# Judgment of the General Court (Seventh Chamber) of 9 September 2016. — Tri Ocean Energy v Council of the European Union. — Common foreign and security policy — Restrictive measures taken against Syria — Freezing of funds — Error of assessment. — Case T-719/14.

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JUDGMENT OF THE GENERAL COURT (Seventh Chamber)9 September 2016 (*)(Common foreign and security policy — Restrictive measures taken against Syria — Freezing of funds — Error of assessment)In Case T-719/14,Tri Ocean Energy, established in Cairo (Egypt), represented by B. Kennelly, Barrister, P. Saini QC, and N. Sheikh, Solicitor,applicant, vCouncil of the European Union, represented by B. Driessen and A. Vitro, acting as Agents,defendant,ACTION under Article 263 TFEU for the annulment of Council Implementing Decision 2014/678/CFSP of 26 September 2014 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2014 L 283, p. 59) and of Council Implementing Regulation (EU) No 1013/2014 of 26 September 2014 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2014 L 283, p. 9), in so far as those measures concern the applicant,THE GENERAL COURT (Seventh Chamber),composed of M. van der Woude, President, I. Wiszniewska-Białecka and I. Ulloa Rubio (Rapporteur), Judges, Registrar: S. Spyropoulos, Administrator,having regard to the written part of the procedure and further to the hearing on 25 February 2016,gives the followingJudgment Background to the dispute1 This case arises as a result of the restrictive measures adopted by the European Union against the Syrian Arab Republic in order that the latter should cease using force against its civilian population.2 The applicant, Tri Ocean Energy, is an Egyptian company. It operates in the Middle East in the sphere of oil and gas shipping.3 On 9 May 2011 the Council of the European Union adopted, on the basis of Article 29 TEU, Decision 2011/273/CFSP concerning restrictive measures against Syria (OJ 2011 L 121, p. 11).
4 Article 3(1) of that decision provides that Member States are to take the necessary measures to prevent the entry into, or transit through, their territories of persons responsible for violent repression against the civilian population in Syria, and persons associated with them, as listed in the annex to that decision. 5 Article 4(1) of that decision provides that all funds and economic resources belonging to, owned, held or controlled by persons responsible for the violent repression against the civilian population in Syria, and natural or legal persons, and entities associated with them, are to be frozen. The detailed rules for the freezing of those funds are set out in the other paragraphs of that article. 6 On the same date, the Council adopted, on the basis of Article 215(2) TFEU and Decision 2011/273, Regulation (EU) No 442/2011 concerning restrictive measures in view of the situation in Syria (OJ 2011 L 121, p. 1). Article 4(1) of that regulation provides for the freezing of all funds and economic resources belonging to, owned, held or controlled by the natural or legal persons, entities and bodies listed in Annex II to that regulation.7 Decision 2011/273 was replaced by Council Decision 2011/782/CFSP of 1 December 2011 concerning restrictive measures against Syria and repealing Decision 2011/273 (OJ 2011 L 319, p. 56). 8 Article 18(1) and Article 19(1) of Decision 2011/782 correspond to Article 3(1) and Article 4(1) of Decision 2011/273 respectively, with the added provision that the restrictive measures set out therein apply also to persons and entities benefiting from or supporting the regime.9 Regulation No 442/2011 was replaced by Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the

situation in Syria and repealing Regulation (EU) No 442/2011 (OJ 2012 L 16, p. 1). That regulation lays down new restrictive measures applying in particular to persons benefiting from the policies of the regime or supporting it.10 On 29 November 2012, the Council adopted Decision 2012/739/CFSP concerning restrictive measures against Syria and repealing Common Decision 2011/782 (OJ 2012 L 330, p. 21). 