



Reports of Cases

JUDGMENT OF THE GENERAL COURT (Sixth Chamber)

4 February 2014*

(Common foreign and security policy — Restrictive measures against Syria — Freezing of funds — Amendment of the form of order sought — Time-limit — Manifest error of assessment — Obligation to state reasons — Right to effective judicial protection — Rights of the defence)

In Joined Cases T-174/12 and T-80/13,

Syrian Lebanese Commercial Bank SAL, established in Beirut (Lebanon), represented by P. Vanderveeren, L. Defalque and T. Bontinck, lawyers,

applicant,

v

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

defendant,

APPLICATION for partial annulment of, first, Council Implementing Regulation (EU) No 55/2012 of 23 January 2012 implementing Article [32](1) of Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2012 L 19, p. 6), second, Council Implementing Decision 2012/37/CFSP of 23 January 2012 implementing Decision 2011/782/CFSP concerning restrictive measures against Syria (OJ 2012 L 19, p. 33), third, 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), fourth, Council Implementing Regulation (EU) No 1117/2012 of 29 November 2012 implementing Article 32(1) of Regulation No 36/2012 (OJ 2012 L 330, p. 9), fifth, the Council's 'decision letters' of 24 January 2012 and of 30 November 2012 notifying the applicant of the restrictive measures concerning it, sixth, Council Decision 2013/109/CFSP of 28 February 2013 amending Decision 2012/739 (OJ 2013 L 58, p. 8), seventh, Council Implementing Regulation (EU) No 363/2013 of 22 April 2013 implementing Regulation No 36/2012 (OJ 2013 L 111, p. 1), and, eighth, 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 measures affect the applicant's situation,

THE GENERAL COURT (Sixth Chamber),

composed of H. Kanninen, President, G. Berardis (Rapporteur) and C. Wetter, Judges,

Registrar: C. Kristensen, Administrator,

having regard to the written procedure and further to the hearing on 12 September 2013,

gives the following

* Language of the case: French.

Judgment

Facts

- 1 The applicant, the Syrian Lebanese Commercial Bank SAL, is a Lebanese bank, 84.2% of the shares in which are held by the Commercial Bank of Syria (CBS), which is owned by the Syrian State.
- 2 On 9 May 2011, the Council of the European Union adopted, on the basis of Article 29 TEU, Decision 2011/273/CFSP concerning restrictive measures against Syria (OJ 2011 L 121, p. 11). Article 4(1) of that decision provides that all funds and economic resources belonging to, owned, held or controlled by persons responsible for the violent repression against the civilian population in Syria, and natural or legal persons, and entities associated with them, are to be frozen. The detailed arrangements for this freezing are defined in the remaining paragraphs of Article 4. Under Article 5(1) of Decision 2011/273, the Council is to establish the list of such persons.
- 3 Similarly, the Council adopted, on the basis of Article 215(2) TFEU and Decision 2011/273, 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). Article 4(1) of that regulation provides for the freezing of all funds and economic resources belonging to, owned, held or controlled by the natural or legal persons, entities and bodies listed in Annex II.
- 4 By Council Decision 2011/684/CFSP of 13 October 2011 amending Decision 2011/273 (OJ 2011 L 269, p. 33), CBS was listed in Annex II to Decision 2011/273, with the following reason:

‘State-owned bank providing financial support to the regime.’
- 5 By Council Decision 2011/782/CFSP of 1 December 2011 concerning restrictive measures against Syria and repealing Decision 2011/273 (OJ 2011 L 319, p. 56), the restrictive measures relating to CBS were maintained, as it was included in Annex II to Decision 2011/782.
- 6 By Council Implementing Decision 2012/37/CFSP of 23 January 2012 implementing Decision 2011/782 (OJ 2012 L 19, p. 33), the applicant’s name was added to Annex I to Decision 2011/782, with the following reason:

‘Subsidiary of [CBS] already listed. Provides financial support to the regime.’
- 7 By Council Regulation (EU) No 1011/2011 of 13 October 2011 amending Regulation No 442/2011 (OJ 2011 L 269, p. 18), CBS was added to Annex IIa to Regulation No 442/2011, with the same reason as in Decision 2011/684.
- 8 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 restrictive measures relating to CBS were maintained, as its name was included in Annex II to Regulation No 36/2012.
- 9 By Council Implementing Regulation (EU) No 55/2012 of 23 January 2012 implementing Article [32](1) of Regulation No 36/2012 (OJ 2012 L 19, p. 6), the applicant’s name was added to Annex II to Regulation No 36/2012, with the same reason as in Implementing Decision 2012/37.

- 10 On 24 January 2012, the Council sent to the applicant a letter ('the letter of 24 January 2012') which reads as follows:

'This is to inform you that the Council ... has decided that your company should be included in the list of persons and entities subject to restrictive measures in the Annex I to Council Decision [2011/782], as implemented by Council Implementing Decision [2012/37], and in Annex II to Council Regulation [No 36/2012], as [implemented] by Council Implementing Regulation [No 55/2012]. The grounds for your designation appear in the relevant entries in those Annexes.

A copy of the Council Implementing Decision and of the Council Implementing Regulation including your company on the abovementioned list is enclosed herewith ...'

- 11 The applicant acknowledged receipt of that letter on 8 February 2012.
- 12 On 24 January 2012, the Council also published in the *Official Journal of the European Union* the Notice for the attention of the persons and entities to which restrictive measures provided for in Council Decision 2011/782, as implemented by Implementing Decision 2012/37, and in Regulation No 36/2012, as implemented by Implementing Regulation No 55/2012, apply (OJ 2012 C 19, p. 5).
- 13 According to that notice, the persons and entities concerned may submit a request to the Council, together with supporting documentation, that the decision to include them in the lists annexed to the measures mentioned in paragraph 12 above should be reconsidered.
- 14 By letter of 15 February 2012, the applicant submitted to the Council a request for reconsideration by which it contested the assertion that it provided financial support to the Syrian regime and requested access to the evidence concerning it held by the Council and a hearing. In the absence of a response from the Council, the applicant repeated that request on 4 April 2012.
- 15 By letter of 3 July 2012, the Council, first, communicated to the applicant an extract from the note from the General Secretariat of the Council to the delegations of the Member States to which was annexed the document on which the applicant's listing among the persons covered by the restrictive measures against Syria had been based ('the documents communicated on 3 July 2012') and, second, refused to grant it a formal hearing on the ground that the possibility of submitting observations in writing was considered to be sufficient.
- 16 By letter of 7 November 2012, the applicant requested that its situation be reconsidered.
- 17 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 applied against the applicant and CBS were maintained, as those two companies were included, respectively, in Annexes I.B and II to Decision 2012/739.
- 18 Under Article 31 of Decision 2012/739, that decision was to apply up to 1 March 2013.
- 19 By Council Implementing Regulation (EU) No 1117/2012 of 29 November 2012 implementing Article 32(1) of Regulation No 36/2012 (OJ 2012 L 330, p. 9), the names of other persons were added to Annex II to Regulation No 36/2012 while the name of one person was removed from it.
- 20 On 30 November 2012, the Council sent the applicant's representatives a letter, which reads as follows:

'We hereby inform you that the Council ... has decided that your client will continue to be included in the list of persons and entities in Annexes I and II to Decision [2012/739] and in Annexes II and IIa to Regulation [No 36/2012], as implemented by Implementing Regulation [No 1117/2012]. The reasons justifying your client's listing are mentioned [in the] corresponding entries in those annexes.

