Reports of Cases

JUDGMENT OF THE GENERAL COURT (Seventh Chamber)

16 July 2014*

(Common foreign and security policy — Restrictive measures adopted against Syria — Freezing of funds — Action for annulment — Adaptation of claims — Out of time — Obligation to state reasons — Rights of the defence — Right to effective judicial protection — Manifest error of assessment — Right to property — Proportionality — Action for damages)

In Case T-572/11,

Samir Hassan, residing in Damascus (Syria), represented by É. Morgan de Rivery and E. Lagathu, lawyers,

applicant,

v

Council of the European Union, represented by S. Kyriakopoulou and M. Vitsentzatos, acting as Agents,

defendant,

APPLICATION for (i) annulment of Council Implementing Decision 2011/515/CFSP of 23 August 2011 implementing Decision 2011/273/CFSP concerning restrictive measures against Syria (OJ 2011 L 218, p. 20), Council Implementing Regulation (EU) No 843/2011 of 23 August 2011, implementing Regulation (EU) No 442/2011 concerning restrictive measures in view of the situation in Syria (OJ 2011 L 218, p. 1), 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), 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), Council Decision 2012/739/CFSP of 29 November 2012 concerning restrictive measures against Syria and repealing Decision 2011/782 (OJ 2012 L 330, p. 21), Council Implementing Decision 2013/185/CFSP of 22 April 2013 implementing Decision 2012/739 (OJ 2013 L 111, p. 77), Council Implementing Regulation (EU) No 363/2013 of 22 April 2013 implementing Regulation No 36/2012 (OJ 2013 L 111, p. 1), and Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria (OJ 2013 L 147, p. 14), in so far as those acts concern the applicant, and (ii) payment of damages for harm allegedly suffered.

THE GENERAL COURT (Seventh Chamber),

composed of M. van der Woude, President, I. Wiszniewska-Białecka and I. Ulloa Rubio (Rapporteur), Judges,

Registrar: J. Weychert, Administrator,

* Language of the case: French.

having regard to the written procedure and further to the hearing on 28 February 2014,

gives the following

Judgment

Background to the dispute

1 The applicant, Mr Samir Hassan, is a businessman of Syrian nationality.

Decision 2011/273 and Regulation No 442/2011

2 Strongly condemning the violent repression of peaceful protest in various locations across Syria and calling on the Syrian authorities to abstain from the use of force, on 9 May 2011 the Council of the European Union adopted Decision 2011/273/CFSP concerning restrictive measures against Syria (OJ 2011 L 121, p. 11). In view of the seriousness of the situation, the Council imposed an arms embargo, an export ban on material which might be used for internal repression and restrictions on the admission to the European Union and the freezing of funds and economic resources of certain persons and entities responsible for the violent repression of the civilian population in Syria.

3 The names of the persons responsible for the violent repression of the civilian population in Syria and the names of natural or legal persons and of entities connected with them are listed in the Annex to Decision 2011/273. Under Article 5(1) of that decision, the Council, acting upon a proposal by a Member State or the High Representative of the Union for Foreign Affairs and Security Policy, may amend the Annex. The applicant's name does not appear in it.

4 Given that some of the restrictive measures adopted against Syria fall within the scope of the TFEU, the Council adopted Regulation (EU) No 442/2011 of 9 May 2011, concerning restrictive measures in view of the situation in Syria (OJ 2011 L 121, p. 1). That regulation is, in essence, identical to Decision 2011/273 but provides for the possibility of release of frozen funds. The list of persons, entities and bodies identified as responsible for the repression in question, or associated with those responsible, appearing in Annex II to that regulation, is identical to the list appearing in the Annex to Decision 2011/273. The applicant's name does not appear on it. Under Article 14(1) and (4) of Regulation No 442/2011, where the Council decides to subject a natural or legal person or an entity or body to the restrictive measures referred to, it shall amend Annex II accordingly and shall also review the list at regular intervals and at least every 12 months.

5 By Council Implementing Decision 2011/515/CFSP of 23 August 2011, implementing Decision 2011/273 (OJ 2011 L 218, p. 20), the Council amended Decision 2011/273, in particular by applying the restrictive measures in question to additional persons and entities. Under Article 1 of that implementing decision, the names of 15 natural persons and of five entities, listed in the Annex to that decision, were added to the list appearing in the Annex to Decision 2011/273. The applicant's name is among them, along with the relevant date of listing, in this case being '23.8.11', and the following reasons:

'Close business associate of Maher Al-Assad. Known for supporting economically the Syrian regime.'

6 On the same date, on the basis of Article 215(2) TFEU and of Decision 2011/273, the Council adopted Implementing Regulation (EU) No 843/2011 of 23 August 2011, implementing Regulation No 442/2011 concerning restrictive measures in view of the situation in Syria (OJ 2011 L 218, p. 1). The applicant's name is listed, together with the same details and reasons as those listed in the Annex to Implementing Decision 2011/515.

7 On 24 August 2011 the Council published in the *Official Journal of the European Union* a notice for the attention of the persons and entities to which restrictive measures provided for in Decision 2011/273, as implemented by Implementing Decision 2011/515, and in Regulation No 442/2011, as implemented by Implementing Regulation No 843/2011, applied (OJ 2011 C 245, p. 2).

8 By Decision 2011/522/CFSP of 2 September 2011 amending Decision 2011/273 (OJ 2011 L 228, p. 16), the Council further amended Decision 2011/273 by providing that the scope of that decision and its Annex applied also to 'persons benefiting from or supporting the regime, and persons associated with them, as listed in the Annex'.

9 By Regulation (EU) No 878/2011 of 2 September 2011 amending Regulation No 442/2011 (OJ 2011 L 228, p. 1), the Council amended Regulation No 442/2011 to the effect that its Annex II applies to 'persons and entities benefiting from or supporting the regime, or persons and entities associated with them'.