11 Decision 2012/739 was replaced by Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria (OJ 2013 L 147, p. 14). The latter decision was subsequently extended until 1 June 2015 by Council Decision 2014/309/CFSP of 28 May 2014 amending Decision 2013/255 (OJ 2014 L 160, p. 37). It was subsequently extended until 1 June 2016 by Council Decision (CFSP) 2015/837 of 28 May 2015 amending Decision 2013/255 (OJ 2015 L 132, p. 82).12 On 22 July 2014, the Council adopted Implementing Decision 2014/488/CFSP implementing Decision 2013/255 (OJ 2014 L 217, p. 49) and Implementing Regulation (EU) No 793/2014 implementing Regulation No 36/2012 (OJ 2014 L 217, p. 10). Those acts contain, for the first time, in the annexes thereto, the name of the applicant's subsidiary, spelt Tri Oceans Trading, together with the following ground:'Providing support to the Syrian regime and benefiting from the regime by organising covert shipments of oil to the Syrian regime.'13 On 26 September 2014, the Council adopted Implementing Decision 2014/678/CFSP implementing Decision 2013/255 (OJ 2014 L 283, p. 59) and Implementing Regulation (EU) No 1013/2014 implementing Regulation No 36/2012 (OJ 2014 L 283, p. 9).14 In those measures, the Council altered the applicant's subsidiary's name, now spelt Tri Ocean Trading or Tri-Ocean Energy, without altering the ground given in Implementing Decision 2014/488 and Implementing Regulation No 793/2014. Those measures were notified to the applicant by letter of 29 September 2014, which the applicant acknowledges having received on 3 October 2014.15 On 3 October 2014, Tri-Ocean Trading brought an action for annulment against the measures referred to in paragraph 12 above, registered at the Registry of the General Court under reference number T-709/14. Procedure and forms of order sought16 By application lodged at the Registry of the General Court on 10 October 2014, the applicant sought annulment of Implementing Decision 2014/678 and Implementing Regulation No 1013/2014.17 In the context of the measures of organisation of procedure provided for in Article 64 of the Rules of Procedure of the General Court of 2 May 1991, the Court asked the applicant and the Council to answer certain written questions and, where appropriate, to provide it with certain documents. The parties complied with those requests.18 The parties presented oral argument and answered the questions put by the Court at the hearings on 25 February 2016. 19 The applicant claims that the Court should:– annul Implementing Decision 2014/678 and Implementing Regulation No 1013/2014 ('the contested measures'), in so far as they concern the applicant;– order the Council to pay the costs of the proceedings.20 The Council contends that the Court should:– dismiss the action as manifestly unfounded;– order the applicant to pay the costs. Law21 In support of its application, the applicant relies, in essence, upon four pleas in law. The first plea alleges errors of fact and an error of assessment; the second, infringement of the rights of the defence and of the right to effective judicial protection; the third, failure to state reasons; and the fourth, infringement of the right to property and of the applicant's right to reputation.22 In the first plea, alleging errors of fact and an error of assessment, the applicant disputes in particular its identification by the Council and the grounds for including its name in the lists at issue as those grounds are set out in the annexes to the contested measures.23 As a preliminary point, as the Court of Justice noted in a review of restrictive measures, the Courts of the European Union must, in accordance with the powers conferred on them by the FEU Treaty, ensure the review, in principle the full review, of the lawfulness of all Union acts in the light of the fundamental rights forming an integral part of the EU legal order. That obligation is expressly laid down by the second paragraph of Article 275 TFEU (see judgment of 28 November 2013, Council v Fulmen and Mahmoudian, C-280/12 P, EU:C:2013:775, paragraph 58 and the case-

law cited).24 According to the case-law, the effectiveness of the judicial review guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union requires, in particular, that as part of the review of the lawfulness of the grounds which are the basis of the decision to include a given entity in the lists of entities subject to sanctions, the Courts of the European Union are to satisfy themselves that that decision is taken on a sufficiently solid factual basis. That entails checking the factual allegations in the summary of reasons underlying that decision, with the consequence that judicial review is not to be restricted to assessment of the cogency in the abstract of the reasons relied upon, but must deal with the question whether those reasons, or, at the very least, one of them, deemed sufficient in itself to support that decision, have or has been substantiated (judgment of 18 July 2013, Commission and Others v Kadi, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 119).25 To that end, it is for the Courts of the European Union to carry out that examination, requesting the competent EU authority, when necessary, to produce information or evidence, confidential or not, relevant to such an examination. It is the task of the competent EU authority to establish, in the event of challenge, that the reasons relied