



Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

11 January 2024*

(Appeal – Common foreign and security policy – Restrictive measures adopted against Syria – Measures directed against persons associated with persons and entities subject to restrictive measures – Lists of persons subject to the freezing of funds and economic resources – Proof that inclusion of the appellant’s name on those lists is well founded)

In Case C-524/22 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 4 August 2022,

Amer Foz, residing in Dubai (United Arab Emirates), represented by L. Cloquet, avocat,

appellant,

the other party to the proceedings being:

Council of the European Union, represented by M. Bishop and T. Haas, acting as Agents,

defendant at first instance,

THE COURT (Sixth Chamber),

composed of T. von Danwitz (Rapporteur), President of the Chamber, P.G. Xuereb and A. Kumin, Judges,

Advocate General: L. Medina,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: English.

Judgment

- 1 By his appeal, Mr Amer Foz seeks to have set aside in part the judgment of the General Court of the European Union of 18 May 2022, *Foz v Council* (T-296/20, EU:T:2022:298; ‘the judgment under appeal’), by which the General Court dismissed his action for annulment of:
- Council Implementing Decision (CFSP) 2020/212 of 17 February 2020 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2020 L 43I, p. 6), and Council Implementing Regulation (EU) 2020/211 of 17 February 2020 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2020 L 43I, p. 1) (together, ‘the initial measures’);
 - Council Decision (CFSP) 2020/719 of 28 May 2020 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2020 L 168, p. 66), and Council Implementing Regulation (EU) 2020/716 of 28 May 2020 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2020 L 168, p. 1) (together, ‘the 2020 maintaining acts’); and
 - Council Decision (CFSP) 2021/855 of 27 May 2021 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2021 L 188, p. 90), and Council Implementing Regulation (EU) 2021/848 of 27 May 2021 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2021 L 188, p. 18) (together, ‘the acts at issue’),

in so far as those acts include and maintain his name on the lists annexed thereto.

Legal context

- 2 Under Article 27 of Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria (OJ 2013 L 147, p. 14), as amended by Council Decision (CFSP) 2015/1836 of 12 October 2015 (OJ 2015 L 266, p. 75):
- ‘1. Member States shall take the necessary measures to prevent the entry into, or transit through, their territories of the persons responsible for the violent repression against the civilian population in Syria, persons benefiting from or supporting the regime, and persons associated with them, as listed in Annex I.
2. In accordance with the assessments and determinations made by the Council in the context of the situation in Syria as set out in recitals 5 to 11, Member States shall also take the necessary measures to prevent the entry into, or transit through, their territories of:
- (a) leading businesspersons operating in Syria;
 - (b) members of the Assad or Makhoul families;
 - (c) Syrian Government Ministers in power after May 2011;
 - (d) members of the Syrian Armed Forces of the rank of “colonel” and the equivalent or higher in post after May 2011;

- (e) members of the Syrian security and intelligence services in post after May 2011;
- (f) members of regime-affiliated militias; or
- (g) persons operating in the chemical weapons proliferation sector,
and persons associated with them, as listed in Annex I.

3. Persons within one of the categories referred to in paragraph 2 shall not be included or retained on the list of persons and entities in Annex I if there is sufficient information that they are not, or are no longer, associated with the regime or do not exercise influence over it or do not pose a real risk of circumvention.

4. All listing decisions shall be made on an individual and case-by-case basis taking into account the proportionality of the measure.

...'

3 Article 28(1) to (5) of Decision 2013/255, as amended by Decision 2015/1836, provides:

'1. 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.

2. In accordance with the assessments and determinations made by the Council in the context of the situation in Syria as set out in recitals 5 to 11, all funds and economic resources belonging to, or owned, held or controlled by:

- (a) leading businesspersons operating in Syria;
- (b) members of the Assad or Makhoul families;
- (c) Syrian Government Ministers in power after May 2011;
- (d) members of the Syrian Armed Forces of the rank of "colonel" and the equivalent or higher in post after May 2011;
- (e) members of the Syrian security and intelligence services in post after May 2011;
- (f) members of regime-affiliated militias; or
- (g) members of entities, units, agencies, bodies or institutions operating in the chemical weapons proliferation sector,
and persons associated with them, as listed in Annex I, shall be frozen.