Decision 2011/782 and Regulation No 36/2012

10 By Decision 2011/782/CFSP of 1 December 2011 concerning restrictive measures against Syria and repealing Decision 2011/273 (OJ 2011 L 319, p. 56), the Council considered that, in view of the gravity of the situation in Syria, it was necessary to impose additional restrictive measures. For the sake of clarity, the measures imposed by Decision 2011/273 and the additional measures were integrated into a single legal instrument. Article 18 of Decision 2011/782 contains restrictions on admission into European Union territory and Article 19 provides for the freezing of the funds and economic resources of persons and entities listed in Annex I. The applicant's name appears at item 50 of the table containing the list in question, under the heading 'A. Persons', together with the same details and reasons as those listed in the Annex to Implementing Decision 2011/515.

11 On 2 December 2011, the Council published in the Official Journal a notice for the attention of the persons and entities to which restrictive measures provided for in Decision 2011/782 and Regulation No 442/2011, as implemented by Council Implementing Regulation (EU) No 1244/2011 concerning restrictive measures in view of the situation in Syria, applied (OJ 2011 C 351, p. 14).

12 Regulation No 442/2011 was replaced by Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation No 442/2011 (OJ 2012 L 16, p. 1). The applicant's name is listed in Annex II to Regulation No 36/2012, together with the same details and reasons as those listed in the Annex to Implementing Decision 2011/515 and Implementing Regulation No 843/2011.

13 On 24 January 2012, the Council published in the Official Journal a notice for the attention of the persons and entities to which restrictive measures provided for in Decision 2011/782 and in Regulation No 36/2012, concerning restrictive measures against Syria applied (OJ 2012 C 19, p. 5).

Decision 2012/739

14 By Council Decision 2012/739/CFSP of 29 November 2012, concerning restrictive measures against Syria and repealing Decision 2011/782 (OJ 2012 L 330, p. 21), the restrictive measures in question were integrated into a single legal instrument. The applicant's name appears at item 48 of the table in Annex I to Decision 2012/739, together with the same details and reasons as those listed in the Annex to Implementing Decision 2011/515.

15 On 30 November 2012, the Council published in the Official Journal a notice for the attention of the persons and entities to which restrictive measures provided for in Decision 2012/739 and in Regulation No 36/2012, as implemented by Council Implementing Regulation (EU) No 1117/2012, of

29 November 2012, implementing Article 32(1) of Regulation No 36/2012, applied (OJ 2012 C 370, p. 6). Council Implementing Regulation No 1117/2012, of 29 November 2012, implementing Article 32(1) of Regulation No 36/2012 (OJ 2012 L 330, p. 9), does not amend the details relating to the applicant.

16 Council Implementing Decision 2013/185/CFSP, of 22 April 2013, implementing Decision 2012/739 (OJ 2013 L 111, p. 77), seeks to update the list of persons and entities subject to restrictive measures as set out in Annex I to Decision 2012/739. The applicant's name is listed at item 48 of the table in Annex I, together with the same details and reasons as those listed in the annex to the previous acts.

17 Council Implementing Regulation (EU) No 363/2013, of 22 April 2013, implementing Regulation No 36/2012 (OJ 2013 L 111, p. 1), contains the same details and reasons as those listed in the annex to the previous acts.

18 On 23 April 2013, the Council published in the Official Journal a notice for the attention of the persons and entities to which restrictive measures provided for in Decision 2012/739, as implemented by Implementing Decision 2013/185, and in Regulation No 36/2012, as implemented by Implementing Regulation No 363/2013, applied (OJ 2013 C 115, p. 5).

Decision 2013/255

19 On 31 May 2013, the Council adopted Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2013 L 147, p. 14). The applicant's name is listed at item 48 of the table in Annex I to that decision, together with the same details and reasons as those listed in the Annex to the previous acts.

20 On 1 June 2013, the Council published in the Official Journal a notice for the attention of the persons and entities to which restrictive measures provided for in Decision 2013/255 and Regulation No 36/2012 applied (OJ 2013 C 155, p. 1).

Procedure and forms of order sought by the parties

21 By an application lodged at the General Court Registry on 4 November 2011, the applicant brought an action for the annulment of Implementing Decision 2011/515 and Implementing Regulation No 843/2011, in so far as those acts concerned him, and an application for damages.

22 By a separate document, lodged at the General Court Registry on 3 February 2012, the applicant brought an application for interim relief seeking the suspension of Implementing Decision 2011/515 and Implementing Regulation No 843/2011, in so far as those acts concerned him, pending the Court's ruling in the main action. By orders of the President of the General Court of 17 February and 23 April 2012 (Case T-572/11 R and Case T-572/11 RII *Hassan* v *Council*, not published in the ECR), this application was dismissed.

23 In a reply lodged at the General Court Registry on 11 April 2012, the applicant adapted his claims by seeking in addition the annulment of Decision 2011/782 and Regulation No 36/2012, in so far as those acts concerned him. By its rejoinder, lodged at the General Court Registry on 13 June 2012, the Council took notice of the applicant's request.

24 By a statement lodged at the General Court Registry on 8 July 2013, the applicant adapted his claims by seeking in addition the annulment of Decision 2012/739, Implementing Decision 2013/185, Implementing Regulation No 363/2013 and Decision 2013/255, in so far as those acts concerned him. The Council waived its right to submit a statement in this regard.

25 Following a change in the composition of the Chambers of the Court, the Judge-Rapporteur was assigned to the Seventh Chamber, to which the present case was accordingly allocated.

26 On hearing the report of the Judge-Rapporteur, the Court decided to open the oral procedure and, by way of procedural organisation measures provided for in Article 64 of its Rules of Procedure, requested the Council to respond to certain written questions and to supply certain documents. The Council complied with that request.