upon against the person concerned are well founded, and not the task of that person to adduce evidence to the contrary, showing that those reasons are not well founded. There is no requirement that that authority should produce before the Courts of the European Union all the information and evidence inherent in the reasons alleged in the measures whose annulment is sought. It is, however, necessary that the information or evidence produced should support the reasons relied upon against the person concerned (see judgment of 28 November 2013, Council v Fulmen and Mahmoudian, C-280/12 P, EU:C:2013:775, paragraphs 65 to 67).26 It is in the light of those considerations that the arguments put forward by the applicant in support of the first plea in law should be examined.27 In support of the first plea in law, the applicant states in particular that it constitutes an entity separate from its subsidiary Tri-Ocean Trading, and submits that the Council therefore failed correctly to identify it. 28 The Council disputes the applicant’s arguments. First, it argues that Tri-Ocean Trading is a wholly-owned subsidiary of the applicant, and states that in the case against Tri-Ocean Trading, whose application was lodged at the Court Registry on 3 October 2014 and registered under number T-709/14, Tri-Ocean Trading provided documents originating with the applicant. It further states that according to the case-law relating to the freezing of Iranian funds, it was not required to prove the involvement of the parent company provided that the subsidiary had benefited from, or supported, the Syrian regime. The Council therefore contends that the applicant cannot absolve itself of its subsidiary’s conduct and that the failure to include the applicant’s name in the lists at issue was liable to enable the measure freezing the funds to be circumvented. Moreover, the Council states that the applicant and its subsidiary use their respective names interchangeably in both the applications made to the General Court and the proffered evidence relating thereto and that, accordingly, it cannot be criticised for regarding them as a single entity.29 In the present case, the Council included the name ‘Tri Ocean Trading’, followed by the indication ‘or Tri-Ocean Energy’ in the annexes to the contested measures on the following grounds:‘Providing support to the Syrian regime and benefiting from the regime by organising covert shipments of oil to the Syrian regime.’30 With regard to the question whether the Council was correct to regard Tri-Ocean Trading and the applicant as a single entity, it should be recalled that, even if the restrictive measures do not constitute criminal penalties, the fact remains that it is for the Council, in accordance with the case-law referred to in paragraphs 23 and 25 above, to establish to the requisite legal standard the identity of the persons and entities in respect of which it adopts restrictive measures (see, to that effect, judgment of 17 April 2013, TCMFG v Council, T-404/11, not published, EU:T:2013:194, paragraph 33).31 Taken on an individual basis, the arguments put forward by the Council in paragraph 28 above are insufficient to establish that the applicant and Tri-Ocean Trading constitute a single entity. First, the mere fact that Tri-Ocean Trading

is a wholly-owned subsidiary of the applicant does not make it possible to establish that the two constitute a single entity. Secondly, the two companies were incorporated under the laws of two separate jurisdictions, namely: the Cayman Islands in the case of Tri-Ocean Trading and Egypt in the case of the applicant. Furthermore, there is no evidence making it possible to consider that the Council was liable to have any particular difficulty in obtaining legal documents concerning the two companies. Thirdly, the argument that the applicant and Tri-Ocean Trading are managed by the same people has no basis in fact, for it is apparent from the documents provided by the applicant as part of the measures of organisation of procedure ordered by the Court that the governing bodies of both companies are made up of different persons. Fourthly, the fact that the arguments expounded and the documents provided by Tri-Ocean Trading and the applicant are identical is not sufficient to make it possible to consider that the two companies constitute a single entity. That fact may be explained by the fact that the statement of reasons adopted by the Council against them is identical. 