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 – Proportionality – Right to property – Freedom to move and reside in the Member States – Right to family life – Non-contractual liability)

In Case T-208/22,

Kinda Makhlouf, residing in Warsaw (Poland), 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 Kinda 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.

I. 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 the level of the Union 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 321 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 19 April 2022, the applicant sent the Council a request seeking the removal of her name from the lists at issue ('the request for reconsideration').

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 reason for including her name on those lists and a file containing supplementary inculpatory evidence ('the supplementary file'). That evidence was, like the aforementioned decision, available at the time when the contested acts were adopted.

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.

II. 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 50 000 in respect of non-material damage suffered as a result of the adoption of the initial acts and, second, compensation of EUR 50 000 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.

III. Law

A. 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.

B. 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 limitation on the exercise of fundamental rights.

1. The first plea in law alleging, in essence, infringement of procedural safeguards

32 The present plea in law is, in essence, composed of two parts. By the first part, the applicant claims that the Council infringed her rights of defence by not hearing her prior to the adoption of the initial acts. By the second part, she takes issue with the Council for responding to the request for reconsideration summarily, which shows that it did not examine that request carefully and impartially, as was incumbent on it.

(a) Admissibility of the plea in law alleging, in essence, infringement of procedural safeguards, raised in the statement of modification

33 In the statement of modification, in support of her application for annulment of the maintaining acts, the applicant puts forward, in support of her argument concerning infringement of her right to be heard by the Council, the same arguments as were put forward at the stage of the application. No new arguments are put forward specifically regarding compliance with procedural safeguards surrounding the adoption of the maintaining acts.

34 The same essentially holds true as regards the applicant's line of argument in connection with the second part of the present plea in law, raised at the stage of the reply, which relates to the request for reconsideration made by the applicant following the adoption of the initial acts. It should be noted that, in the statement of modification, the applicant simply repeats the same arguments put forward regarding that request, which related to the initial acts.

35 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, or before the decision of the Court to rule without an oral part of the procedure, modify the application to take account of that new factor. In addition, Article 86(4)(b) of the Rules of Procedure provides that the statement of modification must contain, where appropriate, the modified pleas in law and arguments.

36 It is clear from the case-law, where a subsequent measure challenged by way of the modification of that application is essentially the same as the measure initially challenged, or where it differs from that measure only in purely formal respects, it is conceivable that, by failing to accompany his or her request for modification by pleas in law and arguments which are themselves modified, the applicant impliedly and specifically relies on the pleas and arguments in his or her originating application (see, to that effect, judgment of 24 January 2019, *Haswani* v *Council*, C-313/17 P, EU:C:2019:57, paragraph 37).

37 In such a case, it is for the Court, when it examines the admissibility of the statement of modification, to ascertain whether the measure challenged by means of the modification of the application has, as compared with the measure challenged by the originating application, substantive differences so that they make it necessary to modify the pleas in law and arguments presented in support of the originating application (judgment of 24 January 2019, *Haswani* v *Council*, C-313/17 P, EU:C:2019:57, paragraph 38).

38 It should be noted that, according to the case-law, the pleas in law and arguments relied on against the act justifying the modification of the application must be set out in that statement in sufficiently clear and precise terms to enable the defendant to prepare its defence and to enable the Court to rule on that modification (see judgment of 28 April 2021, *Sharif* v *Council*, T-540/19, not published, EU:T:2021:220, paragraph 185 and the case-law cited).

39 Furthermore, it is also clear from the case-law that the applicant must, in principle, explain why the pleas in law and arguments previously relied on are transposable to the act referred to in his or her statement of modification. In the absence of explanation from the applicant, the pleas which the applicant put forward in the application are admissible as regards the act referred to in his or her statement of modification only in so far as they may be transposed to the specific context of that act without any explanation being needed (see judgment of 28 April 2021, *Sharif* v *Council*, T-540/19, not published, EU:T:2021:220, paragraph 186 and the case-law cited).

40 In the present case, by the initial acts, the Council included the applicant's name on the lists at issue for the first time. In this regard, it should be borne in mind that, in order to attain the objective pursued by the contested acts, the restrictive measures in question, by their very nature, had to have a surprise effect. For that reason, the Council was not required to hear the applicant before her name was included for the first time on the lists at issue (see, to that effect, judgment of 15 November 2012, *Council* v *Bamba*, C-417/11 P, EU:C:2012:718, paragraph 74 and the case-law cited).

41 However, the surprise effect justifying derogation from the right to be heard prior to the adoption of restrictive measures is no longer necessary at the time when the maintaining acts are adopted. It follows that the procedure leading to the adoption of the maintaining acts is substantively different to the procedure resulting in the adoption of the initial acts, thus making it necessary to modify the pleas in law and arguments presented in support of the originating application, which relate to alleged irregularities surrounding the procedure for the adoption of the initial acts.

42 As has been noted in paragraph 33 above, the applicant merely claims in the statement of modification that she 'extends her application for annulment' to the maintaining acts and that she 'refers to the facts and the different pleas in law set out in [the] application'. The arguments relating to procedural irregularities allegedly committed by the Council which were put forward in the application, in connection with the present plea in law, related solely to the initial acts and

were reproduced in the statement of modification without the slightest explanation as to why they may be transposed to the specific context of the procedure for the adoption of the maintaining acts.

43 Therefore, in the absence of any argument in the statement of modification specific to the procedural irregularities which, it is claimed, vitiate the maintaining acts and possibly rendering them unlawful, the present plea in law put forward in that statement must be dismissed as inadmissible in so far as it is raised in support of the claim for annulment of the maintaining acts.