27 The parties presented oral argument and answered the questions put to them by the Court at the hearing on 28 February 2014.

28 The applicant claims that the Court should:

— annul Implementing Decision 2011/515, Implementing Regulation No 843/2011, Decision 2011/782, Regulation No 36/2012, Decision 2012/739, Implementing Decision 2013/185, Implementing Regulation No 363/2013 and Decision 2013/255, in so far as they concern him;

— hold that the Council is non-contractually liable through the adoption of restrictive measures against him; award him a sum of EUR 250 000 per month, with effect from 1 September 2011, in order to compensate him for the pecuniary loss suffered and the symbolic sum of EUR 1 in respect of the non-pecuniary loss suffered and order the Council to pay compensation for future non-pecuniary loss;

— order the Council to pay the costs.

29 The Council contends that the Court should:

— dismiss the action;

— reject the claim for damages as inadmissible;

— order the applicant to pay the costs.

Law

Admissibility of the applications to adapt the claims

30 As noted in paragraphs 23 and 24 above, the acts in respect of which annulment is sought, and which have annexed to them a list of the persons and entities subject to the restrictive measures in question, including the name of the applicant, have been amended or repealed by the Council on various occasions since the action in the present case was brought. The applicant consequently adapted his claims.

31 According to case-law, when a decision or a regulation of direct and individual concern to an individual is replaced, during the proceedings, by another act with the same subject-matter, this is to be considered a new factor allowing the applicant to adapt his claims and pleas in law. It would be contrary to the principle of due administration of justice and to the requirements of procedural economy to oblige the applicant to make a fresh application. Moreover, it would be inequitable if the institution in question were able, in order to counter criticisms of an act, contained in an application to the Courts of the European Union, to amend the contested measure or to substitute another for it and to rely in the proceedings on such an amendment or substitution in order to deprive the other party of the opportunity of extending his original pleadings to the later act or of submitting

supplementary pleadings directed against that decision (judgments in Case T-256/07 *People's Mojahedin Organization of Iran* v *Council* [2008] ECR II-3019, paragraph 46, and Case T-110/12 *Iranian Offshore Engineering & Construction* v *Council* [2013] ECR, paragraph 16).

32 However, in order to be admissible, a request to amend the form of order sought must be submitted within the time-limit for bringing proceedings laid down in the sixth paragraph of Article 263 TFEU. According to settled case-law, that time-limit is mandatory and must be applied by the Courts of the European Union in such a way as to safeguard legal certainty and equality of persons before the law (see, to that effect, Case C-229/05 P *PKK and KNK* v *Council* [2007] ECR I-439, paragraph 101). It is, therefore, for the Courts to ascertain, if necessary of their own motion, whether that time-limit has been observed (*Iranian Offshore Engineering & Construction* v *Council*, paragraph 17).

33 In addition, it must be recalled that, in the case of acts imposing restrictive measures on a person or entity, the two-month period provided for in the sixth paragraph of Article 263 TFEU only starts to run either on the date of individual communication of that act to the party in question, where that party's address is known, or on the date of publication of a notice in the Official Journal, where the party's address is not known (see, to that effect, judgment in Joined Cases C-478/11 P to C-482/11 P *Gbagbo and Others* v *Council* [2013] ECR, paragraphs 59 to 62).

34 Finally, in accordance with Article 102(1) of the Rules of Procedure, where the period of time allowed for commencing proceedings against a measure adopted by an institution runs from the publication of that measure, that period runs from the end of the 14th day after publication of the measure in the Official Journal. In accordance with the provisions of Article 102(2) of those rules, such periods must also be extended on account of distance by a single period of 10 days.

35 In this case, turning first to the adaptation of claims relating to Decision 2011/782 and Regulation No 36/2012, it should be noted that the adaptation was introduced by the applicant in his reply, lodged at the General Court Registry on 11 April 2012, while the said acts had been adopted on 1 December 2011 and 18 January 2012 respectively.

36 There is no indication either in the case file or in the responses provided by the Council in this regard at the hearing of any individual communication being made in relation to the acts, although the Council had been aware of the applicant's address since 22 November 2011. That was the date on which the Council acknowledged receipt of the letter sent to it by the applicant's lawyers on 17 November 2011 in which they asked the Council to send to that address any information justifying the adoption of restrictive measures against the applicant.

37 In this regard, it should be noted that the Council may not arbitrarily select the means of communicating its decisions to the persons concerned. In paragraph 61 of *Gbagbo and Others* v *Council*, the Court of Justice said that indirect communication of acts in respect of which annulment is sought, via the publication of a notice in the Official Journal, is permissible only when it is impossible for the Council to use a notification. Concluding otherwise would effectively give the Council an easy way of avoiding its duty of notification.

38 As a result of the case-law, if the application for the adaptation of claim relates to an act imposing restrictive measures on a person or entity that has not been communicated individually to the applicant, despite the institution knowing the applicant's address, the time-limit for adaptation of the applicant's heads of claim has not started to run, so that the applicant's request cannot be considered to be out of time (see, to that effect, judgments in Joined Cases T-35/10 and T-7/11 *Bank Melli Iran* v *Council* [2013] ECR, paragraph 59, and of 16 September 2013 in Case T-8/11 *Bank Kargoshaei and Others* v *Council*, not published in the ECR, paragraph 44). Therefore, in the present case, given that Decision 2011/782 and Regulation No 36/2011 were not communicated individually to the applicant even though the Council knew his address, the application for the claim to be adapted in relation to those acts must be considered as admissible.

39 Turning secondly to the adaptation of claims in relation to Decision 2012/739, Implementing Decision 2013/185, Implementing Regulation No 363/2013 and Decision 2013/255, it should be noted that the adaptation was introduced by the applicant in his statement lodged at the General Court Registry on 8 July 2013.