Please find enclosed a copy of the Council decision concerning your client's inclusion in the abovementioned list.

...

Lastly, we draw your attention to the possibility of challenging the Council decision before the [General Court].'

- 21 The applicant acknowledged receipt of that letter on 3 December 2012.
- 22 On 30 November 2012, the Council also published in the *Official Journal of the European Union* the Notice for 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 Implementing Regulation No 1117/2012, apply (OJ 2012 C 370, p. 6), the content of which is essentially the same as that of the notice mentioned in paragraphs 12 and 13 above.
- 23 By letter sent to the Council on 14 December 2012, the applicant objected to the fact that it had been maintained in the list of persons covered by the restrictive measures against Syria on the basis of the acts mentioned in paragraphs 17 and 19 above and requested access to the evidence concerning it held by the Council and a hearing.
- 24 By letter of 28 January 2013, the Council responded to the applicant's request of 7 November 2012, rejecting its arguments relating to its purported independence vis-à-vis CBS and confirming the existence of a link between the applicant and the financing of the Syrian regime.
- 25 By letter of 6 March 2013, the Council responded to the applicant's request of 14 December 2012. On this occasion it notified the applicant that its continued inclusion in the lists of persons covered by the restrictive measures against Syria was based on the documents copies of which the applicant had already received and that there was no obligation to request it to attend a hearing.

Procedure and forms of order sought

- 26 By application lodged at the Court Registry on 17 April 2012, the applicant brought an action, which was registered as Case T-174/12, by which it sought, inter alia, the annulment of Implementing Regulation No 55/2012 and of Implementing Decision 2012/37, in so far as those measures concern it.
- 27 The written procedure was closed on 20 November 2012.
- 28 By document lodged at the Court Registry on 13 February 2013, the applicant brought a second action, which was registered as Case T-80/13, by which it sought, inter alia, the annulment of Decision 2012/739 and of Implementing Regulation No 1117/2012, in so far as those measures concern it.
- 29 The action in Case T-80/13 was accompanied by an application to have the case decided under the expedited procedure on the basis of Article 76a of the Rules of Procedure of the General Court ('the application for an expedited procedure').
- 30 On 18 February 2013, in response to the applicant's claims, the Council lodged at the Court Registry, as new evidence in Case T-174/12, a letter of 2 October 2012 which the governor of the Banque du Liban had sent it concerning the measures which that bank had taken in regard to the applicant ('the letter from the governor').

- 31 By decision of the President of the Sixth Chamber of the General Court of 22 February 2013, the letter from the governor was placed on the file in Case T-174/12 and a period was set for the applicant to set out its views thereon.
- 32 The applicant did not lodge with the Court Registry its observations on the letter from the governor within the prescribed period.
- 33 On 7 March 2013, the Council submitted its observations on the application for an expedited procedure in which it claimed that that application should be dismissed.
- 34 By decision of 13 March 2013, the General Court (Sixth Chamber) dismissed the application for an expedited procedure.
- 35 The written procedure in Case T-80/13 was closed on 18 June 2013, after the statement of defence had been lodged, as the General Court had decided, pursuant to Article 47(1) of the Rules of Procedure, that a second exchange of pleadings was unnecessary.
- 36 In that statement of defence, the Council raised doubts as to the admissibility of the action in so far as it was directed at Implementing Regulation No 1117/2012.
- 37 By a written pleading lodged at the Court Registry on 14 May 2013, the applicant requested leave to amend the form of order which it sought in Case T-80/13 in such a way that its application for annulment would also cover Council Decision 2013/109/CFSP of 28 February 2013 amending Decision 2012/739 (OJ 2013 L 58, p. 8) in so far as it extends the application of Decision 2012/739 up to 1 June 2013 ('the first request to amend the form of order sought').
- 38 By letter lodged at the Court Registry on 18 June 2013, the Council informed the Court that it had no observations to submit on the first request to amend the form of order sought.
- 39 By a written pleading lodged at the Court Registry on 5 July 2013, the applicant once again requested leave to amend the form of order which it sought in Case T-80/13 in such a way that its application for annulment would also cover 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 measures, to which are annexed lists in which the applicant is named, affect its situation ('the second request to amend the form of order sought').
- 40 On hearing the report of the Judge-Rapporteur, the Court decided to open the oral procedure in Cases T-174/12 and T-80/13.
- 41 By order of the President of the Sixth Chamber of the General Court of 15 July 2013, at the request of the Council and having heard the applicant, Cases T-174/12 and T-80/13 were joined for the purposes of the oral procedure and the judgment in accordance with Article 50 of the Rules of Procedure.
- 42 By a written pleading lodged at the Court Registry on 30 July 2013, the Council pointed out that, in so far as it concerns Implementing Regulation No 363/2013, the second request to amend the form of order sought had to be considered to be out of time and therefore inadmissible.
- 43 By a written pleading lodged at the Court Registry on 22 August 2013, the applicant submitted its observations on the plea of inadmissibility raised by the Council in respect of the second request to amend the form of order sought. Those observations were placed on the file by decision of the President of the Sixth Chamber of the General Court of 5 September 2013.

- 44 The parties presented oral argument and answered the oral questions put to them by the Court at the hearing on 12 September 2013.
- 45 In Case T-174/12, the applicant claims that the Court should:
- annul Article 1 of Implementing Regulation No 55/2012 and point 27 of the annex to that regulation in so far as its name was added to Annex II to Regulation No 36/2012;
 - annul Article 1 of Implementing Decision 2012/37 and point 27 of the annex to that decision in so far as its name was added to Annex II to Decision 2011/273;
 - annul, in so far as necessary, ‘the Council’s decision letter of 24 January 2012’;
 - order the Council to pay the costs.
- 46 In Case T-80/13, account being taken of the first and second requests to amend the form of order sought, the applicant claims that the Court should:
- annul Article 25 of Decision 2012/739 and Annex I.B thereto in so far as the applicant’s name appears at No 34 of that annex;
 - annul Article 1 of Implementing Regulation No 1117/2012 in so far as it has the consequence of maintaining the applicant’s name in Annex II to Regulation No 36/2012 by application of Article 1 of Implementing Regulation No 55/2012 and point 27 of the annex to that regulation;
 - annul, in so far as necessary, ‘the Council’s decision letter of 30 November 2012’;
 - annul Decision 2013/109 in so far as it provides that Decision 2012/739 applies until 1 June 2013;
 - annul Implementing Regulation No 363/2013 and Decision 2013/255 in so far as those measures affect the applicant’s situation;
 - order the Council to pay the costs.
- 47 The Council contends, in both cases, that the Court should:
- dismiss the applications;
 - order the applicant to pay the costs.
- 48 At the hearing, in response to questions put by the Court, first, the applicant acknowledged that it had made a clerical error in its second head of claim in Case T-174/12, incorrectly mentioning Decision 2011/273 instead of Decision 2011/782, second, the applicant withdrew that same head of claim, by reason of the repeal of the latter decision, and, third, the Council stated that it would not raise doubts (see paragraph 36 above) as to the admissibility of the applicant’s second head of claim in Case T-80/13, particularly in view of the fact that Implementing Regulation No 1117/2012 had been notified to the applicant.
- 49 Those statements by the parties were noted in the minutes of the hearing.