32 In addition, taken as a whole, the evidence relied on by the Council in paragraph 28 above does not constitute a body of evidence capable of establishing to the requisite legal standard that the applicant and Tri-Ocean Trading constitute a single entity. The fact that the applicant is the parent company of Tri-Ocean Trading, and that the arguments expounded by the applicant and its subsidiary in the actions brought against the measures including their names in the lists at issue are close, is insufficient to demonstrate that the applicant and Tri-Ocean Trading constitute a single entity. Moreover, a distinction is to be drawn between the question of the identity of the persons or entities included in the lists and that relating to whether that person or entity meets the criteria for inclusion. The arguments put forward by the Council relate only to the criteria for inclusion. Furthermore, as was established in paragraph 31 above, the applicant and Tri-Ocean Trading were incorporated in different jurisdictions and have no board members in common in their governing bodies. 33 That conclusion cannot be called into question by the Council's argument that the applicant exerts control over Tri-Ocean Trading. It must be held that the question of the identification of the applicant by the Council in Implementing Decision 2014/678 and Implementing Regulation No 1013/2014 is separate from the question of the exercising of control by a parent company over its subsidiary. In that respect, as is clear from the case-law referred to in paragraph 30 above, with respect to restrictive measures, identification to the requisite legal standard of the addressees of measures taken by the Council is a prerequisite for their listing and for the concrete examination of the facts at issue. Before the merits of the inclusion of the name of a person or entity in the lists at issue is assessed, it is necessary to check whether the persons and entities listed were identified to the requisite legal standard by the Council. The fact that the regulatory framework at issue allows the freezing of funds of persons and entities linked to persons or entities included in the lists at issue does not absolve the Council, at the very least, from individually identifying the persons or entities and from specifying the link between them and the actual and specific reasons justifying the listing of each of them as well. The mere mention of the name 'Tri Ocean Trading' followed by the indication 'or Tri-Ocean Energy' is an ambiguous identification of the applicant, for the Council has not shown that the latter and Tri-Ocean Trading constituted a single entity, as is apparent from paragraphs 31 and 32 above. The examination of the material accuracy of the allegations against the applicant and of the validity of its listing is subject to the applicant's identification to the requisite legal standard by the Council. Equating the applicant with Tri-Ocean Trading, without taking account of the fact that they are two separate entities, is liable to compromise, on the one hand, the applicant's rights of defence, given that the applicant may not necessarily have been properly notified that its name was included in the lists at issue and, on the other, fulfilment of the Council's obligation to state reasons. In the light of the foregoing, the exercise of a power of control by the applicant over Tri-Ocean Trading did not absolve the Council from identifying to the requisite legal standard both the applicant and its subsidiary Tri-Ocean Trading and,

where appropriate, from including the names of the applicant and Tri-Ocean Trading in the lists in the Annexes to Implementing Decision 2014/678 and Implementing Regulation No 1013/2014.34 In those circumstances, the argument put forward by the applicant that the Council did not identify the latter to the requisite legal standard within the meaning of the case-law cited in paragraph 30 above must be upheld, and accordingly, the contested measures must be annulled in so far as they concern the applicant without it being necessary to consider the other arguments raised in support of the present plea. Costs35 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has applied for costs and the Council has been unsuccessful, the latter must be ordered to bear its own costs and to pay those incurred by the applicant.On those grounds,THE GENERAL COURT (Seventh Chamber)hereby:1. Annuls Council Implementing Decision 2014/678/CFSP of 26 September 2014 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria, and Council Implementing Regulation (EU) No 1013/2014 of 26 September 2014 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria in so far as they apply to Tri Ocean Energy;2. Orders the Council of the European Union to bear its own costs and to pay the costs incurred by Tri Ocean Energy. Van der Woude Wiszniewska-Białecka Ulloa RubioDelivered in open court in Luxembourg on 9 September 2016.[Signatures]* Language of the case: English.

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