3. Persons, entities or bodies within one of the categories referred to in paragraph 2 shall not be included or retained on the list of persons and entities in Annex I if there is sufficient information

that they are not, or are no longer, associated with the regime or do not exercise influence over it or do not pose a real risk of circumvention.

4. All listing decisions shall be made on an individual and case-by-case basis taking into account the proportionality of the measure.

5. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of, the natural or legal persons or entities listed in Annexes I and II.'

4 Article 15(1a) and (1b) of 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), as amended by Council Regulation (EU) 2015/1828 of 12 October 2015 (OJ 2015 L 266, p. 1), provides:

'1a. The list in Annex II shall also consist of natural or legal persons, entities and bodies who, in accordance with Article 28(2) of [Decision 2013/255], have been identified by the Council as falling within one of the following categories:

- (a) leading businesspersons operating in Syria;
- (b) members of the Assad or Makhoul families;
- (c) Syrian Government Ministers in power after May 2011;
- (d) members of the Syrian Armed Forces of the rank of "colonel" or the equivalent or higher in post after May 2011;
- (e) members of the Syrian security and intelligence services in post after May 2011;
- (f) members of the regime-affiliated militias;
- (g) persons, entities, units, agencies, bodies or institutions operating in the chemical weapons proliferation;

and natural or legal persons and entities associated with them, and to whom Article 21 of this Regulation does not apply.

1b. Persons, entities and bodies within one of the categories referred to in paragraph 1a shall not be included or retained on the list of persons, entities and bodies in Annex II if there is sufficient information that they are not, or are no longer, associated with the regime or do not exercise influence over it or do not pose a real risk of circumvention.'

Background to the dispute

5 The background to the dispute is set out in paragraphs 2 to 27 of the judgment under appeal. For the purposes of the present appeal, it may be summarised as follows.

6 The appellant is a Syrian businessperson whose name was added by Implementing Decision 2020/212 and Implementing Regulation 2020/211 at line 291 of the list in Section A (Persons) of Annex I to Decision 2013/255 and at line 291 of the list in Section A (Persons) of Annex II to Regulation No 36/2012, listing the names of the persons whose funds and economic resources are frozen (together, ‘the lists at issue’), respectively. His position was described therein as ‘General Manager of ASM International General Trading LLC’. ‘Samer Foz; ... Aman Holding [(Aman Dimashq JSC)]’ and ‘ASM International General Trading LLC’ were referred to therein as ‘relatives/business associates/entities or partners/links’ of the appellant.

7 The reasons for including the appellant’s name on the lists at issue were worded as follows, in an identical manner in each of those lists:

‘Leading businessperson with personal and family business interests and activities in multiple sectors of the Syrian economy, including through Aman Holding (formerly known as the Aman Group). Through Aman Holding, he benefits financially from access to commercial opportunities and supports the [regime of Bashar Al-Assad], including through involvement in the regime-backed development of Marota City. Since 2012, he has also been General Manager of ASM International [General] Trading LLC.

He is also associated with his brother Samer Foz, who has been designated by the [European Union] since January 2019 as a leading businessperson operating in Syria and for supporting or benefiting from the regime.’

8 By Decision 2020/719, which extended the application of Decision 2013/255 until 1 June 2021, and Implementing Regulation 2020/716, the Council of the European Union maintained the appellant’s name on the lists at issue for the same reasons.

9 By Decision 2021/855, which extended the application of Decision 2013/255 until 1 June 2022, and Implementing Regulation 2021/848, the Council maintained the appellant’s name on the lists at issue, amending, first, the description of his position and, second, the reasons for his inclusion on those lists (‘the 2021 reasons’).

10 Accordingly, first, his position is now described therein as ‘Founder of District 6 Company; Founding partner of Easy life Company’. The reference to ‘ASM International General Trading LLC’ has been deleted and that of ‘Vice Chairman of Asas Steel Company’ has been added as ‘relatives/business associates/entities or partners/links’ of the appellant.

11 Second, the 2021 reasons are worded as follows:

‘Leading businessperson with personal and family business interests and activities in multiple sectors of the Syrian economy. He benefits financially from access to commercial opportunities and supports the Syrian regime. Between 2012 and 2019, he was General Manager of ASM International [General] Trading LLC.