44 Consequently, the present plea in law is admissible only in so far as it is raised in support of the claim for annulment of the initial acts.

(b) The first part, alleging that the Council failed to hear the applicant prior to adopting the initial acts

45 The applicant maintains that, when the initial acts were adopted, the Council infringed her rights of defence and her right to a fair trial, as provided for by Articles 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (ECHR), and by Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), as the Council failed to hear her prior to adopting those acts. She maintains that this holds a fortiori since the restrictive measures are coercive, or even criminal, in nature and have serious and lasting effects on the rights of individuals.

46 In the first place, according to settled case-law, the restrictive measures adopted by the European Union do not entail confiscation of the assets of the persons concerned as the proceeds of crime but a freezing of such assets as a precautionary measure, with the result that they do not constitute criminal sanctions. What is more, they do not imply any accusation of a criminal nature (see judgment of 21 July 2016, *Hassan* v *Council*, T-790/14, EU:T:2016:429, paragraph 77 (not published) and the case-law cited).

47 It follows that the applicant's line of argument concerning the allegedly criminal nature of the restrictive measures cannot succeed.

48 In the second place, and as a further preliminary point, whilst, as Article 6(3) TEU confirms, fundamental rights recognised by the ECHR constitute general principles of EU law, the latter does not constitute, as long as the European Union has not acceded to it, a legal instrument which has been formally incorporated into EU law (see judgment of 3 September 2015, *Inuit Tapiriit Kanatami and Others* v *Commission*, C-398/13 P, EU:C:2015:535, paragraph 45 and the case-law cited).

49 Consequently, it is appropriate in this instance to base the examination of the validity of the initial acts on the relevant provisions of the Charter.

50 Thus, in so far as, in the present case, the applicant complains that she was not heard prior to the adoption of the initial acts, the first part of the present plea in law must be regarded as alleging infringement of the right to be heard under Article 41(2)(a) of the Charter.

51 Article 41(2)(a) of the Charter, which is inherent in respect for the rights of the defence, guarantees every person the opportunity to make known his or her views effectively during an administrative procedure and before the adoption of a decision in relation to that person that is

liable to affect his or her interests adversely (see judgment of 27 July 2022, *RT France* v *Council*, T-125/22, EU:T:2022:483, paragraph 75 and the case-law cited). The purpose of that rule is, in particular, to enable the person concerned to correct an error or submit such information relating to his or her personal circumstances as will argue in favour of the adoption or non-adoption of the decision, or in favour of its having a specific content (see, to that effect, judgment of 21 December 2011, *France* v *People's Mojahedin Organization of Iran*, C-27/09 P, EU:C:2011:853, paragraph 65 and the case-law cited).

52 Nevertheless, as the Council states, it is settled case-law that, as regards the initial inclusion of the name of a person or entity on the list of persons and entities subject to restrictive measures, the Council is not required to inform the person concerned beforehand of the grounds on which it intends to rely in order to include that person. So that its effectiveness may not be jeopardised, such a measure must, by its very nature, be able to take advantage of a surprise effect and to apply immediately. In such a case, it is as a rule therefore enough if the institution notifies the person or entity concerned of the grounds and affords it the right to be heard at the same time as, or immediately after, the decision is adopted (see, to that effect, judgments 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, paragraphs 338 to 341, and of 1 October 2020, *Makhlouf* v *Council*, C-157/19 P, not published, EU:C:2020:777, paragraph 43).

53 In the present case, it should be noted, first, that, by the initial acts, the Council adopted the restrictive measures against the applicant for the first time with the result that, in accordance with the case-law cited in paragraph 52 above, it was not obliged to hear her prior to the adoption of those acts.

54 Second, it is apparent from the information before the Court that on 22 February 2022, the very day on which the initial acts were adopted, a notice for the attention of persons subject to the restrictive measures imposed by those acts was published in the *Official Journal of the European Union* (OJ 2022 C 85 I, p. 10). By that notice, the applicant was, inter alia, informed, that she was able to submit to the Council a request for reconsideration of the inclusion of her name on the lists at issue. In those circumstances, the Council also discharged its obligation to notify the applicant of the grounds for including her name on those lists in accordance with the case-law cited in paragraph 52 above.

55 Third, the applicant sent the Council the request for reconsideration by which she requested, in particular, the removal of her name from the lists at issue. That request was refused by the Council on the ground that there were sufficient reasons for maintaining that name on those lists.

56 In the light of the foregoing, it must be held that the Council enabled the applicant to make known her views effectively, as required by the case-law cited in paragraphs 51 and 52 above, and, consequently, respected her right to be heard when the initial acts were adopted.

57 The applicant nonetheless claims that the inclusion of her name on the lists at issue was not motivated by any act which could be held against her, but solely by the death of her father in order to prevent the estate being passed on. According to the applicant, the name of the deceased was maintained on those lists after his death, with the result that his assets remained frozen at the time of the adoption of the initial acts. She therefore maintains that if she had been able to exercise her right to be heard prior to that adoption, this could not have jeopardised the effectiveness of those acts.

58 In that regard, as has already been observed in paragraph 52 above, according to settled case-law, any derogation from the exercise of the right to be heard of the person concerned prior to the initial inclusion of his or her name on the list of persons and entities subject to restrictive measures is intended, in particular, to ensure that the freezing of funds has a surprise effect, so that the effectiveness of the action of the European Union is not jeopardised.

59 In the present case, as the applicant claims, on the date of the adoption of the initial acts, the name of the deceased was still on the lists at issue despite his death on 12 September 2020. His name was only removed by Decision 2022/306 and Implementing Regulation 2022/299, which both entered into force on 25 February 2022, four days after the applicant's name was included on those lists.