40 In this respect, it is clear from the documents filed by the Council by way of procedural organisation measures that the applicant was notified of Decision 2012/739 on 30 November 2012. Since the time-limit to apply for that Decision to be annulled expired on 11 February 2013, that adaptation must be rejected as inadmissible for being out of time.

41 As for the statement adapting the claims in relation to Implementing Decision 2013/85, Implementing Regulation No 363/2013 and Decision 2013/255, it should be noted that those acts, once adopted, formed the subject of an individual notification to the applicant on 13 May and 3 June 2013. That means that the statement adapting the applicant's claims was lodged within two months and 10 days from receipt of the individual notifications for the purposes of the sixth paragraph of Article 263 TFEU and Article 102(2) of the Rules of Procedure. The adaptation of the applicant's claims must therefore be admissible to the extent that it relates to those acts.

42 In view of the findings above, the claims for annulment in this present case must be held admissible in so far as they relate to the annulment of Implementing Decision 2011/515, Implementing Regulation No 843/2011, Decision 2011/782, Regulation No 36/2012, Implementing Decision 2013/185, Implementing Regulation No 363/2013 and Decision 2013/255, to the extent that they affect the applicant (collectively, the 'contested acts').

Claim for annulment

43 In support of his action, the applicant relies on six pleas in law: first, a manifest error of assessment; second, infringement of rights of the defence, right to effective judicial protection and the obligation to state reasons; third, infringement of the right to property and the principle of proportionality; fourth, infringement of the presumption of innocence; fifth, infringement of the Council's Guidelines of 2 December 2005 on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy; and sixth, misuse of power.

44 The Court considers it appropriate to examine the second plea first, and the first plea next.

Second plea in law, alleging an infringement of rights of the defence, the right to effective judicial protection and the obligation to state reasons

45 The second plea is, in essence, divided into two limbs: the first limb alleging infringement of rights of the defence and the right to effective judicial protection and the second limb alleging infringement of the obligation to state reasons.

– Limb alleging infringement of rights of the defence and the right to effective judicial protection

46 The applicant claims, in essence, that he was not notified in good time of the adoption of measures taken against him by the Council and that the Council did not send him any formal notification informing him of the reasons for which he had been included on the lists contained in the contested acts. He claims that the right to effective judicial protection means that the Council must communicate to the person or entity affected by the restrictive measures the reason for their inclusion on the said lists. In addition, he maintains that for the Council to state it was unaware of his address

contradicts its assertion that he is a well-known personality in the elite Syrian business community. Finally, he claims that the Council deprived him of his rights of the defence by adopting the acts at issue.

47 The Council contests the merits of the applicant's arguments.

48 According to settled case-law, respect for rights of the defence, which is enshrined in Article 41(2) of the Charter of Fundamental Rights of the European Union, consists of the right to be heard and the right to have access to the file, subject to legitimate interests in maintaining confidentiality (judgment in Joined Cases C-584/10 P, C-593/10 P and C-595/10 P *Commission and Others* v *Kadi* [2013] ECR, '*Kadi II*', paragraph 99).

49 As for the right to effective judicial protection, which is affirmed in Article 47 of the Charter of Fundamental Rights, the person concerned must be able to ascertain the reasons upon which the decision taken in relation to him is based, either by reading the decision itself or by requesting and obtaining disclosure of those reasons, without prejudice to the power of the court having jurisdiction to require the authority concerned to disclose that information, so as to make it possible for him to defend his rights in the optimal way and to decide, with full knowledge of the relevant facts, whether it is worth his while applying to the court having jurisdiction, and so as to put the court fully in a position to review the lawfulness of the decision in question (see, to that effect, *Kadi II*, paragraph 100 and the case-law cited).

50 None the less, Article 52(1) of the Charter of Fundamental Rights allows for limitations on the exercise of the rights enshrined in the Charter, as long as the limitation in question respects the essence of the fundamental right concerned and, subject to the principle of proportionality, as long as it is necessary and genuinely meets objectives of general interest recognised by the European Union (see *Kadi II*, paragraph 101 and the case-law cited).

51 Further, the question of whether there is an infringement of the rights of the defence and the right to effective judicial protection must be examined with regard to the specific circumstances of each particular case, including the nature of the act at issue, the context of its adoption and the legal rules governing the matter in question (*Kadi II*, paragraph 102).

52 In relation to the rights of the defence of a person who is subject to restrictive measures, the Courts of the European Union distinguish, on the one hand, between initially including the name of a person or entity on the list imposing the restrictive measures and, on the other hand, retaining the name of that person or entity on the list following subsequent decisions.

53 The European Union authorities cannot be required to communicate the reasons for including the name of a person or entity on the list in question prior to the initial listing, since such communication could jeopardise the effectiveness of the freezing of funds and resources imposed by those decisions (see judgment in Case T-383/11 *Makhlouf* v *Council* [2013] ECR, paragraphs 38 and 39 and the case-law cited).

54 However, in the case of a decision to retain the name of the person concerned on the list in question, the competent Union authority must disclose to that person, prior to taking that decision, the evidence against that person available to that authority and relied on as the basis of its decision, so as to put that person in a position to defend his rights (see, to that effect, *Kadi II*, paragraphs 111 and 112).

55 In this case, Article 5 of Decision 2011/273 and Article 14(2) and 14(3) of Regulation No 442/2011, the content of which is essentially repeated in Article 21 of Decision 2011/782, Article 15(3) of Regulation No 36/2012 and in Article 30(2) of Decision 2013/255, provide that the Council must communicate its

decision to the person or entity concerned, including the reasons for his inclusion on the list, either directly, if his address is known, or via the publication of a notice, in order to enable him to state his case.