He is also associated with his brother Samer Foz, who has been designated by the Council since January 2019 as a leading businessperson operating in Syria and for supporting or benefiting from the regime. Together with his brother, he implements a number of commercial projects, notably in the Adra al-Ummaliyya area ([Damascus suburbs, Syria]). These projects include a factory that manufactures cables and cable accessories as well as a project to produce electricity

using solar power. They also engaged in various activities with [the Islamic State of Iraq and the Levant (ISIL), Da'esh] on behalf of the [regime of Bashar Al-Assad], including the provision of weapons and ammunitions in exchange for wheat and oil.'

The action before the General Court and the judgment under appeal

- 12 By application lodged at the Registry of the General Court on 12 May 2020 and amended in the course of the proceedings, the appellant brought an action for annulment of the initial measures, the 2020 maintaining acts and the acts at issue, in so far as they concern him, relying on six pleas in law alleging (i) an error of assessment, (ii) infringement of the principle of proportionality, (iii) infringement of the right to property and the freedom to pursue an economic activity, (iv) misuse of powers, (v) infringement of the obligation to state reasons and, lastly, (vi) infringement of the rights of the defence and of the right to a fair hearing.
- 13 The General Court first examined the fifth and sixth pleas, which it rejected, and next, in paragraphs 71 to 179 of the judgment under appeal, the first plea.
- 14 In that context, after preliminary considerations, the General Court examined the elements of the reasons for listing in respect of each of the listing criteria, the relevance and reliability of the evidence submitted by the Council, followed by the scope of the listing criterion relating to the association with a person or entity subject to the restrictive measures and the appellant's family business interests within Aman Holding and ASM International General Trading.
- 15 So far as concerns the appellant's family business interests within Aman Holding, in paragraph 137 of the judgment under appeal, the General Court noted that, as regards the acts at issue, the appellant had legitimately established that, on 22 November 2020, and therefore prior to their adoption, he had transferred his shares in Aman Holding and that, following that transfer, he no longer held a position of responsibility within that company; accordingly, in respect of those acts, the Council could not rely on his shareholding in that company in order to establish a link between him and his brother, Samer Foz. The General Court concluded, in paragraph 144 of that judgment, that, as regards the initial measures and the 2020 maintaining acts, the Council had sufficiently substantiated the link between the appellant and his brother, Samer Foz, on account of their business links with Aman Holding, but that was not the case as regards the acts at issue.
- 16 Concerning the appellant's family business interests within ASM International General Trading, in paragraphs 149 and 155 of the judgment under appeal, the General Court held that, as regards the initial measures, the Council had sufficiently substantiated the link between the appellant and his brother, Samer Foz, on account of their business links with ASM International General Trading, but not as regards the 2020 maintaining acts or the acts at issue, since that company had been liquidated on 25 February 2020.
- 17 As for the various activities with ISIL carried out by the appellant and his brother, Samer Foz, on behalf of the Syrian regime, the General Court, in paragraphs 161 to 164 of the judgment under appeal, stated as follows:

'161. According to the wording of the 2021 reasons, the various activities with ISIL carried out on behalf of the Syrian regime include, inter alia, "the provision of weapons and ammunitions in exchange for wheat and oil".