60 It is true that the exercise by the applicant of her rights of defence prior to the adoption of the initial acts was not likely to jeopardise the effectiveness of the action of the European Union in respect of the assets in the estate which the applicant was designated to receive and which had remained frozen because the name of the deceased had been maintained on the lists at issue several months after his death.

61 It must be borne in mind, however, that in adopting the initial acts the Council not only froze the assets previously forming the deceased's estate, but also froze all the applicant's funds and economic resources, including assets forming part of her own estate. As far as the latter assets are concerned, it is common ground that this was an initial inclusion, for which the case-law cited in paragraph 52 above recognises the need to ensure a surprise effect in order to guarantee its effectiveness.

62 In these circumstances, the applicant's complaint alleging that there was no need to guarantee a surprise effect in this instance, since the assets of the deceased had remained frozen when the initial acts were adopted, cannot succeed.

63 It follows that the present part must be rejected as unfounded.

(c) The second part, alleging the summary nature of the Council's response

64 The applicant alleges that the Council responded to the request for reconsideration summarily, or even 'expeditiously', without having 'at the very least discussed the merits of the exculpatory evidence' that she had produced. In her view, in doing so, the Council infringed the obligation to examine that request carefully and impartially, thereby disregarding her rights of defence.

65 In the present case, the applicant claimed in the request for reconsideration, in essence, that she had now organised her life outside Syria, where she had, moreover, never held a political or economic role or had any ties to the regime in power. In that connection, she produced documents attesting that she had married a Polish national who held shares in companies incorporated under Polish law. She also provided a rental agreement and copies of two residence permits to demonstrate that she no longer lived in Syria.

66 In the request for reconsideration, the applicant also stated that the Makhlouf family's situation was 'widely known to have altered', as had been widely reported by the Western media in particular. That was attested by an article published on a news and information website.

67 It should be noted in that regard that the right to be heard for the purposes of Article 41(2)(a) of the Charter means, inter alia, that when comments are made by the individual concerned on the summary of reasons, the competent European Union authority is under an obligation to examine, carefully and impartially, whether the alleged reasons are well founded, in the light of those comments and any exculpatory evidence provided with those comments (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 114).

68 As regards the applicant's claim that the Council failed to examine the merits of her arguments, it must be noted that, although for the rights of the defence and the right to be heard to be observed, the EU institutions must enable the person concerned by the act adversely affecting him or her to make his or her views known effectively, those institutions cannot be required to accept those views (see, to that effect, judgments of 7 July 2017, *Arbuzov* v *Council*, T-221/15, not published, EU:T:2017:478, paragraph 84, and of 27 September 2018, *Ezz and Others* v *Council*, T-288/15, EU:T:2018:619, paragraph 330).

69 Thus, the fact that the Council did not conclude that the initial acts were not well founded cannot mean that it did not take note of the evidence and arguments produced by the applicant in her request for reconsideration (see, to that effect, judgment of 27 September 2018, *Ezz and Others* v *Council*, T-288/15, EU:T:2018:619, paragraphs 330 and 331).

70 Furthermore, the Council stated in its response that it had examined the applicant's comments and had concluded that they did not call into question its assessment, with the result that there were sufficient reasons to maintain the inclusion of her name on the lists at issue as a member of the Makhlouf family and an heir of the deceased. That response was accompanied by supporting documents for the initial acts.

71 In the light of the foregoing considerations, it must be found that the Council fulfilled its obligations as regards respect for the applicant's right to be heard in the course of the procedure leading to the adoption of the initial acts.

72 Accordingly, the present part and, consequently, the first plea in law in its entirety must be rejected.

2. The second plea in law, alleging an error of assessment

73 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.

74 The Council disputes the applicant's arguments.

(a) Preliminary observations

75 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 (see judgment of 26 October 2022, *Ovsyannikov* v *Council*, T-714/20, not published, EU:T:2022:674, paragraph 61 and the case-law cited).

76 The effectiveness of the judicial review guaranteed by Article 47 of the Charter 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).

77 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).

78 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).

79 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).

80 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).

81 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).

82 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).

83 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).

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

(b) The merits of the inclusion of the applicant's name on the lists at issue

85 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.

86 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.

87 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.

88 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.

89 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.

90 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).

91 Lastly, it has been held that the specific listing criteria in respect of the seven categories of persons referred to in paragraph 90 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).

92 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 88 above, the criterion is not confined to 'influential' members of that family.

93 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.

94 Thus, in the light of the considerations set out in paragraphs 90 to 92 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.

95 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.

96 In that regard, it has been held in the case-law, as has been stated in paragraph 78 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).

97 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).

98 In the present case, in order to rebut the presumption of a link with the Syrian regime, the applicant puts forward, in essence, two sets of arguments relating, first, to her private and family life and, second, to the breakdown of relations between the Makhlouf family and that regime.

99 In the first place, the applicant claims that she has never had a direct individual link with the Syrian regime, with her father's activities or with the public authorities and that, following her marriage to a Polish national, she also moved the centre of her interests abroad. According to the applicant, her private and family life is now removed from the Syrian context. She thus takes the view that her name should not have been included on the lists at issue, since she has no links to that regime.

100 In support of her arguments, the applicant produces the following evidence relating to her marriage to a Union citizen and her domicile outside Syria:

– a copy of her certificate of marriage to her second husband, entered into in Damascus (Syria), as well as a copy of his passport, issued by the Polish authorities, and two extracts from the Polish companies register relating to shares held by her husband;

– a copy of the applicant's residence permit issued by the Polish authorities on 10 February 2020 and expiring on 21 January 2021;

– a copy of two rental agreements for an apartment in Warsaw (Poland) for periods running from 17 August 2018 to 31 August 2021 and from 1 July 2022 to 31 August 2023, respectively;

– a copy of her residence permit issued by the authorities of the United Arab Emirates on 3 March 2022, expiring on 2 March 2024.