56 In that regard, it should be noted from the outset that, as stated in paragraph 36 above, the applicant's address only became known to the Council on 22 November 2011. The Council could therefore not provide an individual notification of the acts prior to that date.

57 Turning first to the contested acts named in the application, namely Implementing Decision 2011/515 and Implementing Regulation No 843/2011, it should be noted that the Council is correct in stating that the applicant was in a position to know of the adoption of the said acts via the notice of 24 August 2011 published in the Official Journal for the attention of the persons and entities to which restrictive measures provided for in Decision 2011/273 and Regulation No 442/2011, as implemented by the two acts mentioned above, applied (see paragraph 7 above). Given that the Council did not have the applicant's address at the date the said acts were adopted, it cannot be criticised for having breached his rights of the defence through a failure to notify him individually.

58 In addition, it cannot be considered a contradiction on the one hand to assert that the applicant was a close associate of Mr Maher Al-Assad and, on the other, not to know his address. In this regard, it should be recalled that, as the Council submits, the EU institutions have only limited resources in Syria to research the private addresses of all those individuals affected by the restrictive measures regime, particularly during periods of revolt. Moreover, the Council's practice of sending notification to the individual concerned only to an actual address, if known, rather than to an approximate address in Syria, as the applicant appears to maintain, is justified, given that otherwise the notification could be opened and read by a third party other than the applicant, and that restrictive measures are a sensitive matter. Finally, knowledge of a connection between the applicant and Mr Maher Al-Assad is something that can be deduced from information other than his address.

59 Turning secondly to the acts of which annulment is sought in the reply of 11 April 2012 and the adaptation of claim of 8 July 2013, namely Decision 2011/782, Regulation No 36/2012, Implementing Decision 2013/185, Implementing Regulation No 363/2013 and Decision 2013/255, the fact is that, in accordance with the case-law referred to in paragraph 54 above and given that the applicant's address was known to the Council from 22 November 2011, there was a requirement on Council to inform the applicant of the adoption of those acts by means of an individual notification. While it did so in respect of the last three aforementioned acts, it did not send an individual notification in relation to the first two. In this respect, the Council should have informed the applicant individually of the reasons for retaining his name on the list contained in those acts.

60 However, according to case-law, the lack of an individual notification does not necessarily lead to the annulment of an act if the applicant's rights are safeguarded. Indeed, where the Council has failed to meet its obligation to notify the applicant individually of an act, but the applicant has become aware of the act in question and lodged an action against it within the time-limits, his rights of the defence have not been affected, since he has had the opportunity to defend himself (see, to that effect *Makhlouf* v *Council*, paragraph 48 and the case-law cited).

61 In the present case, contrary to what the applicant maintains, failure to notify him individually did not affect either his rights of the defence or his right to effective judicial protection in so far as, first, it did not prevent him from being aware of the individual and specific reasons for the adoption of restrictive measures against him, nor from responding to them. Secondly, it should be pointed out that the applicant is not seeking to rely on any argument that this omission made it more difficult for him to defend himself against the Council, in terms of the administrative procedure or before the General Court (see, by analogy, Joined Cases T-439/10 and T-440/10 *Fulmen and Mahmoudian* v *Council* [2013] ECR, paragraph 68). Finally, the fact remains that the heads of claim in the applicant's adapted application in relation to Decision 2011/782 and Regulation No 36/2012 have in any case been

declared admissible (see paragraph 37 above) and he has therefore had the ability to bring an action before the Courts of the European Union under the second paragraph of Article 275 TFEU in conjunction with the fourth and sixth paragraphs of Article 263 TFEU.

62 Consequently, the lack of notification to the applicant of some of the contested acts does not, in this case, justify their annulment.

63 It must be held that the rights of the defence and the right to effective judicial protection have been duly safeguarded.

64 The first limb of the second plea must therefore be rejected.

– Limb alleging infringement of the obligation to state reasons

65 The applicant claims that the Council has provided only vague and general reasons for justifying the inclusion of his name on the lists contained in the contested acts. In this respect he points out that, according to case-law, since persons and entities who are made subject to restrictive measures do not have the right to a prior hearing, it is all the more important to comply with the obligation to state reasons. Stating reasons should not just relate to the legal basis of application of the act in question but also to the specific and actual reasons for which the Council, acting within its discretion, considers that the persons or entities in question should be subject to restrictive measures.

66 The Council contests the applicant's arguments.

67 According to settled case-law, the purpose of the obligation to state the reasons on which an act adversely affecting an individual is based, which is a corollary of the principle of respect for the rights of the defence, is, first, to provide the person concerned with sufficient information to make it possible to ascertain whether the act is well founded or whether it is vitiated by a defect which may permit its legality to be contested before the Courts of the European Union and, secondly, to enable those Courts to review the legality of that act (see Case C-417/11 P *Council* v *Bamba* [2012] ECR, paragraph 49 and the case-law cited).

68 It should also be recalled that the statement of reasons required by Article 296 TFEU must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the act and to enable the court having jurisdiction to exercise its power of review (see *Makhlouf* v *Council*, paragraph 61 and the case-law cited).

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

70 Therefore, the statement of reasons for an act of the Council which imposes a measure freezing funds must identify the actual and specific reasons why the Council considers, in the exercise of its discretion, that that act must be adopted in respect of the person concerned (see *Makhlouf* v *Council*, paragraph 63 and the case-law cited).

71 However, the requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the act in question, the nature of the reasons given and the interest which the addressees of the act may have in obtaining explanations (see *Makhlouf* v *Council*, paragraph 64 and the case-law cited).

72 It is not necessary for the reasoning to go into all the relevant facts and points of law, inasmuch as the question whether the statement of reasons meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see *Makhlouf* v *Council*, paragraph 65 and the case-law cited).