162. It can be established, in the light of the information from the website Pro-Justice, that the [appellant] and his brother carried out activities on behalf of the Syrian regime, including the provision of weapons and ammunition in exchange for wheat and oil. According to that website, that trade took place when ISIL controlled eastern Syria, which, moreover, was confirmed by an ISIL leader. The website The Syria Report mentions that the transport of wheat, in particular, in areas controlled by ISIL is carried out by Aman Holding's subsidiary, which is another factor indicating Samer Foz's importance in the eyes of the Syrian regime. Aman Holding, which is managed by the Foz family, acts on behalf of the Syrian regime in the grain trade, according to the Reuters website. It is stated on the latter website that Aman Holding acts as a broker in the grain trade for Hoboob, a company owned by the Syrian State. Aman Holding confirms that it imported wheat into Syria in 2013. Finally, ASM International General Trading, established in the United Arab Emirates, also operated in the wheat trade, as is apparent from the websites Arab News and Al Arabiya.
163. Therefore, as is apparent from paragraph 162 above, the Council has adduced a set of indicia that are sufficiently specific, precise and consistent within the meaning of the case-law. Thus, that part of the 2021 reasons is sufficiently substantiated. That conclusion is not called into question by the [appellant's] unsubstantiated argument that those accusations are the result of peremptory assertions which are, consequently, unfounded.
164. Therefore, it must be concluded that, as regards that part of the 2021 reasons, the Council sufficiently substantiated the link between the [appellant] and Samer Foz on account of their various activities carried out on behalf of the Syrian regime with ISIL.'
- 18 Under the heading 'Conclusions on association with a person or entity subject to restrictive measures', the General Court stated as follows, in paragraphs 165 to 167 of the judgment under appeal:
- '165. In the first place, it is clear from the foregoing that the [appellant] and his brother, Samer Foz, have links in the context of business. First of all, the Council has demonstrated that, at the time when the initial measures were adopted, the [appellant] and Samer Foz had business links through the family business Aman Holding and ASM International General Trading. Next, as regards the 2020 maintaining acts, the Council demonstrated that the two brothers had business links through that family undertaking. Finally, as regards the 2021 maintaining acts, the Council has demonstrated that the [appellant] and his brother had business links, since they carried out activities with ISIL on behalf of the Syrian regime.
166. The business links between the [appellant] and his brother, Samer Foz, are also reflected in a form of concertation in how their share portfolios are managed. ...
167. Finally, in his written pleadings, the [appellant] does not claim to have broken off his relations with Samer Foz or distanced himself from him. Consequently, the links between the [appellant] and his brother continue.'
- 19 In paragraph 177 of the judgment under appeal, the General Court found that the reason for including the appellant's name on the lists at issue due to his association with a person subject to restrictive measures was sufficiently substantiated, with the result that, in the light of that criterion, the inclusion of his name on those lists was well founded. In paragraph 179 of that

judgment, the General Court rejected the first plea as unfounded, without there being any need to examine the merits of the other complaints raised by the appellant seeking to call into question the other reasons for listing.

- 20 Lastly, the General Court rejected the fourth plea, then the second and third pleas, taken together and, consequently, the action in its entirety.

Forms of order sought by the parties and procedure before the Court of Justice

- 21 The appellant claims that the Court should:

- set aside in part the judgment under appeal in so far as that judgment dismissed its action for annulment of the acts at issue;
- annul the acts at issue in so far as they concern him;
- order the Council to remove his name from the annexes to Decision 2013/255 and Regulation No 36/2012; and
- order the Council to pay the costs.

- 22 The Council contends that the Court should:

- dismiss the appeal;
- in the alternative, dismiss the appellant's request that it be ordered to remove his name from the annexes to Decision 2013/255 and Regulation No 36/2012; and
- order the appellant to pay the costs.

The appeal

- 23 The appellant puts forward eight grounds in support of his appeal, the first to fourth of which allege distortion of the evidence and factual circumstances, the fifth, misapplication of the case-law arising from the judgments of 21 April 2015, *Anbouba v Council* (C-605/13 P, EU:C:2015:248), and of 21 April 2015, *Anbouba v Council* (C-630/13 P, EU:C:2015:247), the sixth, misapplication of Articles 27 and 28 of Decision 2013/255, as amended by Decision 2015/1836, and of Article 15 of Regulation No 36/2012, as amended by Regulation 2015/1828, the seventh, distortion of the facts, and the eighth, misapplication of the rules relating to the burden of proof.

Admissibility

Arguments of the parties

- 24 The Council contends, primarily, that the grounds of appeal are inadmissible in the absence of the precise identification of the contested paragraphs of the judgment under appeal, contrary to the requirements of the second subparagraph of Article 256(1) TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union and Article 168(1)(d) and Article 169(2) of the Rules of Procedure of the Court of Justice. Consequently, the action should be declared inadmissible in its entirety.
- 25 The appellant disputes that line of argument by submitting that, in addition to the arguments put forward in support of each of the grounds of appeal which he raises, the introductory part of the appeal concerns paragraphs 162, 167 and 177 of the judgment under appeal as being those which contain the findings of the General Court which he considers to be incorrect.