Law

Admissibility

The first request to amend the form of order sought

- 50 By its first request to amend the form of order sought, the applicant seeks to broaden the scope of its action for annulment in order also to cover Decision 2013/109, by which the application of Decision 2012/739 was extended from 1 March 2013 to 1 June 2013.
- 51 It must be borne in mind in this regard that, where the measure initially contested is replaced, during the proceedings, by another measure with the same subject-matter, the latter is to be considered a new factor allowing the applicant to adapt its claims and pleas in law. It would not be acceptable if a EU institution or body were able, in order to counter criticisms of one of its measures contained in an application, to amend that 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 measure or of submitting supplementary pleadings directed against that measure (Case 14/81 *Alpha Steel v Commission* [1982] ECR 749, paragraph 8, and judgment of 28 May 2013 in Case T-200/11 *Al Matri v Council*, not published in the ECR, paragraph 80).
- 52 Furthermore, in order to be admissible, a request to amend the form of order sought must be lodged within the two-month period for bringing proceedings laid down in the sixth paragraph of Article 263 TFEU, extended on account of distance by 10 days pursuant to Article 102(2) of the Rules of Procedure. This time-limit for bringing proceedings is mandatory and must be applied by the European Union Courts in such a way as to safeguard legal certainty and equality of persons before the law (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 (order of 11 January 2012 in Case T-301/11 *Ben Ali v Council*, not published in the ECR, paragraph 16).
- 53 In the present case, Decision 2013/109, inter alia, replaced the wording of Article 31 of Decision 2012/739 so as to provide that Decision 2012/739 would apply up to 1 June 2013, and not merely up to 1 March 2013, as initially prescribed. Although Decision 2013/109 did not replace Decision 2012/739, it must be stated that it is an ‘amendment’ of that decision, within the meaning of the case-law mentioned in paragraph 51 above, designed to modify its scope *ratione temporis*. Such amendment of a measure forming the subject-matter of the dispute constitutes a legal basis for amending the form of order sought by the applicant (see, to that effect, *Al Matri v Council*, cited in paragraph 51 above, paragraph 81).
- 54 Accordingly, the form of order directed against Decision 2013/109, which was submitted to the Court Registry on 14 May 2013, within the period for bringing the action for annulment, must be held to be admissible. The decision, which was adopted on 28 February 2013 and published in the *Official Journal of the European Union* on 1 March 2013, had not been notified to the applicant on the date on which its request to amend the form of order sought was lodged, either individually or through the publication of a notice.

The second request to amend the form of order sought

- 55 By its second request to amend the form of order sought, the applicant wishes to broaden the scope of its action for annulment such as also to cover Implementing Regulation No 363/2013 and Decision 2013/255.

- 56 While the Council does not raise any objections to the part of the second request to amend the form of order sought relating to Decision 2013/255, it claims that the part of that request directed at Implementing Regulation No 363/2013 is inadmissible on the ground that it is out of time. The Council points out in this regard that on 23 April 2013 it arranged for publication in the *Official Journal of the European Union* of not only that implementing regulation but also a Notice for the attention of the persons and entities to which the restrictive measures provided for in Decision 2012/739, as implemented by Council Implementing Decision 2013/185/CFSP, and in Regulation No 36/2012, as implemented by Implementing Regulation No 363/2013, apply (OJ 2013 C 115, p. 5; 'the notice of 23 April'). With reference to the judgment of the Court of Justice of 23 April 2013 in Joined Cases C-478/11 P to C-482/11 P *Gbagbo and Others v Council* [2013] ECR, the Council claims that the period within which the applicant could amend the form of order sought to include that implementing regulation had started to run from the publication of the notice of 23 April and had expired on 3 July 2013. According to the Council, Article 102(1) of the Rules of Procedure, under which, 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 is to be calculated from the end of the 14th day following publication thereof in the *Official Journal of the European Union*, is not applicable in the present case.
- 57 The applicant challenges the plea of inadmissibility raised by the Council.
- 58 First, on the basis of the case-law mentioned in paragraph 51 above, the second request to amend the form of order sought should be held to be admissible in so far as it is directed at Decision 2013/255. That decision, under which the applicant continues to be covered by the restrictive measures against Syria, was adopted on 31 May 2013 and published in the *Official Journal of the European Union* on 1 June 2013. Consequently, the second request to amend the form of order sought, lodged at the Court Registry on 5 July 2013, was made within the period for bringing proceedings concerning the decision in question.
- 59 Second, with regard to the plea of inadmissibility raised by the Council in respect of the application for annulment of Implementing Regulation No 363/2013 contained in the second request to amend the form of order sought, it should be noted that it was held in paragraphs 61 and 62 of the judgment in *Gbagbo and Others v Council*, cited in paragraph 56 above, that, under the provisions that were applicable in those cases, where it is impossible to communicate individually to the person concerned the measure by which restrictive measures against him are adopted or maintained, the publication of a notice triggers the period for bringing proceedings against that measure.
- 60 As far as the application of these principles in the present context is concerned, it should first be pointed out that, in Article 32(2), Regulation No 36/2012 contains a provision which corresponds, in essence, to the provision interpreted by the Court of Justice in *Gbagbo and Others v Council*, cited in paragraph 56 above, according to which the Council must communicate to the persons concerned its decision to apply to them restrictive measures either directly, if the address is known, or through the publication of a notice.
- 61 Second, the applicant is correct in its observation that the Council has not explained how it was impossible for it to communicate individually to the applicant its decision to adopt Implementing Regulation No 363/2013 when it must have known its address, as it had communicated other measures to it previously and had been informed of the address of the applicant's representatives in the present cases, which were pending.
- 62 Third, and in any event, it must be noted that, in paragraph 64 of the judgment in *Gbagbo and Others v Council*, cited in paragraph 56 above, the Court of Justice simply stated that, on the date on which the action was brought at first instance, the period for applying for the annulment of the measures

contested in that action had expired, without it being necessary to rule on the applicability of Article 102(1) of the Rules of Procedure, which provides for an additional 14 days for the calculation of the period in which an action must be brought. That action was out of time in any event.