73 In particular, the reasons given for an act adversely affecting a person are sufficient if it was adopted in circumstances known to that person which enable him to understand the scope of the act concerning him (see *Makhlouf* v *Council*, paragraph 66 and the case-law cited).

74 In the present case, dealing first with the general reasons for the European Union adopting restrictive measures against Syria, it should first be noted that the first three recitals to Decision 2011/273, which also appear in the later contested acts, set out the reasons as follows:

‘(1) On 29 April 2011, the European Union expressed its grave concern about the situation unfolding in Syria and the deployment of military and security forces in a number of Syrian cities.

(2) The Union strongly condemned the violent repression, including through the use of live ammunition, of peaceful protest in various locations across Syria resulting in the death of several demonstrators, wounded persons and arbitrary detentions, and called on the Syrian security forces to exercise restraint instead of repression.

(3) In view of the seriousness of the situation, restrictive measures should be imposed against Syria and against persons responsible for the violent repression against the civilian population in Syria.’

75 Moreover, Article 4(1) of Decision 2011/273 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, as listed in the Annex, shall be frozen.’

76 As for the acts subsequent to Decision 2011/515 and Implementing Regulation No 843/2011, it should first be pointed out that Article 4 of Decision 2011/273 was amended by Decision 2011/522 as follows:

‘All funds and economic resources belonging to, or owned, held or controlled by, persons responsible for the violent repression against the civilian population in Syria, persons and entities benefiting from or supporting the regime, and persons and entities associated with them, as listed in the Annex, shall be frozen.’

77 The grounds for this amendment are found in particular in the fourth recital to Decision 2011/522, which is worded as follows:

‘The restrictions on admission and the freezing of funds and economic resources should be applied to additional persons and entities benefiting from or supporting the regime, in particular persons and entities financing the regime, or providing logistical support to the regime, in particular the security apparatus, or who undermine the efforts towards a peaceful transition to democracy in Syria.’

78 According to the decision in *Makhlouf* v *Council*, it could be presumed that the general context to which Decision 2011/273 referred is familiar to leading figures in Syrian society. In this case, Mr Samir Hassan is, as is apparent from the file, a well-known and well-established businessman in Syria who, through his professional activities, was in a position to be aware of decisions taken relating to the freezing of funds that would affect him.

79 In addition, despite what the applicant claims, the general criteria in question are clear and relate solely to actual persons or entities. Even if the Council has a margin of discretion in applying the criteria, they are not arbitrary since there are certain limits established. In this respect it must be pointed out that the said criteria apply only to persons responsible for the repression against the civilian population in Syria and to persons and entities associated with them and, following the adoption of Decision 2011/522, to persons and entities benefiting from the policies carried out by the Syrian regime and persons and entities who support that regime financially or logistically. Consequently it must be held that, contrary to the applicant's claims, the general criteria in question allow the persons and entities targeted by the contested acts to be identified.

80 Dealing secondly with the grounds for including the applicant's name on the list contained in Implementing Decision 2011/515 and subsequent acts, it should be pointed out that this is said to be due to the applicant being a close associate of Mr Maher Al-Assad and being known to support the Syrian regime economically.

81 First, in relation to the applicant's close association with Mr Maher Al-Assad, the Court states that this reason is also clear and precise within the meaning of the case-law, given that the applicant has had the opportunity to dispute the existence of a link between himself and Mr Maher Al-Assad. What is more, when assessing whether the obligation to state reasons has been complied with, the reasons established in relation to Mr Maher Al-Assad should be borne in mind. It is clear from the reasons stated that, according the Council, Mr Maher Al-Assad was one of those responsible for civilian repression in Syria. In particular, in Decision 2011/273, he was described as 'Commander of the army's 4th Division, member of Baath Party Central Command, strongman of the Republican Guard; principal overseer of violence against demonstrators'.

82 As for the reasoning that the applicant is known to have provided economic support to the Syrian regime, the fact that the applicant has supplied numerous documents to show that he was not involved in any economic activity the purpose of which was supporting the regime confirms that the reasons stated by the Council enabled him to understand the actions of which he was accused and to dispute the occurrence or the relevance of those actions.

83 It follows that the statement of reasons satisfied the rules referred to in paragraphs 67 to 73 above. Indeed, it allowed the applicant to understand the reasons why his name had been included on the list in question, namely, because of his links with a person responsible for the violent repression of the civilian population in Syria. In addition, it allowed him to dispute the facts, as can be seen from his arguments and the evidence provided in the context of the first plea.

84 Therefore the statement of reasons given by the Council was sufficient to satisfy the Council's obligation to state reasons under the second paragraph of Article 296 TFEU.

85 The second limb of the second plea in law must therefore be rejected, as must the second plea in law in its entirety.

First plea in law, alleging a manifest error of assessment

86 The applicant alleges that the Council has not sufficiently proven in law reasons justifying his inclusion on the lists at issue and complains that the Council has specified neither the source of its information nor evidence proving that he supported the Syrian regime economically. In particular, he first points out that the object and the activities of the fifteen companies he administers in Syria are strictly commercial and financial and that the two banks in which he holds an interest do not have any link with the Syrian regime. In addition, he says he has never held a political, or even an official, post indicating a connection with the Syrian authorities, and was not a member of Cham Holding's board of directors in August 2011. He states that, in reality, he is only a minority shareholder in that company with a holding of only 1.714%. Secondly, the applicant declares that the fact that his name was included on the lists at issue at the proposal of a Member State does not justify his inclusion on the said lists in the contested acts. Thirdly, the applicant maintains that the contents of the contested acts breach the general principles of non-discrimination and equal treatment guaranteed under EU law, since the name of another shareholder with the same holding in the company Cham Holding was removed by the Council from the lists at issue.