Findings of the Court

- 26 As a preliminary point, in accordance with settled case-law, it follows from the second subparagraph of Article 256(1) TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union and Article 168(1)(d) and Article 169(2) of the Rules of Procedure of the Court that an appeal must indicate precisely the contested paragraphs of the judgment under appeal and the legal arguments specifically advanced in support of the appeal, failing which the appeal or the ground of appeal concerned may be inadmissible (judgment of 23 November 2021, *Council v Hamas*, C-833/19 P, EU:C:2021:950, paragraph 50 and the case-law cited).
- 27 An appeal that does not have such characteristics cannot be the subject of a legal assessment which would allow the Court to exercise its function in the area under examination and to carry out its review of legality (order of 19 June 2015, *Makhlouf v Council*, C-136/15 P, EU:C:2015:411, paragraph 25, and judgment of 17 December 2020, *Inpost Paczkomaty v Commission*, C-431/19 P and C-432/19 P, EU:C:2020:1051, paragraph 31 and the case-law cited).
- 28 In the present case, so far as concerns the sixth ground of appeal, as the Council contends, the appeal does not meet the requirements of that case-law. The arguments put forward by the appellant in support of that ground of appeal do not refer to any specific paragraph of the judgment under appeal and do not make it possible to identify the considerations which are vitiated by an error of law, among those set out in paragraphs 79 to 176 of that judgment, which led the General Court to confirm, in paragraph 177 of the judgment under appeal, that the inclusion of his name on the lists at issue was well founded.
- 29 By contrast, the appeal makes it possible to identify the contested paragraphs of the judgment under appeal which are being challenged in the first to fifth and eighth grounds of appeal, namely paragraphs 161 to 164 of that judgment, and sets out the reasons why, according to the appellant, those paragraphs are vitiated by an error of law, enabling the Court of Justice to exercise its power of review. The same applies to the seventh ground of appeal, which concerns paragraph 167 of that judgment.

- 30 It follows that the first to fifth, seventh and eighth grounds of appeal are admissible and that the sixth ground of appeal must be rejected as inadmissible.

Substance

The first to fourth grounds of appeal

– Arguments of the parties

- 31 By his first ground of appeal, the appellant submits that, in paragraphs 161 to 164 of the judgment under appeal, the General Court distorted the evidence from the Pro-Justice website. First, the General Court altered and distorted the original text of the article published on that website, by presenting the claims of its author as proven facts notwithstanding the reservations expressed and precautions taken by that author, who had used the term ‘accused’ and, on two occasions, the adverb ‘purportedly’. Second, the General Court wrongly referred to the confirmation of the trade referred to by an ISIL leader, since the URL link referred to in a footnote to that article refers to a page that does not exist. That confirmation is, in any event, not demonstrated or corroborated by any other source and that article lacks precision as regards the alleged involvement of the appellant with his brother, Samer Foz, in dealings with ISIL.
- 32 By his second to fourth grounds of appeal, the appellant submits that the General Court distorted the evidence from, respectively, the website The Syria Report, the press article on the Reuters website and, so far as concerns ASM International General Trading, the websites Arab News and Al Arabya. In that regard, the website The Syria Report refers to a subsidiary of Aman Holding and not to the appellant’s personal involvement in dealings with ISIL. The press article on the Reuters website refers to the companies Aman Group or Aman Holding and not to the appellant or ISIL. Lastly, the websites Arab News and Al Arabya do not mention ISIL, but only ASM International General Trading.
- 33 The General Court contradicts itself given that, first, in paragraph 137 of the judgment under appeal, it acknowledged that the appellant had transferred his shares in Aman Holding before the date of adoption of the acts at issue and that, following that transfer, he no longer held a position of responsibility within that company. Second, the General Court held that, in respect of those acts, the Council could not rely on the appellant’s shareholding in Aman Holding in order to establish a link between him and his brother, Samer Foz. Accordingly, paragraph 137 of the judgment under appeal invalidates the article on the website The Syria Report, which is not up to date. The same is true of the press article from the Reuters website.
- 34 The General Court also contradicts itself in so far as it accepted that ASM International General Trading had been dissolved and held, in paragraph 155 of the judgment under appeal, that the business links between the appellant and his brother, Samer Foz, within ASM International General Trading were not sufficiently substantiated as regards the 2020 maintaining acts and the acts at issue. The evidence from the websites Arab News and Al Arabya is therefore also not up to date.