101 In this regard, it is sufficient to recall that, according to the case-law, the fact of living outside Syria does not in itself constitute sufficient circumstance to assert that the person concerned was not, or is no longer, linked to 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 (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).

102 The same conclusion must be drawn regarding the fact that the applicant is married to an EU national and the fact that her husband holds shares in two Polish companies.

103 As regards the applicant's argument that she has never played a political or economic role in Syria, it should be noted that, according to recital 7 of Decision 2015/1836, the restrictive measures taken on the basis of the criterion of family membership do not simply target persons involved in Syrian political life. Those measures, such as the contested acts, target, among others, certain members of the Makhlouf family through whom the Council considers, in particular, that it is able to directly influence the Syrian regime to change its policies of repression. That holds all the more because, according to the same recital, power in Syria traditionally is exercised on a family basis (see paragraph 11 above).

104 It follows that the applicant's arguments relating to her private and family life are not, in themselves, capable of rebutting the presumption of association with the Syrian regime.

105 In the second place, the applicant claims that since 2018 'the Makhlouf family's situation is widely known to have altered' with the result that there is now a conflict between the family and the Syrian regime. According to the applicant, her name should not be included on the lists at issue because she is not associated with that regime.

106 In support of her arguments, the applicant has provided the following documents:

– an article published on the France 24 website on 20 May 2020 ('the France 24 article');

– an article published on the Freethinker website on 12 September 2020, in Arabic, accompanied by a free translation into French, which analyses the death notice for the deceased ('the press article on the death notice');

– an article published on the 'Arabi21.com' website on 2 May 2020 ('the Arabi21.com article');

– a communication dated 31 December 2022 attesting to the resignation of Mr Hafez Makhlouf from the post of brigadier general of the Syrian army.

107 According to the applicant, the information contained in the documents mentioned in paragraph 106 above is such as to demonstrate the breakdown of relations between the Makhlouf family and the Syrian regime.

108 In this regard, first, it should be noted that the France 24 article only reports a conflict which has now arisen between a brother of the applicant, Mr Rami Makhlouf, and the Syrian Government, affecting him, his wife, his children and his associates. In the video accompanying the article, Mr Rami Makhlouf appeals to his cousin, the Syrian President Mr Bashar Al-Assad, to take action to put an end to the economic repression which he is suffering at the hands of the Syrian authorities.

109 Thus, although the France 24 article suggests that Mr Rami Makhlouf believes that he is subject to interference, on the part of the Syrian authorities, with his property rights, the article does not indicate whether other members of the Makhlouf family are not, or are no longer, 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, or even Mr Rami Makhlouf himself, as he still considers himself close enough to his cousin, the Syrian President, to address him directly and publicly ask him to take action in support of his interests.

110 Second, it should be noted that the Arabi21.com article reports that the applicant reacted on one of the social media networks to the video, mentioned in paragraph 108 above, posted by her brother, Mr Rami Makhlouf, in which he criticised the Syrian regime while appealing for action from his cousin, the Syrian President. In her own post, the applicant prayed for her brother's protection and safety and that '[God] would keep the children of the forbidden far [from her brother]'. Such statements by which the applicant shows moral support for her brother without really identifying the third party that is allegedly interfering with his interests are not such as to support her argument regarding the breakdown of relations between the Makhlouf family and the Syrian regime.

111 Third, the press article on the death notice mentions the applicant's divorce from her former husband, a cousin of the Syrian President. It also reports that the divorce followed the hacking of the applicant's telephone and the circulation of certain photographs found on that telephone. Thus, the applicant's separation from her former husband is not presented as having been caused by the breakdown of relations between the Makhlouf family and the Syrian regime, as is claimed by the applicant.

112 Furthermore, although, according to the press article on the death notice, no date for condolences, 'as is customarily included', appears in the notice and the burial ceremony for the deceased was cancelled, it adds that, 'according to certain sources[,] that decision was taken on the direct orders of [the Syrian President]'. However, that allegation is not borne out by any information in the documents before the Court and, as such, remains purely speculative, especially since it is well known that the deceased died in September 2020 against the backdrop of health restrictions related to the COVID-19 pandemic.

113 In addition, according to the press article on the death notice, the notice does not mention the names of the sons of Mr Hafez Al-Assad, including the Syrian President, even though it is customary that 'the family of the deceased mentions the names of well-known and influential figures', which 'proves the extent of the family dispute existing between the two parties'.

114 It should be noted, however, that these comments amount to a mere interpretation, by the author of the press article on the death notice, of the content of the notice, based on inferences made in the light of certain social practices that are customary in Syria or claims that are not otherwise supported. That analysis is not therefore sufficient, as such, to establish the breakdown of relations between the Makhlouf family and the Syrian regime.

115 Fourth, the applicant has produced a communication dated 31 December 2022 attesting to the resignation of Mr Hafez Makhlouf from the post of brigadier general of the Syrian army. Suffice it to note in that regard that the communication merely mentions the retirement of Mr Hafez Makhlouf, brigadier general, as from 3 January 2023, at his request. The applicant fails to clarify the relevance of this evidence or to provide further details of this resignation, simply stating that 'the consideration [by the Court] of this evidence seems [to her] important to the outcome of the dispute'. In these circumstances, this evidence cannot be considered such as to establish the breakdown of relations between the Makhlouf family and the Syrian regime.

