of Implementing Decision 2022/242, mentioned in paragraph 80 above, has become devoid of purpose.

The claim for compensation

84 The applicant claims that the error of assessment made by the Council vitiating the contested acts constitutes a sufficiently serious breach of a rule of law intended to confer rights on individuals. She also adds that the contested acts seriously harm her reputation.

85 The Council disputes the applicant's arguments, contending in particular that the contested acts are not vitiated by any illegality and that the claim for compensation must therefore be dismissed at the outset.

86 The Council also observes that the applicant has not produced any evidence from which it is possible to determine with the required precision the nature, the genuineness and the extent of the non-material damage claimed by her. Consequently, it casts doubt on the admissibility of the claim for compensation.

87 It should be noted in that regard that in order for the European Union to incur non-contractual liability under the second paragraph of Article 340 TFEU for unlawful conduct of its institutions, a number of conditions must be satisfied: the institutions' conduct must be unlawful, actual damage must have been suffered and there must be a causal link between the conduct and the damage pleaded. Furthermore, since those three conditions for incurring liability are cumulative, failure to meet one of them is sufficient for an action for damages to be dismissed, without its being necessary to examine the other conditions (judgment of 22 June 2022, *Haswani* v *Council*, T-479/21, not published, EU:T:2022:383, paragraph 155).

88 In support of her claim for compensation, the applicant relies, in essence, on the fact that, since it does not have information or evidence establishing that the restrictive measures to which she is subject are well founded, the Council committed a sufficiently serious breach of a rule of law intended to confer rights on individuals within the meaning of the case-law based on the second paragraph of Article 340 TFEU.

89 It must therefore be determined whether the error of assessment found in the context of the second plea in law constitutes an illegality of such a kind as to give rise to non-contractual liability on the part of the European Union.

90 In that regard, it should be recalled that, according to settled case-law, a finding that a legal act of the European Union is unlawful, however regrettable that unlawfulness may be, is not a sufficient basis for holding that the non-contractual liability of the European Union, flowing from illegal conduct on the part of one of its institutions, has automatically arisen. In order for that condition to be met, the case-law requires the applicant to demonstrate that the institution in question has not merely breached a rule of law, but that the breach is sufficiently serious and that the rule of law was intended to confer rights on individuals (see judgment of 7 July 2021, *HTTS* v *Council*, T-692/15 RENV, EU:T:2021:410, paragraph 53 and the case-law cited).

91 According to the case-law, in order to determine whether a breach of a rule of EU law is sufficiently serious, the EU judicature takes into account inter alia the complexity of the situations to be regulated, the difficulties in applying or interpreting the legislation and, more particularly, the margin of discretion available to the author of the act in question (judgment of 10 September 2019, *HTTS* v *Council*, C-123/18 P, EU:C:2019:694, paragraph 42).

92 Thus, non-contractual liability of the European Union can arise only if an irregularity is found that would not have been committed in similar circumstances by an administrative authority exercising ordinary care and diligence (judgment of 10 September 2019, *HTTS* v *Council*, C-123/18 P, EU:C:2019:694, paragraph 43).

93 The requirement for proof of a sufficiently serious breach is intended to avoid, in the field inter alia of restrictive measures, the institution concerned being obstructed in the exercise of the functions which it is responsible for carrying out, in the general interest of the European Union and its Member States, by the risk of ultimately having to bear losses which the persons concerned by its acts might potentially suffer, without however leaving individuals to bear the consequences, be they financial or non-material, of flagrant and inexcusable misconduct on the part of the institution concerned (see judgment of 7 July 2021, *Bateni* v *Council*, T-455/17, EU:T:2021:411, paragraph 87 and the case-law cited).

94 In the present case, as mentioned in paragraph 15 above, at the time when the applicant's name was included on the lists at issue, the Council was in possession of the decision opening the succession of the deceased, which stated, among other things, that the applicant was a member of the Makhlouf family. The applicant contests neither the accuracy or the veracity of the factual information in that decision, nor the probative value of that decision. Consequently, that document, which originates from a Syrian court, constitutes sufficient evidence for the Council to substantiate, a priori, the ground for including the applicant on the lists at issue based on the criterion of family membership.

95 It should be noted in that regard that the criterion of family membership is an objective, autonomous and sufficient criterion, with the result that the Council was not required to demonstrate that there is a link between the applicant, a member of the Makhlouf family, and the Syrian regime (see paragraph 52 above).

96 Thus, when the contested acts were adopted, the Council had sufficient evidence to consider that the conditions for the presumption of a link with the Syrian regime were met, so that the applicant's argument that, in essence, the error of assessment made by the Council constitutes a sufficiently serious breach of a rule of law intended to confer rights on individuals cannot succeed.

97 An error of assessment adduced as a plea in support of an action for annulment must be distinguished from the manifest and grave disregard for the limits set on an institution's discretion relied upon when alleging a sufficiently serious breach of a rule of law intended to confer rights on individuals in an action for damages (see, to that effect, judgment of 7 July 2021, *Bateni* v *Council*, T-455/17, EU:T:2021:411, paragraph 113).

98 It should be noted in that regard that the applicant does not put forward any specific arguments to demonstrate how the Council's error of assessment constitutes a sufficiently serious breach of a rule of law intended to confer rights on individuals such as to give rise to non-contractual liability on the part of the European Union. She merely asserts that the Council is unable to adduce evidence to establish that the contested acts are well founded.

99 However, the existence of an error of assessment does not, as the applicant suggests, automatically lead to the conclusion that the Council committed a sufficiently serious breach of the substantive conditions for including the applicant's name on the lists at issue.

100 Consequently, notwithstanding the fact that the contested acts are vitiated by illegality, in view of the decision opening the succession assessed in the light of the presumption of a link with the Syrian regime stemming from the criterion of family membership, it cannot be held that the Council manifestly and gravely disregarded the limits set on its discretion, thereby giving rise to non-contractual liability on the part of the European Union.

101 In those circumstances, even though the Council has not discharged the burden of proof incumbent on it in order to establish that the contested acts are well founded in the context of a challenge to them, that error of assessment cannot be regarded as flagrant and inexcusable within the meaning of the case-law cited in paragraphs 95 and 96 above, such that it would not have been made by an administrative authority exercising ordinary care and diligence in similar circumstances.

102 Since the conditions for the European Union to incur liability are cumulative, the claim for compensation must be dismissed, without there being any need to examine the other conditions mentioned in paragraph 89 above or, a fortiori, the admissibility of that claim.

Costs

103 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. Since the Council has been unsuccessful, it must be ordered to pay the costs in accordance with the form of order sought by the applicant.

On those grounds,

THE GENERAL COURT (Ninth Chamber, Extended Composition)

hereby:

1. **Annuls Council Implementing Decision (CFSP) 2022/242 of 21 February 2022 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria and Council Implementing Regulation (EU) 2022/237 of 21 February 2022 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria, in so far as they concern Ms Shahla Makhlouf;**

2. **Annuls Council Decision (CFSP) 2023/1035 of 25 May 2023 amending Decision 2013/255/CFSP concerning restrictive measures in view of the situation in Syria and Council Implementing Regulation (EU) 2023/1027 of 25 May 2023 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria, in so far as they concern Ms Makhlouf;**

3. **Dismisses the action as to the remainder;**

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

Truchot Kanninen Frendo

Sampol Pucurull Perišin

Delivered in open court in Luxembourg on 17 July 2024.

[Signatures]