- 63 By contrast, in the present cases, the question whether Article 102(1) of the Rules of Procedure must be interpreted as applying where the adoption of an act containing restrictive measures was communicated to the person concerned by the publication of a notice is crucial in establishing whether the second request to amend the form of order sought was lodged before the expiry of the period for bringing proceedings against Implementing Regulation No 363/2013, calculated from the publication of the notice of 23 April. That request, which was made on 5 July 2013, would not be out of time if, by the application of Article 102(1) of the Rules of Procedure, the period for bringing proceedings expired on 17 July 2013, and not on 3 July 2013, as the Council claims.
- 64 In this regard, it should be noted that where individual communication is not possible and the Council replaces this with the publication of a notice, the persons concerned can become aware of that notice only on reading the *Official Journal of the European Union*. The purpose of the 14-day period laid down in Article 102(1) of the Rules of Procedure is to ensure that interested parties have sufficient time within which to bring an action against the published measures and, consequently, to ensure observance of the right to effective judicial protection, as now laid down in Article 47 of the Charter of Fundamental Rights of the European Union.
- 65 As the Rules of Procedure provide, in Article 102(1), for an additional period of 14 days to bring proceedings against measures published in the Official Journal, it must be concluded that that provision must also be applied, by analogy, where the event triggering the period for bringing proceedings is a notice relating to those measures, which is itself also published in the *Official Journal of the European Union*. The same reasons which justified the granting of an additional period of 14 days in respect of published measures apply to published notices, unlike individual communications.
- 66 In addition, if the view were taken that that article of the Rules of Procedure was not applicable in the circumstances of the present cases, individuals would be in a less favourable position than they would have been in the absence of the obligation to communicate individually. In that latter case, mere publication of the acts containing the restrictive measures would have been sufficient to trigger the period for bringing proceedings, including the additional 14 days mentioned in Article 102(1) of the Rules of Procedure.
- 67 It should also be pointed out in this regard that, in paragraph 58 of the judgment in *Gbagbo and Others v Council*, cited in paragraph 56 above, the Court of Justice stressed the fact that the obligation to communicate individually was intended primarily to protect individuals. Consequently, that judgment cannot be invoked to subject individuals to treatment that would be less favourable to them than that which would result from mere publication of the acts containing the restrictive measures against them.
- 68 In the light of the foregoing, the plea of inadmissibility raised by the Council must be rejected and it must therefore be concluded that the second request to amend the form of order sought is admissible in its entirety, including in so far as it is directed at Implementing Regulation No 363/2013.

Substance

- 69 In support of its action in Case T-174/12, the applicant relies, essentially, on four pleas in law, alleging, respectively:
- a manifest error of assessment with regard to its involvement in the financing of the Syrian regime;

- an infringement of its rights of defence, of its right to a fair hearing and of its right to effective judicial protection;
- a lack of sufficient and precise reasoning;
- insufficiencies surrounding the adoption of, inter alia, Regulation No 36/2012 and Implementing Regulation No 55/2012.

- 70 In support of its action in Case T-80/13, the applicant essentially relies on the first three pleas in law mentioned in paragraph 69 above and on a plea in law alleging that the circumstances of the case were inadequately examined.
- 71 In view of the clear symmetries between the two actions, the pleas in law dealing with the same points in each of the joined cases should be grouped and examined together.

The pleas in law alleging a lack of sufficient and precise reasoning

- 72 The applicant claims that, in deciding to include and maintain it in the lists of persons covered by the restrictive measures against Syria, the Council failed to fulfil its obligation to state reasons. While the applicant does not dispute that the Council has explained adequately the reasons why restrictive measures relating to Syria had to be adopted, it stresses that the specific reasoning which relates to it is ambiguously phrased and merely states the fact that it is a subsidiary of CBS, without clarifying how this might imply that it provides financial support to the Syrian regime. This, it argues, is an unacceptable presumption in view of the quasi-penal character of the measures in question and of the judgment of the Court of Justice of 13 March 2012 in Case C-376/10 P *Tay Za v Council* [2012] ECR. In addition, the application of that presumption fails to take account of the alleged absence of any link of dependence between the applicant and CBS.
- 73 The applicant then goes on to submit that the lack of reasoning in relation to its inclusion in the lists of persons covered by the restrictive measures in question was not remedied by the documents communicated on 3 July 2012 (see paragraph 15 above) in response to its request for reconsideration, especially as it had in the interim sent the Council a number of items of evidence demonstrating its independence vis-à-vis CBS.
- 74 The Council refutes the applicant's arguments.
- 75 It should first of all be stated that the purpose of the obligation to state the reasons for a measure adversely affecting a person, as provided for by the second paragraph of Article 296 TFEU, is, first, to provide the person concerned with sufficient information to make it possible to determine whether the measure is well founded or whether it is vitiated by an error which may permit its validity to be contested before the European Union Courts and, second, to enable the latter to review the lawfulness of that measure. The obligation to state reasons therefore constitutes an essential principle of EU law which may be derogated from only for compelling reasons. The statement of reasons must therefore in principle be notified to the person concerned at the same time as the measure adversely affecting him, as failure to state reasons cannot be remedied by the fact that the person concerned learns the reasons for the measure during the proceedings before the European Union Courts (see, to that effect, judgment of the Court of Justice of 15 November 2012 in Case C-417/11 P *Council v Bamba* [2012] ECR, paragraph 49, and judgment in Case T-390/08 *Bank Melli Iran v Council* [2009] ECR II-3967, 'the *Bank Melli* judgment of the General Court', paragraph 80).
- 76 Unless, therefore, overriding considerations to do with the security of the European Union or of its Member States or with the conduct of their international relations militate against the communication of certain matters, the Council is obliged to apprise a person or entity covered by restrictive measures

of the actual specific reasons why it takes the view that such measures had to be adopted. It must thus state the facts and points of law on which the legal justification of the measures in question depend and the considerations which led it to adopt them (see, to that effect, the *Bank Melli* judgment of the General Court, cited in paragraph 75 above, paragraph 81).

77 Furthermore, the statement of reasons must be appropriate to the measure at issue and to the context in which it was adopted. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons is sufficient 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. In particular, the reasons given for a measure adversely affecting a person are sufficient if that measure was adopted in circumstances known to that person which enable him to understand the scope of the measure concerning him (*Council v Bamba*, cited in paragraph 75 above, paragraphs 53 and 54, and the *Bank Melli* judgment of the General Court, cited in paragraph 75 above, paragraph 82).

78 In the present case, the reasons provided by the Council from the time of the applicant's inclusion in the list of the restrictive measures against Syria have, in essence, always been as follows:

‘Subsidiary of [CBS] already listed. Provides financial support to the regime.’

79 The documents communicated on 3 July 2012 mainly reiterate the reasons reproduced in paragraph 78 above and add the clarification that the applicant ‘allows [CBS] to employ strategies to circumvent European sanctions’.

80 As regards the clarification contained in this addition, it must be noted, first of all, that this information was transmitted to the applicant only after the action had been brought in Case T-174/12 and, second, that it does not include any indication of the specific means by which the applicant allows CBS to ‘circumvent European sanctions’.

81 In those circumstances, the only legitimate reasons given by the Council to justify the applicant's inclusion and maintenance in the lists of persons to whom the restrictive measures against Syria apply are those mentioned in paragraph 78 above.

82 It should be noted in this regard that it was sufficient for the applicant to read the first sentence of the reasoning for the measures by which the applicant was included and maintained in the list of persons covered by the restrictive measures against Syria to understand that it was subject to the restrictive measures in question by virtue of its status as a subsidiary of CBS.

83 This is demonstrated by the fact that, in the application by which it brought its action in Case T-174/12, the applicant disputed the relevance of the shareholding criterion applied by the Council and submitted evidence to demonstrate its purported independence vis-à-vis CBS.