116 It follows that the evidence adduced by the applicant in support of her sets of arguments relating, first, to her private and family life and, second, to the breakdown of relations between the Makhlouf family and the Syrian regime is not capable of rebutting the presumption of association with that regime in the light of the case-law mentioned in paragraph 97 above.

117 That conclusion is all the more compelling in the light of the evidence contained in the supplementary file.

118 The supplementary file contains, first, the Arabi21.com article and the press article on the death notice, which have already been examined in paragraphs 110 to 114 above in so far as the applicant also relies on the same evidence in order to dispute that the contested acts are well founded.

119 Second, the supplementary file also contains:

– an article published on the 'verify-sy.com' website on 18 March 2021;

– an article published on the *Financial Times* website on 11 September 2019 ('the *Financial Times* article').

120 The article published on the 'verify-sy.com' website reports the existence of a fake Twitter account run by a person named 'Amani Makhlouf', allegedly the sister of Mr Rami Makhlouf, which, in reality, did not belong to any member of the Makhlouf family. In those circumstances, this evidence must be considered to be irrelevant in the present case.

121 The *Financial Times* article reports that, over the six years preceding its publication, several members of the Makhlouf family bought at least 20 apartments in a luxury residential complex in Moscow (Russia), worth 40 million United States dollars (USD). Those acquisitions were made using a series of loans and financial arrangements to divert funds outside Syria. In particular, in 2015 the applicant acquired an apartment worth several million US dollars. Three brothers and a sister-in-law of the applicant also acquired other apartments in the same building.

122 The *Financial Times* article adds that since the beginning of the war in Syria, investing in Russia – a country that supports the Syrian regime – has become a way for members of the Assad and Makhlouf families to safeguard and protect their funds against the restrictive measures imposed on them. According to the article, property investments in Russia are a financial manoeuvre to circumvent the restrictive measures imposed, in particular, by the European Union.

123 First of all, the applicant does not dispute the clear, precise and detailed information contained in the *Financial Times* article. Second, the concomitant nature of the investments mentioned in paragraph 121 above reveals the existence of links between the applicant and other members of the Makhlouf family who, as is apparent from the information before the Court, are subject to EU restrictive measures. Third, it should be noted that the applicant, while stating that she does not have a profession, has failed to clarify the source of the funds that enabled her to acquire the property in question. In these circumstances, the applicant's decision to invest in Russia was taken in a context in which, according to that article, strategies are developed to circumvent the EU restrictive measures.

124 It should be added that the Arabi21.com article, which is also contained in the supplementary file, refers to the applicant's public support for her brother Mr Rami Makhlouf through a post on social media networks. As has been stated in paragraph 110 above, the content of that post fits into in a political context which attests to the existence of close ties between the applicant and her brother, not only at family level but also politically, inter alia. Therefore, the Arabi21.com article is such as to corroborate the information contained in the *Financial Times* article.

125 In the light of all the foregoing, since the applicant has not validly rebutted the presumption of association with the Syrian regime, the contested acts must be considered to have been taken on a sufficiently solid factual basis within the meaning of the case-law cited in paragraph 76 above.

126 It must therefore be found that, since the contested acts are not vitiated by an error of assessment, the second plea in law must be rejected.

3. The third and fourth pleas in law, alleging, in essence, an unlawful limitation on the exercise of fundamental rights

127 In support of the present pleas in law, the applicant essentially puts forward two complaints, alleging:

– first, an unlawful limitation on the exercise of her right to property;

– second, a unlawful limitation on the exercise of her right to respect for private and family life.

128 In that regard, the applicant observes in particular that, under Article 5(4) TEU, 'the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties' and that, under Article 28(4) of Decision 2013/255, all decisions to list persons in Annex I thereto are to be made 'on an individual and case-by-case basis taking into account the proportionality of the measure'.

(a) The first complaint, alleging an unlawful limitation on the exercise of the applicant's right to property

129 The applicant claims that the contested acts, by which the Council, in particular, froze all her funds and economic resources, unjustifiably and disproportionately restrict her right to property.

130 The Council disputes the applicant's arguments.

131 In that connection, it should be recalled that, under Article 17(1) of the Charter, 'everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest'.

132 In the present case, by the contested acts, the Council froze all the applicant's funds and economic resources, a measure which undeniably entails a restriction of the exercise of the right to property referred to in Article 17(1) of the Charter (see, to that effect, judgments 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 358, and of 13 September 2013, *Makhlouf* v *Council*, T-383/11, EU:T:2013:431, paragraph 99).

133 However, the right to property, as protected by Article 17(1) of the Charter, does not constitute an unfettered prerogative and may therefore be limited, under the conditions laid down in Article 52(1) of the Charter (see, to that effect, judgments of 27 February 2014, *Ezz and Others* v *Council*, T-256/11, EU:T:2014:93, paragraph 195, and of 22 September 2021, *Al-Imam* v *Council*, T-203/20, EU:T:2021:605, paragraph 254 (not published) and the case-law cited).

134 Article 52(1) of the Charter recognises limitations on the exercise of the rights and freedoms enshrined therein. Under that provision, 'any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms' and 'subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others'.

135 Thus, in order to comply with EU law, a limitation on the exercise of fundamental rights must satisfy four conditions. First, the limitation in question must be 'provided for by law', in the sense that the EU institution adopting measures liable to restrict a natural or legal person's right or freedom must have a legal basis for its actions. Second, the limitation in question must respect the essence of those rights. Third, the limitation must pursue an objective of general interest, recognised as such by the European Union. Fourth, the limitation in question must be proportionate (see, to that effect, judgment of 27 July 2022, *RT France* v *Council*, T-125/22, EU:T:2022:483, paragraph 145).