87 The Council claims from the outset that the General Court must exercise only limited powers of review in relation to restrictive measures aimed at putting pressure on the regime of a third party that respects neither the rule of law nor human rights. It also maintains that the inclusion of the applicant's name on the lists at issue is indeed justified, particularly given that the applicant belongs to the ruling economic class in Syria. In this respect, the Council considers it sufficient that the applicant is on the board of directors and is a shareholder of Cham Holding, a company controlled by Mr Rami Makhlouf, who is also subject to the restrictive measures. Finally, the Council considers the argument that it has breached the principle of non-discrimination to be invalid, since it reviews the circumstances of each case individually, according to complex political appraisals and many elements which are sometimes unknown to the public.

88 According to case-law, the effectiveness of the judicial review guaranteed by Article 47 of the Charter of Fundamental Rights requires that, as part of the review of the lawfulness of the reasons forming the basis of the decision to list or to maintain the listing of a given person as one subject to sanctions, the Courts of the European Union are to ensure that that decision is taken on a sufficiently solid factual basis. That entails a verification of the factual allegations in the summary of reasons underpinning that decision, with the consequence that judicial review cannot be restricted to an assessment of the cogency in the abstract of the reasons relied on, but must concern whether those reasons, or, at the very least, one of those reasons, deemed sufficient in itself to support that decision, is substantiated (see *Kadi II*, paragraph 119).

89 It is the task of the competent European Union authority to establish, in the event of challenge, that the reasons relied on against the person concerned are well founded, and not the task of that person to adduce evidence of the negative, that those reasons are not well founded. It is necessary that the information or evidence produced should support the reasons relied on against the person concerned. If that material is insufficient to allow a finding that a reason is well founded, the Courts of the European Union shall disregard that reason as a possible basis for the contested decision to list or maintain a listing (*Kadi II*, paragraphs 121 to 123).

90 In the present case, the Council maintains that the applicant is a businessman belonging to the ruling economic class in Syria. However, even though it is true that the applicant's status as a businessman is an undeniable fact that he himself has acknowledged, the fact remains that that status is not the reason on which the contested acts are based. Therefore, to establish whether the Council's decision was well founded, it is necessary to examine whether the applicant's connection with Mr Maher Al-Assad and his economic support (financial and logistical) of the Syrian regime responsible for repression have been sufficiently proven in law.

91 It must first be noted that the only justification provided by the Council in this regard consists of extracts from documents dated 16 August 2011 with the reference 'Coreu CFSP/0060/11' (Council documents 5048/12 and 5710/14) and 21 January 2012 (Council document 5711/14), which contain the same brief statement of reasons as that repeated in the contested acts, namely the fact that the applicant was a close business associate of Mr Maher Al-Assad. Therefore, the Council has not provided any evidence to substantiate, or even to suggest, a connection between the applicant and Mr Maher Al-Assad.

92 Next, the Council has provided to the Court some press articles about the Syrian elite, a press release from the US Department of the Treasury designating Mr Rami Makhlouf as a beneficiary of Syrian corruption, and an extract from the document with the reference 'Coreu CFSP/0060/11' of 21 January 2012 (Council document 5711/14) containing the reasons that 'Mr Samir Hassan is one of the principal shareholders in Cham Holding and directs some of its subsidiaries', that 'several of Rami Makluf's properties … are registered in his name' and that 'he owns warehouses converted into detention camps'. However in response to a question raised by the Court at the hearing, the Council was unable to provide any evidence to substantiate these statements.

93 Consequently, the evidence provided by the Council does not contain anything to substantiate its allegations that the applicant is connected with Mr Maher Al-Assad or supports the Syrian regime economically.

94 Accordingly, the Council has not discharged the burden of proof under Article 47 of the Charter of Fundamental Rights as interpreted by the Court of Justice in *Kadi II*.

95 The first plea must therefore be upheld and the contested acts annulled to the extent that they affect the applicant, without any need to examine the other pleas put forward in support of this action.

The temporal effects of annulling the contested acts

96 Under the second paragraph of Article 264 TFEU the Court may, if it considers it necessary, state which of the effects of an annulled act are to be considered as definitive. According to case-law, this provision permits the Courts of the European Union to decide the date on which the annulment takes effect (see Case T-58/12 *Nabipour and Others* v *Council* [2013] ECR, paragraphs 250 and 251 and the case-law cited).

97 In the present case, the Court considers it necessary, for the reasons set out above, to maintain the effects of the contested acts until the date of expiry of the period for bringing an appeal set out in the first paragraph of Article 56 of the Statute of the Court of Justice of the European Union or, if an appeal is brought in that period, until the date of any dismissal of that appeal.

98 Therefore, the applicant's interest in obtaining an immediately effective annulment must be balanced against the general interest pursued by European Union policy in relation to restrictive measures against Syria. Modifying the temporal effects of the annulment of a restrictive measure can thus be justified by the need to ensure that the restrictive measures are effective and, in short, by overriding considerations to do with safety or the conduct of the international relations of the Union and its Member States (see, by analogy, where there was no duty to inform the person concerned in advance of the reason for the initial listing of his name, judgment in Case C-27/09 P *France* v *People's Mojahedin Organization of Iran* [2011] ECR I-13427, paragraph 67).

99 Annulling the contested acts with immediate effect, in so far as they concern the applicant, would allow the applicant to transfer all or some of his assets outside the European Union without the Council having time to apply Article 266 TFEU in order to remedy the irregularities noted in this judgment, which could seriously and irreversibly affect the effectiveness of any steps that the Council might in future decide to take in relation to freezing the applicant's funds.

100 In relation to the application of Article 266 TFEU in the present case, it should be pointed out that this decision to annul the listing of the applicant's name is based on the fact that the reasons for listing him were not substantiated by sufficient evidence (see paragraph 94 above). Although it is for the Council to decide how this judgment will be enforced, it should not automatically be ruled out that the applicant will be re-listed. On a re-examination, the Council has the ability to re-list the applicant on the basis of reasons that are sufficiently substantiated in law.