84 Although it is true that, as the applicant claims, the second sentence of the reasoning in question does not make clear whether it is CBS or the applicant that provides financial support to the Syrian regime, those two possibilities are not mutually exclusive. In actual fact, that sentence means that the applicant, as a subsidiary of a bank that finances the Syrian regime, also provides such financial support itself, at least indirectly.

85 In any event, assuming that the second sentence of the reasoning given by the Council does not, because of a lack of precision, satisfy the conditions laid down in the second paragraph of Article 296 TFEU, as interpreted by case-law, that does not affect the decision on the present plea in law. The first

sentence of that reasoning is sufficient in itself to support the view that the Council fulfilled the obligation to explain why the applicant was included and maintained in the lists of persons covered by the restrictive measures against Syria, namely the fact that it is a subsidiary of CBS.

86 It must be pointed out in this regard that the duty to state adequate reasons in a measure is an essential procedural requirement which must be distinguished from the question whether the reasoning is well founded, which is concerned with the substantive legality of the measure at issue. The reasoning of a measure consists in a formal statement of the grounds on which that measure is based. If those grounds are vitiated by errors, the latter will vitiate the substantive legality of the decision, but not the statement of reasons in it, which may be adequate even though it sets out reasons which are incorrect (see, to that effect, Case C-413/06 P *Bertelsmann and Sony Corporation of America v Impala* [2008] ECR I-4951, paragraph 181, and *Council v Bamba*, cited in paragraph 75 above, paragraph 60).

87 In the light of the foregoing considerations, the pleas in law alleging a failure to fulfil the obligation to state reasons must be rejected, as the validity of the reasoning provided by the Council in respect of the applicant must be assessed in the context of the pleas in law alleging a manifest error in that institution's assessment of the applicant's involvement in financing the Syrian regime.

The pleas in law alleging a manifest error of assessment of the applicant's involvement in financing the Syrian regime

88 The applicant claims that the Council committed a manifest error of assessment in so far as it found that the applicant provided financial support to the Syrian regime without proving its allegations on this point. It states, in this regard, that the Council cannot rely on mere allegations or solely on the shareholding link between it and CBS, but that it is required to provide proof.

89 According to the applicant, the Council's error of assessment is all the more manifest because an examination of the evidence produced by the applicant shows that it cannot provide financial support to the Syrian regime.

90 Thus, first of all, the applicant's statutes ('the SLCB statutes'), under which management of the applicant lies with the board of directors alone, demonstrate, in its view, its full autonomy vis-à-vis CBS, which does not issue directives or guidelines in respect of its subsidiary.

91 The applicant states in this connection that on 24 February 2012 its board of directors took the decision not to maintain relations with the legal persons included in the lists of natural and legal persons covered by the restrictive measures against Syria adopted by the European Union and by the United States of America or with persons associated with them.

92 Second, the applicant argues that since 2005 it has not lent funds to CBS and that, in any event, all of its transactions are subject to Lebanese banking regulations and are audited by the Banque du Liban, which has even appointed a permanent auditor for the applicant.

93 Furthermore, the applicant points out that independent auditors have confirmed that it did not carry out any suspicious banking transactions.

94 The Council disputes the applicant's arguments.

95 It should be noted that, under Article 19(1) of Decision 2011/782, Article 25(1) of Decision 2012/739 and Article 28(1) of Decision 2013/255:

‘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 Annexes I and II, shall be frozen.’

96 Article 15(1) of Regulation No 36/2012 refers to the provision cited in paragraph 95 above for the purposes of the definition of the list of persons covered by the restrictive measures contained in that regulation.

97 In the present cases, it must be stated that the applicant is covered by the restrictive measures against Syria on the ground that it is a subsidiary of CBS and, as such, is liable to participate in the financing of the Syrian regime.

98 It thus appears that the Council takes the view that the applicant comes within the category of persons who are ‘associated’ with persons supporting the Syrian regime, in this case CBS, within the meaning of the provision cited in paragraph 95 above.

99 This position taken by the Council must be accepted.

100 The facts, which are not disputed, that 84.2% of the applicant’s shares are held by CBS and that CBS, which is owned by the Syrian State, supports the regime in that country indicate clearly an association with persons supporting that regime within the terms of that provision.

101 It should be pointed out in this regard that where the funds of an entity identified as supporting the Syrian regime, such as CBS, are frozen, there is a not insignificant danger that that entity may exert pressure on the entities which it holds, owns or controls in order to circumvent the effect of the measures taken against it. Consequently, the freezing of the funds of those entities, which the Council is required to carry out under the provision cited in paragraph 95 above and by reference to that provision in Article 15(1) of Regulation No 36/2012, is necessary and appropriate in order to ensure the effectiveness of the measures adopted and to guarantee that those measures are not circumvented (see, to that effect and by analogy, judgment of the Court of Justice of 13 March 2012 in Case C-380/09 P *Melli Bank v Council* [2012] ECR, ‘the *Melli Bank* judgment of the Court of Justice’, paragraphs 39 and 58).

102 It is settled case-law that where a legal person is wholly owned by another person which undoubtedly must be covered by restrictive measures, that legal person must also be subject to those measures, by reason solely of that shareholding link, on condition that the measures by which the restrictive measures in question were adopted provide for their application to legal persons owned or controlled by persons already covered (see, to that effect and by analogy, the *Melli Bank* judgment of the Court of Justice, cited in paragraph 101 above, paragraph 79, and judgment of 20 February 2013 in Case T-492/10 *Melli Bank v Council* [2013] ECR, ‘the *Melli Bank* judgment of the General Court’, paragraph 56).

103 This conclusion is not called into question by the judgment in *Tay Za v Council*, cited in paragraph 72 above, which is relied on by the applicant. While the Court of Justice held, in paragraph 66 of that judgment, that restrictive measures could not be applied to natural persons solely on the ground of their family connection with persons associated with the leaders of the third country against which those measures had been adopted, nothing in that judgment can be interpreted as meaning that the shareholding link criterion established in the *Melli Bank* judgment of the Court of Justice, cited in paragraph 101 above, has been invalidated.