(1) Compliance with the first condition, under which the limitation on the right must be 'provided for by law'

136 In order to comply with EU law, the limitation on the exercise of the fundamental right to property must be 'provided for by law' in the sense that the EU institution adopting a measure liable to restrict the exercise of that right by a person must have a legal basis for its actions (see, to that effect, judgment of 5 October 2017, *Ben Ali* v *Council*, T-149/15, not published, EU:T:2017:693, paragraph 161).

137 The restrictive measures are provided for by law, since they are set out in basic acts of general application and have a clear legal basis in EU law and since they are formulated in sufficiently precise terms as regards their scope and the reasons showing why they apply to the applicant (see judgment of 5 November 2014, *Mayaleh* v *Council*, T-307/12 and T-408/13, EU:T:2014:926, paragraph 176 and the case-law cited).

138 In this respect, it should be noted that the contested acts in the present case were essentially adopted on the basis of the provisions establishing the criterion of family membership laid down in the basic acts. The basic acts were adopted on the basis of provisions relating to the Common Foreign and Security Policy (CFSP), in particular Article 29 TEU and Article 215 TFEU.

139 Thus, the first condition set out in Article 52(1) of the Charter justifying a limitation on a fundamental right is met in the present case.

(2) Compliance with the second condition, under which the limitation on the right must respect the essence of that right

140 In order to comply with EU law, the limitation on the exercise of the fundamental right to property must respect the essence of that right.

141 From the point of view of EU law, a freezing of funds and economic resources is a precautionary measure and not a confiscation of the assets of the person concerned (see, to that effect, judgment of 21 July 2016, *Hassan* v *Council*, T-790/14, EU:T:2016:429, paragraph 77 (not published) and the case-law cited). The contested acts do not therefore constitute a measure which definitively deprives the applicant of the very substance of her right to property.

142 Furthermore, Article 28(6) of Decision 2013/255, as amended by Decision 2015/1836, and Article 16 of Regulation No 36/2012, as amended by Regulation 2015/1828, provide for the possibility, first, to authorise the use of frozen funds to meet essential needs or to satisfy certain commitments and, second, to grant specific authorisation to unfreeze funds, other financial assets or other economic resources (see judgment of 28 April 2021, *Sharif* v *Council*, T-540/19, not published, EU:T:2021:220, paragraph 203 and the case-law cited).

143 Lastly, it must be borne in mind that the restrictive measures are by nature temporary and reversible, as the Council is required to carry out a periodic re-examination of them in accordance with the second and third sentences of Article 34 of Decision 2013/255, as amended by Decision 2015/1836, and with Article 32(4) of Regulation No 36/2012, as amended by Regulation 2015/1828 (see judgment of 24 November 2021, *Foz* v *Council*, T-258/19, not published, EU:T:2021:820, paragraph 173 and the case-law cited).

144 It follows that, in view of the nature and the extent of the freezing of all the applicant's funds and economic resources provided for, although the contested acts limit the exercise of her right to property, they respect the essence of that right.

145 The second condition set out in Article 52(1) of the Charter is therefore met in the present case.

(3) Compliance with the third condition, under which the limitation on the right must pursue an objective of general interest, recognised as such by the European Union

146 In order to comply with EU law, the limitation on the exercise of the fundamental right to property must pursue an objective of general interest, recognised as such by the European Union. Those objectives include the objectives, which are fundamental to the international community, of protecting civilian populations against violent repression and maintaining international peace and security (see, to that effect, judgment of 22 September 2021, *Al-Imam* v *Council*, T-203/20, EU:T:2021:605, paragraph 258 (not published) and the case-law cited).

147 Thus, the importance of the aims pursued by the restrictive measures at issue is such as to justify negative consequences, even of a substantial nature, for the persons or entities concerned (see judgment of 22 September 2021, *Al-Imam* v *Council*, T-203/20, EU:T:2021:605, paragraph 254 (not published) and the case-law cited).

148 It follows that, in so far as the aim of the contested acts is to protect civilian populations against violent repression and maintain international peace and security, which are objectives of general interest, recognised as such by the European Union, the third condition set out in Article 52(1) of the Charter is satisfied in the present case.

(4) Compliance with the fourth condition, under which the limitation on the right must be proportionate

149 Article 52(1) of the Charter provides that any limitation on the exercise of the fundamental rights and freedoms provided for therein must be proportionate.

150 The principle of proportionality, which is one of the general principles of EU law and is set out in Article 5(3) TEU, requires that measures adopted by the EU institutions do not exceed the limits of what is appropriate and necessary in order to attain the objectives pursued by the legislation in question and do not go beyond what is necessary to achieve those objectives. Consequently, when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (see, to that effect, judgments of 4 April 2019, *Sharif* v *Council*, T-5/17, EU:T:2019:216, paragraph 90, and of 24 November 2021, *Foz* v *Council*, T-258/19, not published, EU:T:2021:820, paragraph 168 and the case-law cited).

151 In the present case, as is clear from the examination of the second plea in law, since the applicant has not succeeded in rebutting the presumption of association with the Syrian regime, the contested acts must be considered to have been taken on a sufficiently solid factual basis in accordance with the case-law cited in paragraph 76 above, with the result that the inclusion of the applicant's name on the lists at issue is well founded.

152 Accordingly, the adoption of restrictive measures against the applicant, as a member of the Makhlouf family associated with the Syrian regime, cannot be regarded as inappropriate, since it is a step taken in pursuit of an objective of general interest as fundamental to the international community as the protection of civilian populations (see, to that effect, judgment of 22 September 2021, *Al-Imam* v *Council*, T-203/20, EU:T:2021:605, paragraph 258 (not published) and the case-law cited).