- 35 By considering that the evidence from those four websites could corroborate a link between the appellant and his brother, Samer Foz, in dealings with ISIL, when that evidence did not demonstrate such a link, the General Court was not consistent and distorted the facts. Therefore, all of those items of evidence should be excluded from the set of indicia relied on by the General Court.
- 36 According to the Council, the first to fourth grounds of appeal are unfounded.

– *Findings of the Court*

- 37 According to settled case-law, in an appeal, the Court of Justice has no jurisdiction to establish the facts or, in principle, to examine the evidence which the General Court accepted in support of those facts. Provided that the evidence has been properly obtained and the general principles of law and the Rules of Procedure in relation to the burden of proof and the taking of evidence have been observed, it is for the General Court alone to assess the value which should be attached to the evidence produced before it, save where that evidence has been distorted (see, to that effect, judgment of 1 October 2020, *Cham Holding v Council*, C-261/19 P, EU:C:2020:781, paragraph 66 and the case-law cited).
- 38 There is such distortion where, without recourse to new evidence, the assessment of the existing evidence is clearly incorrect. However, such distortion must be obvious from the documents on the Court's file, without there being any need to carry out a new assessment of the facts and the evidence. Furthermore, where an appellant claims that the evidence has been distorted, it must indicate precisely the evidence alleged to have been distorted by the General Court and show the errors of appraisal which, in its view, led to that distortion (judgment of 29 November 2018, *Bank Tejarat v Council*, C-248/17 P, EU:C:2018:967, paragraph 44 and the case-law cited).
- 39 In the present case, as regards the excerpt from the report on the website Pro-Justice which, according to the first ground of appeal, the General Court distorted, it is true that the General Court did not quote that excerpt verbatim, in paragraph 162 of the judgment under appeal, but referred to its content in substance, using more positive wording, without making any reference to the term 'accused' or to the adverb 'purportedly' contained in that report. However, the General Court's assessment of that evidence does not appear to be manifestly incorrect, since it is apparent from that report that a named ISIL leader confirmed that the appellant and his brother, Samer Foz, were engaged in various commercial activities with ISIL on behalf of the Syrian regime. Furthermore, although the appellant claims that the URL link given in the footnote is no longer active, it is not apparent from paragraph 162 of that judgment that the General Court based its assessment on that source. In any event, the only item of evidence provided by the appellant does not make it possible to establish that that link was not active previously, in particular at the time when the Court took account of that report.
- 40 It should be added that, in paragraph 111 of the judgment under appeal, which is not disputed in the appeal, the General Court held that that report on the website Pro-Justice constituted sound and reliable evidence. Thus, in so far as the appellant claims that that report lacked precision, such an argument must be rejected as unfounded.
- 41 As regards the second to fourth grounds of appeal, by which the appellant claims that the General Court distorted the items of evidence deriving from the websites The Syria Report, Reuters, Arab News and Al Arabya, also referred to in paragraph 162 of the judgment under appeal, the appellant does not indicate precisely what that distortion consists of, but merely claims that they

were not able to demonstrate or corroborate the existence of a business link between the appellant and his brother, Samer Foz, since those items did not refer to him personally, or to ISIL as far as some of them are concerned, but to companies, namely Aman Group, Aman Holding and one of its subsidiaries, and ASM International Trading General.

- 42 In so far as the appellant claims that the evidence was outdated or obsolete since he had transferred his shares in Aman Holding on 7 October 2020 and ASM International General Trading had been liquidated on 25 February 2020, as the General Court found in paragraphs 133 and 149 of the judgment under appeal, it appears that the appellant had already made that argument before the General Court, as is apparent from paragraphs 103 to 112 of that judgment.
- 43 Similarly, the appellant had already argued before the General Court that his name was not mentioned in several of the articles from those websites, as is apparent from paragraphs 98 to 102 of that judgment.
- 44 However, the General Court held, in paragraphs 98 to 112 of that judgment, which are not subject to challenge in the present appeal, that it was reliable and relevant evidence, like that of the website Pro-Justice.
- 45 It follows from all the foregoing that, by that line of argument and by the line of argument relied on, as to the remainder, in support of the first ground of appeal, the appellant appears in actual fact to be seeking to obtain a fresh assessment of the facts and evidence by the Court of Justice, which falls outside its jurisdiction in an appeal in accordance with the case-law cited in paragraph 37 of the present judgment. In that respect, such a line of argument is inadmissible.
- 46 Lastly, the argument that there is a contradiction between the considerations of the General Court set out, first, in paragraphs 137 and 155 of the judgment under appeal and, second, in paragraphs 162 to 164 of that judgment, is based on a misreading of that judgment. As the Council correctly maintains, the General Court's findings in those paragraphs are not based on the appellant's involvement in those companies on a specific date, contrary to what the General Court states in paragraphs 137, 144 and 155 of that judgment. Furthermore, it is apparent in particular from paragraphs 129, 143, 145 and 146 of the judgment under appeal, which are not contested in the present appeal, that the appellant was indeed involved in those companies with his brother, Samer Foz, before that transfer and liquidation. Therefore, that argument must be rejected as unfounded.
- 47 It follows that the first to fourth grounds of appeal must be rejected as partly inadmissible and partly unfounded.