- 104 In the present cases, it is true that CBS holds 84.2% of the shares in the applicant, and not 100%, as was the position in the cases mentioned in paragraph 102 above.
- 105 It is also true that, as the applicant pointed out at the hearing, in its judgment of 6 September 2013 in Case T-493/10 *Persia International Bank v Council* [2013] ECR, paragraph 119, the Court held that ownership by Bank Mellat, which was already covered by restrictive measures, of 60% of the share capital of Persia International Bank plc did not, by itself, justify the adoption and maintenance of restrictive measures in regard also to Persia International Bank.
- 106 However, in *Persia International Bank v Council*, cited in paragraph 105 above, the Court found that, although Bank Mellat held a majority within the general meeting of the Persia International Bank, an agreement between the shareholders of Persia International Bank prevented Bank Mellat from nominating the majority of executive directors of Persia International Bank. Consequently, the Court was able to conclude that the risk described in paragraph 101 above did not exist (see, to that effect, *Persia International Bank v Council*, cited in paragraph 105 above, paragraphs 106 to 113).
- 107 In the present cases, unlike that in *Persia International Bank v Council*, cited in paragraph 105 above, the applicant has not provided any evidence to show that, within its general meeting, the large majority held by CBS was not sufficient to allow CBS to nominate the majority of the members of the board of directors.
- 108 First of all, a shareholding of 84.2% allows CBS to control the general meeting of the applicant.
- 109 Under Article 54 of the SLCB statutes, within the general meeting, each shareholder has a number of votes equal to the number of shares held. With an 84.2% shareholding, CBS therefore has sufficient shares to achieve quorum and the majority required in the three forms of general meeting, namely constituent, ordinary and extraordinary, as can be seen from Articles 57, 58, 63, 64, 69 and 70 of the SLCB statutes.
- 110 Second, as regards the powers of the general meeting, it is sufficient to note that the ordinary general meeting determines the dividends to be paid in accordance with Article 65(c) of the SLCB statutes. Thus, the fact that the applicant has not distributed dividends to CBS since 2005 does not prevent CBS, which holds a large majority within that general meeting, to decide otherwise in future, as the Council points out.
- 111 Third, whilst, under Article 30 of the SLCB statutes, the management of the applicant lies with the board of directors, it is the general meeting that elects the members of the board of directors, in accordance with that same article. While the board of directors enjoys wide-ranging powers, those powers are exercised for the purpose of giving effect to the decisions of the general meeting, in accordance with Article 36 of the SLCB statutes.
- 112 Fourth, it is necessary to reject the applicant's argument that the Council ought to have taken account of the fact that the second paragraph of Article 144 of the Commercial Code of Lebanon provides that, in principle, the majority of the members of the board of directors of a Lebanese public limited company must be nationals of that country.
- 113 It should be noted that the Lebanese nationality of the majority of the members of the applicant's board of directors does not mean that, following decisions of the general meeting, which is controlled by CBS, the board will not decide to transfer funds to the Syrian regime.

- 114 The foregoing observations lead to the conclusion that the applicant is a legal person associated with CBS and that the risk described in paragraph 101 above therefore exists in the present cases, unlike the situation in *Persia International Bank v Council*, cited in paragraph 105 above. Consequently, the Council was obliged to apply to the applicant the restrictive measures against Syria in accordance with the provision cited in paragraph 95 above.
- 115 Since the condition that the applicant be a 'person associated' with a person supporting the Syrian regime is satisfied, it is not necessary to carry out any further review (see, to that effect and by analogy, the *Melli Bank* judgment of the Court of Justice, cited in paragraph 101 above, paragraphs 78 and 79) in so far as the evidence put forward by the applicant cannot call into question the shareholding link relied on by the Council.
- 116 It must be stated in this regard that that link is not called into question by the fact that the applicant's activities are subject to supervision by the Banque du Liban.
- 117 First of all, as can be seen in particular from the letter from the governor, it is true that the Banque du Liban ensures that the applicant, like any other bank operating in Lebanon, complies with the laws and regulations in force in that country, including those relating to measures to combat money laundering and the financing of terrorism. In his letter, the governor also stated that a permanent auditor had been appointed for the applicant in order to strengthen that combat, with a view to ensuring compliance with the restrictions imposed by the competent international authorities.
- 118 Second, the letter from the governor states that the Banque du Liban has issued a circular according to which banks operating in that country are expected to be aware of the laws and regulations applying to their foreign correspondents and to deal with those correspondents in accordance with, inter alia, the sanctions and restrictions adopted by the competent authorities of the respective countries of those correspondents. Furthermore, the Banque du Liban closed the foreign-currency accounts which the applicant held with it.
- 119 Nevertheless, the fact remains that the supervisory activity and the measures taken by the Banque du Liban relate to the funds held by the applicant in Lebanon. By contrast, the measures taken by the Council relate only to the funds which the applicant holds or might hold within the European Union and the transactions that it might wish to carry out using those funds.
- 120 Thus, the aims of the measures taken by the Banque du Liban are not the same, at least not exactly the same, as the aims of the restrictive measures taken by the Council against Syria.
- 121 In addition, and in particular, the applicant cannot call into question whether it is appropriate to include and maintain it in the lists of the persons covered by the restrictive measures against Syria adopted by the Council on the ground that its activities, including those that are connected with the European Union, are supervised by the national authority of a third State. In that case the Council would no longer have any control over the effectiveness of that supervision, a situation which could frustrate the aims of those measures.
- 122 This fact also makes it possible to distinguish the applicant's situation from that in *Persia International Bank v Council*, cited in paragraph 105 above. While it is true that, in paragraph 117 of that judgment, the Court highlighted the supervisory role of the United Kingdom Financial Services Authority, limiting the influence that the majority shareholder of the bank in question could exert, that was an authority of a Member State which was required to comply with Council measures, and not an authority of a third State as in the present cases.
- 123 Lastly, as the Council has acted in accordance with case-law, the applicant is wrong to claim that its inclusion and maintenance in the lists of persons covered by the restrictive measures against Syria by reason of the identity of its majority shareholder run counter to the general principles of law

according to which only the entity responsible for improper practices can be sanctioned. By including and maintaining the applicant in those lists, the Council did not have in view the applicant's autonomous conduct contrary to the requirements of the measures establishing restrictive measures against Syria, but its shareholder structure and therefore its close association with its parent company (see, to that effect and by analogy, the *Melli Bank* judgment of the Court of Justice, cited in paragraph 101 above, paragraph 81), which, as is common ground, is owned by the Syrian State (see paragraphs 1 and 100 above).

124 On the basis of the foregoing considerations, the present pleas in law must be rejected.

The pleas in law alleging an infringement of the rights of the defence, the right to a fair hearing and the right to effective judicial protection

125 The applicant claims that, despite its many requests, the Council never communicated to it the precise, individual evidence justifying its inclusion and maintenance in the lists of persons covered by the restrictive measures against Syria. In addition, the applicant argues that, when the action was lodged in Case T-174/12, the Council had not yet responded to its requests of 15 February and 4 April 2012 (see paragraph 14 above).

126 Likewise, it claims, the Council never explained what evidence formed the basis for maintaining the applicant on those lists despite the evidence purportedly submitted by the applicant showing that the Council's assessment was incorrect on the ground that the mere fact of being a subsidiary of CBS did not mean that the applicant provided financial support to the Syrian regime.

127 In addition, the applicant complains that the Council did not grant its requests for a hearing. It claims that the case-law relied on by the Council in support of the view that a hearing is not a right available to persons covered by restrictive measures is not relevant.

128 The Council disputes the applicant's arguments.

129 It should be noted that the fundamental right to observance of the rights of defence during a procedure preceding the adoption of a restrictive measure is expressly affirmed in Article 41(2)(a) of the Charter of Fundamental Rights, which is recognised by Article 6(1) TEU as having the same legal value as the Treaties (see, to that effect, Case C-27/09 P *France v People's Mojahedin Organization of Iran* [2011] ECR I-13427, paragraph 66).