153 In addition, it is settled case-law that restrictive measures such as the measures at issue do not go beyond what is necessary to achieve the objective of protecting civilian populations, as alternative and less restrictive measures, such as an obligation to justify, a posteriori, how the funds transferred were used, are not as effective in achieving the goal pursued, which is to directly influence the Syrian regime through members of the Assad and Makhlouf families to change its policies of repression, while avoiding the risk of circumvention of restrictive measures through family members (see, to that effect and by analogy, judgment of 16 January 2019, *Haswani* v *Council*, T-477/17, not published, EU:T:2019:7, paragraph 76 and the case-law cited).

154 Moreover, as the Council observes, Article 28(6) of Decision 2013/255, as amended by Decision 2015/1836, and Article 16 of Regulation No 36/2012, as amended by Regulation 2015/1828, provide for the possibility, first, to authorise the use of frozen funds to meet essential needs or to satisfy certain commitments and, secondly, to grant specific authorisation for the release of certain funds, other financial assets or other economic resources (see judgment of 24 November 2021, *Foz* v *Council*, T-258/19, not published, EU:T:2021:820, paragraph 171 and the case-law cited).

155 It follows that the inclusion of the applicant's name on the lists at issue cannot be regarded as going beyond what is necessary to achieve the objectives of the rules on restrictive measures against Syria. Consequently, the limitation caused by the contested acts on the exercise by the applicant of her right to property cannot be considered to be disproportionate.

156 This conclusion is not called into question by the applicant's argument regarding the possibility of confining the freezing of funds and economic resources to the assets forming part of the deceased's estate.

157 As is clear from the examination of the second plea in law, the decision opening the succession is such as to support the grounds for including the applicant's name on the lists at issue relating to her membership of the Makhlouf family, which establishes a presumption of a link with the Syrian regime that the applicant has not succeeded in rebutting.

158 Furthermore, in the present case, the evidence contained in the supplementary file indicates that the contested acts are not based solely on considerations related to inheritance or on the proportion of the deceased's estate which the applicant is to receive, but also on the existence of a real risk of circumvention of the restrictive measures by her (see paragraphs 121 to 124 above). Thus, the inculpatory evidence relied on by the Council is such as to justify freezing the applicant's own resources.

159 In these circumstances, the applicant cannot legitimately claim that the adoption of restrictive measures against her could not produce a positive effect in order to achieve the objective of protecting civilian populations in Syria or that this would be disproportionate.

160 It follows that the fourth condition set out in Article 52(1) of the Charter is also met in the present case, with the result that the present complaint must be rejected as unfounded.

(b) The second complaint, alleging an unlawful limitation on the exercise of the applicant's right to respect for private and family life

161 The applicant claims in essence that, because her husband is a Polish national and lives in Poland, the contested acts prohibiting her from entering the territory of the European Union interfere with her 'right to family life' guaranteed by the ECHR.

162 The Council disputes the applicant's arguments.

163 In the light of the considerations in paragraphs 48 to 49 above, it should be observed that the fundamental right in respect of which the applicant claims an unlawful limitation is the right to respect for private and family life enshrined in Article 7 of the Charter.

164 It should be noted that the applicant has produced, in support of her claims, copies of two rental agreements for an apartment in Warsaw for periods running from 17 August 2018 to 31 August 2021 and from 1 July 2022 to 31 August 2023, respectively, along with the residence permit issued to her by the Polish authorities, which expired on 21 January 2021.

165 Furthermore, while stating that her domicile for the purposes of the present proceedings is established in Warsaw and that her husband lives in Poland, 'the country in which he has the centre of his vital, professional and family interests', the applicant states in the application that, 'more recently, the couple decided, instead, to settle in Dubai (United Arab Emirates)'. In support of that claim, she has produced a residence permit issued by the authorities of the United Arab Emirates, expiring on 2 March 2024.

166 Thus, first, it is not possible to determine from the applicant's arguments and the evidence in the case file whether her residence was actually established in Poland or in another country on the date of adoption of the initial acts, 21 February 2022. Accordingly, the applicant has failed to establish that, on the date when it entered into force, the prohibition on her entering the territory of the European Union – and, consequently, Poland – interfered with her right to respect for private and family life.

167 In addition, the applicant cannot legitimately claim that, on account of the prohibition on entering the territory of the European Union to which she is subject as a result of the adoption of the contested acts, she is prevented from leading her life in Dubai, where she states that she resides with her husband on the date when the application was lodged.

168 In so far as the applicant claims that the contested acts restrict the exercise of her right to respect for private and family life in that they prevent her from residing, temporarily or permanently, in Poland with her husband, when he is a national of that Member State, the following observations should be made.

169 According to the case-law, the right to respect for private and family life guaranteed by Article 7 of the Charter, with which an interference may actually be made by measures prohibiting entry into the territory of the European Union, is not absolute and may involve restrictions justified by

objectives of general interest pursued by the European Union (see, to that effect, judgment of 22 September 2021, *Al-Imam* v *Council*, T-203/20, EU:T:2021:605, paragraph 254 (not published) and the case-law cited).

170 Thus, by adopting restrictive measures falling within the scope of the CFSP, the Council may, in principle, limit the right to respect for private and family life.

171 However, as is clear from paragraphs 133 and 134 above, the restrictive measures, in so far as they constitute restrictions on the fundamental rights enshrined in the Charter, must comply with the conditions set out in Article 52(1) thereof.