The fifth ground of appeal

– Arguments of the parties

- 48 By his fifth ground of appeal, the appellant submits that the General Court misapplied the case-law arising from the judgments of 21 April 2015, *Anbouba v Council* (C-605/13 P, EU:C:2015:248), and of 21 April 2015, *Anbouba v Council* (C-630/13 P, EU:C:2015:247), by holding, in paragraph 164 of the judgment under appeal, that the Council had substantiated to the requisite legal standard the link which existed between the appellant and his brother, Samer Foz, on account of their various activities carried out on behalf of the Syrian regime with ISIL

and, therefore, the requirement relating to the existence of a set of indicia that are sufficiently specific, precise and consistent within the meaning of that case-law. In so far as the evidence from the websites Pro-Justice and The Syria Report, the press article published on the Reuters website and, so far as concerns ASM International General Trading LLC, the websites Arab News and Al Arabya, were all distorted, the set of indicia relied on by the General Court lacks content.

49 The Council contends that the fifth ground of appeal is unfounded.

– *Findings of the Court*

50 In the present case, the appellant's arguments put forward in support of the fifth ground of appeal presuppose that the General Court distorted, as he claimed in support of his first to fourth grounds of appeal, the evidence drawn from the websites referred to in paragraph 162 of the judgment under appeal, which led the General Court to confirm, in paragraph 164 of that judgment, that, as regards the part of the reasons of the acts at issue relating to the link between the appellant and his brother, Samer Foz, on account of their various activities carried out on behalf of the Syrian regime with ISIL, the Council had adduced a set of indicia that are sufficiently specific, precise and consistent within the meaning of the case-law arising from the judgments of 21 April 2015, *Anbouba v Council* (C-605/13 P, EU:C:2015:248), and of 21 April 2015, *Anbouba v Council* (C-630/13 P, EU:C:2015:247), cited in paragraph 158 of the judgment under appeal.

51 Since it follows from the response given to the first to fourth grounds of appeal, set out in paragraph 47 of the present judgment, that the appellant has unsuccessfully challenged the judgment under appeal on grounds of distortion, the fifth ground of appeal must be rejected as ineffective.

The eighth ground of appeal

– *Arguments of the parties*

52 By his eighth ground of appeal, the appellant submits that the General Court misapplied the rules governing the burden of proof in so far as it held, in paragraph 163 of the judgment under appeal, that the claim that he carried out various activities with ISIL and his brother, Samer Foz, on behalf of the Syrian regime, could not be called into question by his allegedly unfounded argument that those accusations were the result of 'peremptory' and, according to the General Court, 'unfounded' assertions. In that connection, the appellant has always denied having had any relationship with ISIL and the fact of demonstrating the opposite amounts to proving a negative fact and, therefore, a '*probatio diabolica*'. The burden of proof rested on the Council in accordance with the case-law of the Court of Justice, which adduced, as previously shown, unsatisfactory evidence distorted by the General Court.