101 As a result, the effects of the annulled decisions and regulations must therefore be maintained as against the applicant until the date of expiry of the period for bringing an appeal or, if an appeal is brought in that period, until the date of any dismissal of that appeal.

Claim for damages

102 The applicant claims that he has suffered serious harm as a result of the measures taken against him. He claims that there are three cumulative conditions making the European Union non-contractually liable and claims damages of EUR 250 000 per month with effect from 1 September 2011 as compensation for material damage suffered, one symbolic euro as compensation for non-pecuniary loss suffered, and compensation for future loss.

103 The Council disputes the applicant's arguments and considers that the applicant has not proven that the requirements for such a claim have been met.

104 Pursuant to the second paragraph of Article 340 TFEU, in the case of non-contractual liability, the European Union shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties.

105 It is settled case-law 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 cumulative conditions must be satisfied: the institution's conduct must be unlawful, actual damage must have been suffered and there must be a causal link between the alleged conduct and the damage pleaded (Case 26/81 *Oleifici Mediterranei* v *EEC* [1982] ECR 3057, paragraph 16; Case T-383/00 *Beamglow* v *Parliament and Others* [2005] ECR II-5459, paragraph 95; and Case T-341/07 *Sison* v *Council* [2011] ECR II-7915, paragraph 28).

106 If any one of those three conditions required for the European Union to incur non-contractual liability is not satisfied, the claims for damages must be dismissed and it is unnecessary to consider the other conditions (see, to that effect, Case C-146/91 *KYDEP* v *Council and Commission* [1994] ECR I-4199, paragraph 81, and Case T-170/00 *Förde-Reederei* v *Council and Commission* [2002] ECR II-515, paragraph 37). Furthermore, the European Union Courts are not obliged to examine those requirements in any particular order (Case C-257/98 P *Lucaccioni* v *Commission* [1999] ECR I-5251, paragraph 13).

107 Finally, it should be recalled that, according to case-law, any claim for damages, whether the damage is material or non-material, and whether the compensation is symbolic or actual, must give particulars of the nature of the damage alleged in connection with the conduct at issue and must quantify the whole of that damage, even if approximately (see judgment of 11 July 2007 in Case T-47/03 *Sison* v *Council*, not published in the ECR, paragraph 250 and the case-law cited).

108 In the present case, the applicant's claim for damages must be dismissed since there is no proof of damage caused to him. The applicant has merely put forward some figures for economic loss of revenue without producing any evidence of the amount of this loss before and after his inclusion on the lists in question and therefore has not shown that any damage arose as a result of his funds being unavailable. In this respect, neither the letters from the bank informing the applicant that his assets had been frozen (Annexes 5 and 9 to the application) nor the cancellation of his bank cards (Annexes 17 and 18 to the application) can be considered as sufficient to justify the amount set out in his damages claim. In addition, the applicant does not explain how disclosure of the suspension of contractual relations with his alleged suppliers enables the amount claimed as compensation to be determined (Annexes 19 to 21 to the application). What is more, during the hearing, the applicant was questioned about evidence that could justify the amount claimed as compensation and he was unable to supply any. Additionally, the applicant's alleged loss of revenue could be considered to be a direct consequence of the deterioration of the Syrian economy since the start of events affecting that country.

109 In the light of the above, the applicant's claim for damages must be dismissed as unfounded.

Costs

110 Under Article 87(3) of the Rules of Procedure, the Court may rule that costs are to be shared or that each party is to bear its own costs where each party succeeds on some and fails on other heads.

111 In this instance, since the Council has failed on the heads relating to annulment and the applicant on the heads relating to damages, a fair application of the provision referred to above is to rule that the Council shall bear its own costs and shall pay one half of the costs incurred by the applicant in these proceedings. In relation to the interlocutory proceedings, the applicant shall bear his own costs and pay those of the Council.

On those grounds,

THE GENERAL COURT (Seventh Chamber)

hereby:

1. **Dismisses the action for annulment of Council Decision 2012/739/CFSP of 29 November 2012 concerning restrictive measures against Syria and repealing Decision 2011/782/CFSP as being inadmissible;**

2. **Annuls, in so far as the acts concern Mr Samir Hassan:**

   — **Council Implementing Decision 2011/515/CFSP of 23 August 2011 implementing Decision 2011/273/CFSP concerning restrictive measures against Syria;**

   — **Council Implementing Regulation (EU) No 843/2011 of 23 August 2011 implementing Regulation (EU) No 442/2011 concerning restrictive measures in view of the situation in Syria;**

— **Council Decision 2011/782/CFSP of 1 December 2011 concerning restrictive measures against Syria and repealing Decision 2011/273/CFSP;**

— **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;**

— **Council Implementing Decision 2013/185/CFSP of 22 April 2013 implementing Decision 2012/739/CFSP;**

— **Council Implementing Regulation (EU) No 363/2013 of 22 April 2013 implementing Regulation (EU) No 36/2012;**

— **Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria;**

3. **Orders the effects of the annulled decisions and regulations to be maintained as regards Mr Hassan, until the date of expiry of the period for bringing an appeal or, if an appeal is brought in that period, until the date of any dismissal of that appeal;**

4. **Dismisses the application for damages;**

5. **Orders the Council of the European Union to bear its own costs and to pay one half of the costs incurred by Mr Hassan in these proceedings;**

6. **Orders Mr Hassan to bear half of his own costs incurred in these proceedings and to pay his own costs and the costs incurred by the Council in the interlocutory proceedings.**

Van der Woude Wiszniewska-Białecka Ulloa Rubio

Delivered in open court in Luxembourg on 16 July 2014.

[Signatures]