(1) Compliance with the first and third conditions, under which the limitation on the right must, respectively, be 'provided for by law' and pursue an objective of general interest, recognised as such by the European Union

172 It should be observed, first, that the considerations, set out in paragraphs 136 to 139 above, as to the first condition set out in Article 52(1) of the Charter, are applicable by analogy to the provisions on restrictions on entry and free movement in the territory of the European Union and, consequently, to the restriction on the exercise of the right to respect for private and family life. The same also holds for the considerations in paragraphs 146 and 147 above relating to the third condition set out in that provision concerning the pursuit of an objective of general interest recognised as such by the European Union.

173 Accordingly, those conditions are met in the present case.

(2) Compliance with the second condition, under which the limitation on the right must respect the essence of that right

174 Under EU law, restrictive measures imposing a restriction on entry into the territory of the European Union, which may entail a possible limitation on the exercise of the right to respect for private and family life, constitute precautionary measures which only temporarily affect the ability of the holder of such a right to rely on it, if necessary, in the territory of the European Union and do not therefore deprive the person concerned of the very substance of that right (see, to that effect and by analogy, judgment of 21 July 2016, *Hassan* v *Council*, T-790/14, EU:T:2016:429, paragraph 77 (not published) and the case-law cited).

175 The restrictive measures are by nature temporary and reversible, as the Council is required to carry out a periodic re-examination of them in accordance with the second and third sentences of Article 34 of Decision 2013/255, as amended by Decision 2015/1836, and with Article 32(4) of Regulation No 36/2012, as amended by Regulation 2015/1828 (see judgment of 24 November 2021, *Foz* v *Council*, T-258/19, not published, EU:T:2021:820, paragraph 173 and the case-law cited).

176 Furthermore, it must be borne in mind that Article 27(9) of Decision 2013/255, as amended by Decision 2015/1836, also provides that the competent authority of a Member State may authorise the entry into its territory of a person subject to restrictive measures, in particular on the grounds of urgent humanitarian need, the effect of which is to limit any interference with such a person's right to respect for private and family life (see, to that effect, judgment of 21 January 2015, *Makhlouf* v *Council*, T-509/11, not published, EU:T:2015:33, paragraph 113).

177 In the light of all of the foregoing considerations, having regard to the nature and the extent of the restriction on the applicant entering the territory of the European Union, although the contested acts limit the exercise of the right to respect for private and family life, they respect the essence of that right.

178 Thus, the second condition set out in Article 52(1) of the Charter is met in the present case.

(3) Compliance with the fourth condition, under which the limitation on the right must be proportionate

179 The considerations set out in paragraphs 149 to 160 above as to the necessary and appropriate nature of the measures for the freezing of the applicant's funds and economic resources are applicable by analogy to the provisions of the contested acts restricting entry into the territory of the European Union. Therefore, the limitations caused by the restrictive measures on the exercise by the applicant of her right to respect for private and family life are not disproportionate (see, to that effect and by analogy, judgment of 12 February 2020, *Kanyama* v *Council*, T-167/18, not published, EU:T:2020:49, paragraph 132 and the case-law cited).

180 In particular, it is settled case-law that restrictions on entry and free movement in the territory of the European Union do not go beyond what is necessary to achieve the objective of protecting civilian populations, as alternative and less restrictive measures, such as a system of prior authorisation, are not as effective in achieving the goal pursued (see, to that effect, judgments of 13 September 2013, *Makhlouf* v *Council*, T-383/11, EU:T:2013:431, paragraph 101 and the case-law cited, and of 16 January 2019, *Haswani* v *Council*, T-477/17, not published, EU:T:2019:7, paragraph 76).

181 In the light of the foregoing, the limitations caused by the restrictive measures on the exercise by the applicant of her right to respect for private and family life cannot be regarded as disproportionate, having regard to the objective of general interest pursued.

182 It follows that the fourth condition set out in Article 52(1) of the Charter is also met in the present case.

183 It follows from the foregoing that the present complaint must be rejected as unfounded.

184 In the light of all the considerations above, the third and fourth pleas in law must be rejected and, consequently, the claim for annulment dismissed in its entirety.

C. The claim for compensation

185 The applicant claims that the contested acts seriously harm her reputation and claims that the Council should be ordered to pay her compensation in respect of non-material harm suffered, which she quantifies at EUR 50 000 in the application and at EUR 50 000 in the statement of modification.

186 The Council disputes the applicant's arguments.

187 In that connection, it is sufficient to recall 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 it 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).

188 In support of her claim for compensation, the applicant relies on a single plea of unlawfulness, alleging that the Council does not have information or evidence establishing to the requisite legal standard that the restrictive measures adopted against her are well founded.

189 However, as is clear from the examination of the second plea in law (see paragraph 125 above), since the applicant has not succeeded in rebutting the presumption of a link with the Syrian regime, the inclusion of her name on the lists at issue is well founded having regard to the criterion of family membership.

190 The Council cannot therefore be criticised for having vitiated the contested acts by unlawfulness.

191 It follows that the condition that the conduct must be unlawful within the meaning of the case-law cited in paragraph 187 above is not satisfied. Moreover, all the pleas in law raised by the applicant are also rejected, with the result that there can be no finding of unlawful conduct on the part of the Council.

192 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 187 above or, a fortiori, the admissibility of that claim.

193 In the light of the foregoing considerations, the present action must be dismissed in its entirety.

IV. Costs

194 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.

195 In the present case, since the applicant has been unsuccessful, she must be ordered to pay the costs in accordance with the form of order sought by the Council.

On those grounds,

THE GENERAL COURT (Ninth Chamber, Extended Composition)

hereby:

1. Dismisses the action;

2. Orders Ms Kinda Makhlouf to pay the costs.

Truchot Kanninen Frendo

Sampol Pucurull Perišin

Delivered in open court in Luxembourg on 17 July 2024.

[Signatures]