53 The Council maintains that that ground is unfounded.

– *Findings of the Court*

- 54 By his eighth ground of appeal, the appellant claims, in essence, that, in paragraph 163 of the judgment under appeal, the General Court infringed the rules relating to the burden of proof in so far as it found that the conclusion which it had reached, as regards the sufficiently substantiated nature of the part of the 2021 reasons relating to the various activities with ISIL carried out by the appellant and his brother, Samer Foz, on behalf of the Syrian regime, was not called into question by the appellant's unsubstantiated argument that those accusations were the result of unfounded assertions.
- 55 It is not apparent from that finding of the General Court that it had infringed the rules on the burden of proof.
- 56 In that regard, first, it should be noted that that finding is based on the assessment, by the General Court alone, of the evidence provided by the Council, referred to in paragraph 162 of the judgment under appeal, in respect of which, contrary to the appellant's premiss in his arguments and as is apparent from paragraphs 39 to 47 of the present judgment, the Court of Justice did not find any distortion on the part of the General Court. Second, it is apparent that the General Court examined the relevance and reliability of the evidence produced by the Council not only in paragraphs 98 to 112 of the judgment under appeal, but also in the light of the conditions laid down in Article 27(3) and Article 28(3) of Decision 2013/255, as amended by Decision 2015/1836, in paragraphs 170 to 176 of that judgment, since those various paragraphs are not contested in the appeal.
- 57 Lastly, the appellant does not state that he submitted to the General Court evidence which it failed to examine.
- 58 It follows that, under the guise of a ground of appeal alleging infringement of the rules governing the burden of proof, the appellant is in actual fact asking the Court of Justice to substitute its own assessment of the evidence submitted to the General Court and of the value which the General Court attributed to it, which, in accordance with the case-law referred to in paragraph 37 of the present judgment, falls outside the Court of Justice's jurisdiction on appeal.
- 59 In the light of those considerations, the eighth ground of appeal must be rejected as inadmissible.

The seventh ground of appeal

– *Arguments of the parties*

- 60 By his seventh ground of appeal, the appellant claims that the General Court, in paragraph 167 of the judgment under appeal, distorted the factual circumstances concerning the absence of a link between him and his brother, Samer Foz, in finding that, in his written pleadings, the appellant did not claim to have broken off his relations with Samer Foz or to have distanced himself from him. The appellant stated many times in his written pleadings that he no longer had any business or professional relationship with his brother, Samer Foz, in particular in paragraphs 92 to 99 of his reply before the General Court, in which he stated, inter alia, that, at the time when he lodged his application at first instance, he was not associated with his brother, Samer Foz, in any undertaking, company, partnership or project.

61 According to the Council, that ground of appeal is unfounded.

– *Findings of the Court*

- 62 By his seventh ground of appeal, the appellant complains that the General Court distorted the assertions made in his written pleadings by holding, in paragraph 167 of the judgment under appeal, that he did not claim to have broken off his relations with Samer Foz or to have distanced himself from him, when he specifically stated therein that he no longer had any business relationship with him.
- 63 However, those considerations set out in the first sentence of paragraph 167 are only one of the grounds in support of the General Court’s finding relating to the appellant’s association with a person subject to restrictive measures, which is based essentially on the grounds set out in paragraphs 165 and 166 of that judgment establishing the existence of present or past business links between the appellant and his brother, Samer Foz. Those latter grounds are either not referred to in the appeal or, in so far as they are based on paragraphs 162 to 164 of that judgment, were unsuccessfully criticised in the first to fifth and eighth grounds of appeal, as is apparent from paragraphs 47, 51 and 59 of the present judgment.
- 64 Since those grounds support, to the requisite legal standard, the conclusion in the second sentence of paragraph 167 of the judgment under appeal, any distortion alleged by the appellant, even if established, cannot lead to the judgment under appeal being set aside. It follows that the seventh ground of appeal must be rejected as ineffective.
- 65 Since none of the grounds of appeal have been upheld, the appeal should be dismissed in its entirety.

Costs

- 66 Under Article 138(1) of the Rules of Procedure of the Court, which applies to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party’s pleadings.
- 67 Since the Council has applied for costs and the appellant has been unsuccessful, the appellant must be ordered to bear his own costs and to pay those incurred by the Council.

On those grounds, the Court (Sixth Chamber) hereby:

- 1. Dismisses the appeal;**
- 2. Orders Mr Amer Foz to bear his own costs and to pay those incurred by the Council of the European Union.**

von Danwitz

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Delivered in open court in Luxembourg on 11 January 2024.

A. Calot Escobar
Registrar

T. von Danwitz
President of the Chamber