130 It is also to be noted that, according to settled case-law, the principle of effective judicial protection is a general principle of EU law stemming from the constitutional traditions common to the Member States, which has been enshrined in Articles 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, this principle having, furthermore, been reaffirmed by Article 47 of the Charter of Fundamental Rights (Case C-432/05 *Unibet* [2007] ECR I-2271, paragraph 37, and Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat International Foundation v Council and Commission* [2008] ECR I-6351, '*Kadi*', paragraph 335).

131 In addition, it has consistently been held that the effectiveness of judicial review, which it must be possible to apply to the lawfulness of the grounds on which a European Union authority includes the name of a person or entity in the lists of persons and entities covered by the restrictive measures adopted by that authority, means that the authority in question is obliged to communicate those grounds to the person or entity concerned, so far as possible, either when that inclusion is decided on or, at the very least, as swiftly as possible after that decision in order to enable those persons or entities to exercise, within the periods prescribed, their right to bring an action (see, to that effect, *Kadi*, cited in paragraph 130 above, paragraph 336).

- 132 Compliance with that obligation to communicate those grounds is necessary both to enable the persons to whom restrictive measures are addressed to defend their rights in the best possible conditions and to decide, with full knowledge of the relevant facts, whether there is any point in their applying to the European Union Courts (see, to that effect, Case 222/86 *Heylens and Others* [1987] ECR 4097, paragraph 15) and to put the latter fully in a position in which they may carry out the review of the lawfulness of the European Union measure in question which is their duty under the Treaty (*Kadi*, cited in paragraph 130 above, paragraph 337).
- 133 In accordance with the requirements laid down by that case-law, Article 21(2) and (3) of Decision 2011/782, Article 27(2) and (3) of Decision 2012/739, Article 30(2) and (3) of Decision 2013/255 and Article 32(2) and (3) of Regulation No 36/2012 provide that the Council is to communicate its decision, including the grounds for listing, to the person concerned, either directly, if the address is known, or through the publication of a notice, providing such person or entity with an opportunity to present observations. Where observations are submitted, or where substantial new evidence is presented, the Council is required to review its decision and to inform the natural or legal person, entity or body accordingly.
- 134 Article 32(4) of Regulation No 36/2012 provides that the lists in its annexes must be reviewed at regular intervals and at least every 12 months.
- 135 In the present cases, the measures by which the Council decided to include the applicant in the lists of persons covered by the restrictive measures against Syria were communicated to it by the letter of 24 January 2012. That letter made reference to Implementing Decision 2012/37 and to Implementing Regulation No 55/2012, which were enclosed and contained the grounds for including the applicant in those lists.
- 136 The fact that that communication took place after the applicant had been included for the first time in the list of persons covered by the restrictive measures in question cannot, in itself, be regarded as an infringement of the rights of the defence.
- 137 It should be borne in mind in this regard that, according to case-law, observance of the rights of the defence, in particular the right to be heard, with regard to restrictive measures, does not require the European Union authorities, before the name of a person or entity is entered in the list imposing restrictive measures for the first time, to communicate the grounds for that inclusion to the person or entity concerned (see, to that effect, *Kadi*, cited in paragraph 130 above, paragraph 338).
- 138 Such prior communication would be liable to jeopardise the effectiveness of the freezing of funds and resources imposed by those authorities (see, to that effect, *Kadi*, cited in paragraph 130 above, paragraph 339).
- 139 In order to attain their objective, such measures must, by their very nature, take advantage of a surprise effect and apply with immediate effect (see, to that effect, *Kadi*, cited in paragraph 130 above, paragraph 340).
- 140 Thus, the Council was not required to hear the applicant before it was included for the first time in the lists of persons covered by the restrictive measures against Syria, as the possibility for the applicant to contact the Council after receiving the letter of 24 January 2012 was sufficient to ensure that its rights of defence would be respected.
- 141 On reading the grounds for its inclusion, as set out in the measures annexed to the letter of 24 January 2012, the applicant decided to submit to the Council a request for access to the evidence demonstrating its support for the Syrian regime. While awaiting the response from the Council, the applicant brought the action in Case T-174/12.

- ¹⁴² The Council did not respond to that request until a significant period after that action had been brought, namely on 3 July 2012.
- ¹⁴³ It should, however, be stated in this regard that the content of the documents communicated on 3 July 2012 is essentially the same as the grounds with which the applicant was already familiar from reading the letter of 24 January 2012 and the measures enclosed with that letter, namely Implementing Decision 2012/37 and Implementing Regulation No 55/2012. Like those latter measures, the document in question states that the applicant is a subsidiary of CBS.
- ¹⁴⁴ Since, first, the applicant clearly knew the identity of its principal shareholder, second, as is evident from an examination of the pleas in law alleging a manifest error of assessment of the applicant's involvement in the financing of the Syrian regime, the mere fact that the applicant is a subsidiary 84.2% of the shares of which are held by CBS justifies the adoption of restrictive measures against it and, third, the applicant was immediately informed of the fact that those restrictive measures were precisely attributable to its status as a subsidiary of CBS, it is irrelevant that the document in question contains additional grounds.
- ¹⁴⁵ The important factor, by contrast, is that the applicant was able, from the time at which it was included in the lists of persons covered by the restrictive measures against Syria, to exercise its rights of defence and its right to effective judicial protection by explaining to the Council and to the Court the reasons why it took the view that its status as a subsidiary of CBS did not justify its listing.
- ¹⁴⁶ In any event, even if it is assumed that the Council ought to have provided the applicant with the documents communicated on 3 July 2012 before the action was brought against the contested measures in Case T-174/12, it must be stated that this would be an immaterial error since, had there been no error, the applicant would not have been better able to defend itself (see, by analogy, judgment of the Court of Justice of 16 February 2012 in Joined Cases C-191/09 P and C-200/09 P *Council v Interpipe Niko Tube and Interpipe NTRP* [2012] ECR, paragraph 78, and Case T-25/06 *Alliance One International v Commission* [2011] ECR II-5741, paragraph 183).
- ¹⁴⁷ With regard to the complaint that the Council did not grant the applicant a hearing, neither the legislation in question nor the general principle of observance of the rights of the defence gives the persons concerned the right to such a hearing (see, by analogy, Case T-256/07 *People's Mojahedin Organization of Iran v Council* [2008] ECR II-3019, paragraph 93, and judgment of 6 September 2013 in Case T-434/11 *Europäisch-Iranische Handelsbank v Council* [2013] ECR, paragraph 64).
- ¹⁴⁸ As regards observance of the applicant's rights of defence in connection with the adoption of Decision 2012/739, Implementing Regulation No 1117/2012, Implementing Regulation No 363/2013, Decision 2013/109 and Decision 2013/255, which are subsequent measures maintaining its name in the lists containing the names of persons covered by the restrictive measures, it should be stated that the argument of the surprise effect of those measures cannot, in principle, be legitimately relied on (see, to that effect and by analogy, *France v People's Mojahedin Organization of Iran*, cited in paragraph 129 above, paragraph 62).
- ¹⁴⁹ However, according to case-law, the right to be heard prior to the adoption of measures maintaining restrictive measures in respect of persons already covered by them presupposes that the Council has admitted new evidence against those persons (see, to that effect and by analogy, *France v People's Mojahedin Organization of Iran*, cited in paragraph 129 above, paragraph 63, and the *Melli Bank* judgment of the General Court, cited in paragraph 102 above, paragraph 72).
- ¹⁵⁰ In the present case, when the Council maintained the applicant's name in the lists of persons covered by the restrictive measures against Syria, it did not admit any new evidence that had not already been communicated to the applicant following its initial listing.

- 151 Under the provisions mentioned in paragraph 133 above, the applicant had the possibility, on its own initiative, to be heard by the Council without a new express request being made prior to the adoption of each subsequent measure, in the absence of new evidence in relation to it being admitted.
- 152 The applicant availed itself of that possibility, in particular by the letter which it sent to the Council on 14 December 2012, to which the Council replied on 6 March 2013 (see paragraphs 23 and 25 above).
- 153 Although that response came after the action had been brought against Decision 2012/739, that decision, in the same way, moreover, as Implementing Regulation No 1117/2012, Implementing Regulation No 363/2013 and Decision 2013/255, did not amend the reasons for the restrictive measures concerning the applicant and was not based on any new evidence, but only on the shareholding link between CBS and the applicant, on which the applicant had already expressed its point of view on several occasions before the Council and the Court.
- 154 For that same reason, even if it is assumed that the Council ought to have heard the applicant before adopting the measures mentioned in paragraph 153 above, such an irregularity would have been inconsequential, in accordance with the case-law cited in paragraph 146 above.
- 155 In the light of the foregoing considerations, the present pleas in law must be rejected.

The pleas in law alleging insufficiencies surrounding the adoption of Regulation No 36/2012 and Implementing Regulation No 55/2012

- 156 The applicant criticises the Council for the fact that Regulation No 36/2012, unlike Regulation No 442/2011, which it repealed, does not contain a reference to the need to ensure observance of the fundamental rights of the persons covered by the measures contained in those regulations.
- 157 The applicant goes on to claim that, while it is true that the content and the aims of Regulation No 36/2012 justify the Council's adoption of it on the basis of Article 215 TFEU, account should nevertheless have been taken of the fact that that regulation raises questions of fundamental rights, which would have made it necessary to adopt it on the basis of Article 75 TFEU. That article provides for the adoption of measures in accordance with the ordinary legislative procedure under Article 294 TFEU, which gives the European Parliament a greater role than simply being informed of the adoption of restrictive measures, as provided for in Article 215 TFEU.
- 158 The Council refutes the applicant's arguments.
- 159 First, with regard to the failure to mention fundamental rights, this fact has no bearing on the lawfulness of the contested measures, in the absence of proof by the applicant that its fundamental rights have been infringed. This part of the present plea in law is therefore irrelevant.
- 160 Second, as regards the question of the legal basis of Regulation No 36/2012, the applicant, in response to a question put by the Court at the hearing, acknowledged that the Council could legitimately base the adoption of that regulation on Article 215 TFEU. That statement was noted in the minutes of the hearing.
- 161 As for the claim, made by the applicant in its reply, that it is 'disputable that the legal basis of the measures adversely affecting it allows the Council to adopt acts containing measures that are particularly detrimental to the fundamental rights of the persons to whom they are addressed without the involvement of the Parliament', it must be pointed out, in any event, that, while participation by the Parliament in the legislative process is the reflection, at EU level, of the fundamental democratic principle that the people should participate in the exercise of power through the intermediary of a representative assembly, the difference between Article 75 TFEU and Article 215 TFEU, so far as the

Parliament's involvement is concerned, is the result of the choice made by the framers of the Treaty of Lisbon conferring a more limited role on the Parliament with regard to the European Union's action under the common foreign and security policy (judgment of the Court of Justice of 19 July 2012 in Case C-130/10 *Parliament v Council* [2012] ECR, paragraphs 81 and 82).

162 In this regard, even if it is assumed that the applicant is entitled to raise a plea in law which essentially concerns an infringement of the Parliament's rights and powers, it should be borne in mind that, according to case-law, it is not contrary to EU law for it to be possible for measures to be adopted that impinge directly on the fundamental rights of natural or legal persons by means of a procedure that excludes the Parliament's participation, since the duty to respect fundamental rights is imposed, in accordance with Article 51(1) of the Charter of Fundamental Rights, on all the institutions and bodies of the European Union. In addition, under Article 215(3) TFEU, the measures referred to in that article are to include necessary provisions on legal safeguards. In consequence, a measure such as Regulation No 36/2012 may be adopted on the basis of Article 215(2) TFEU on condition that it contains safeguards for the respect of the fundamental rights of the persons concerned (see, to that effect and by analogy, *Parliament v Council*, cited in paragraph 161 above, paragraphs 83 and 84; with regard to the possibility for a legal person to claim an infringement of fundamental rights, see the *Melli Bank* judgment of the General Court, cited in paragraph 102 above, paragraph 41).

163 In the present cases, Regulation No 36/2012 contains the necessary provisions to protect fundamental rights as, in Article 32(2) to (4) in particular, it requires the Council to include the grounds for including any natural or legal person in the list of persons covered by the restrictive measures contained in that regulation, to communicate to those persons, directly or through the publication of a notice, the fact that they have been listed, providing them with an opportunity to present observations, to review its decision where substantial new evidence is presented or where observations are submitted, and to review the lists at regular intervals and at least every 12 months.

164 In the light of the foregoing considerations, the present pleas in law must be rejected.

The plea in law alleging that the circumstances of the present cases were inadequately examined

165 The applicant claims that the Council did not conduct a proper examination of the circumstances of the present cases, but simply adopted the proposals made by the Member States without verifying the validity and relevance of the information and evidence capable of forming the basis for the adoption and maintenance of the restrictive measures against it.

166 The Council disputes the applicant's arguments.

167 In the present case, the Council included and maintained the applicant in the lists of persons covered by the restrictive measures against Syria by reason of the fact that 84.2% of its shares are held by CBS.

168 This is correct and has never been disputed by the applicant. By contrast, the applicant has sought to show that, despite this shareholding link, it retained its independence vis-à-vis CBS.

169 However, as is clear from the examination of the pleas in law alleging a manifest error of assessment with regard to the applicant's involvement in the financing of the Syrian regime, in the present case the Council was properly entitled to use that shareholding link in order to include and maintain the applicant in the lists in question.

170 As the Council relied on that link, the validity of which has to be confirmed, it must be concluded that it examined adequately the circumstances of the present cases.

171 Consequently, the present plea in law must be rejected.

¹⁷² It follows from all of the foregoing considerations that none of the pleas in law raised by the applicant is well founded, with the result that the actions must be dismissed in their entirety without it being necessary to rule on the admissibility, disputed by the Council, of the applicant's claims seeking the annulment, in so far as necessary, of the 'Council's decision letters' of 24 January 2012 and of 30 November 2012.

Costs

¹⁷³ Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the Council.

On those grounds,

THE GENERAL COURT (Sixth Chamber)

hereby:

- 1. Dismisses the actions;**
- 2. Orders Syrian Lebanese Commercial Bank SAL to pay the costs.**

Kanninen

Berardis

Wetter

Delivered in open court in Luxembourg on 4 February 2014.

[Signatures]