



Reports of Cases

JUDGMENT OF THE GENERAL COURT (Seventh Chamber)

30 April 2015 *

(Common foreign and security policy — Restrictive measures against Syria — Freezing of funds — Rights of the defence — Obligation to state reasons — Error of assessment — Right to property — Right to respect for private life — Proportionality)

In Case T-593/11,

Fares Al-Chihabi, residing in Aleppo (Syria), represented initially by L. Ruessmann and W. Berg, lawyers, and subsequently by L. Ruessmann and J. Beck, Solicitor,

applicant,

v

Council of the European Union, represented by M. Bishop and R. Liudvinaviciute-Cordeiro, acting as Agents,

defendant,

supported by

European Commission, represented initially by S. Boelaert and T. Scharf, and subsequently by T. Scharf and M. Konstantinidis, acting as Agents,

intervener,

APPLICATION for annulment of Council Decision 2011/522/CFSP of 2 September 2011 amending Decision 2011/273/CFSP concerning restrictive measures against Syria (OJ 2011 L 228, p. 16), Council Regulation (EU) No 878/2011 of 2 September 2011 amending Regulation (EU) No 442/2011 concerning restrictive measures in view of the situation in Syria (OJ 2011 L 228, p. 1), Council Decision 2011/782/CFSP of 1 December 2011 concerning restrictive measures against Syria and repealing Decision 2011/273 (OJ 2011 L 319, p. 56), Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation No 442/2011 (OJ 2012 L 16, p. 1), Council Decision 2012/739/CFSP of 29 November 2012 concerning restrictive measures against Syria and repealing Decision 2011/782 (OJ 2012 L 330, p. 21), Council Implementing Regulation (EU) No 1117/2012 of 29 November 2012 implementing Article 32(1) of Regulation No 36/2012 (OJ 2012 L 330, p. 9), 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), and any subsequent legislation to the extent that it maintains or replaces those acts in so far as those acts concern the applicant,

* Language of the case: English.

THE GENERAL COURT (Seventh Chamber),

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

Registrar: C. Kristensen, Administrator,

having regard to the written procedure and further to the hearing on 12 June 2014,

gives the following

Judgment

Background to the dispute

- 1 The applicant, Mr Fares Al-Chihabi, is a businessman of Syrian nationality.
- 2 Strongly condemning the violent repression of peaceful protest in various locations throughout Syria and calling on the Syrian authorities not to resort to force, the Council of the European Union adopted on 9 May 2011 Decision 2011/273/CFSP concerning restrictive measures against Syria (OJ 2011 L 121, p. 11). In view of the seriousness of the situation, the Council established an arms embargo, a ban on equipment that could be used for internal repression, restrictions on the admission into the European Union of certain persons and entities responsible for the violent repression of the civilian population in Syria, and the freezing of their funds and economic resources.
- 3 The names of the persons responsible for the violent repression of the civilian population in Syria are listed in the annex to Decision 2011/273, as are those of the persons — natural or legal — and entities associated with them. The applicant's name is not listed there. Under Article 5 of that decision, the Council, acting upon a proposal by a Member State or the High Representative of the European Union for Foreign Affairs and Security Policy, may amend that annex.
- 4 Since some of the restrictive measures taken against the Syrian Arab Republic fall within the scope of the FEU Treaty, the Council adopted Regulation (EU) No 442/2011 of 9 May 2011 concerning restrictive measures in view of the situation in Syria (OJ 2011 L 121, p. 1). That regulation is essentially identical to Decision 2011/273, but provides for the possibility of releasing frozen funds. The list set out in Annex II to Regulation No 442/2011 is identical to the list set out in the Annex to Decision 2011/273 and consequently does not mention the applicant's name. Under Article 14(1) and (4) of Regulation No 442/2011, where the Council decides to subject a natural or legal person, entity or body to the restrictive measures referred to, it is required to amend Annex II accordingly and also to review the list set out therein at regular intervals and at least once every 12 months.
- 5 By Decision 2011/522/CFSP of 2 September 2011 (OJ 2011 L 228, p. 16), the Council amended Decision 2011/273, providing that the scope of that decision and the Annex thereto also covered 'persons benefiting from or supporting the regime, and persons associated with them, as listed in the annex'. The applicant's name appears in the first line of the table in the Annex to that decision, together with the date '2.09.2011' and the following reasons:

'President of Aleppo Chamber of Industry. Supports economically the Syrian regime.'

- 6 By Regulation (EU) No 878/2011 of 2 September 2011 amending Regulation No 442/2011 (OJ 2011 L 228, p. 1), the Council extended the scope of Annex II to Regulation No 442/2011 to cover ‘persons and entities benefiting from or supporting the regime, or persons and entities associated with them’. The applicant’s name appears in the first line of the table in that annex, together with the same reasons and information as in the Annex to Decision 2011/522.
- 7 On 3 September 2011, the Council published a Notice for the attention of the persons and entities to which restrictive measures provided for in Decision 2011/522 and Regulation No 878/2011 apply (OJ 2013 C 261, p. 4).
- 8 By Decision 2011/782/CFSP of 1 December 2011 concerning restrictive measures against Syria and repealing Decision 2011/273 (OJ 2011 L 319, p. 56), the Council found that, in view of the seriousness of the situation in Syria, it was necessary to impose additional restrictive measures, such as restrictions on financing enterprises or participating in certain infrastructure projects. For the sake of clarity, the measures imposed by Decision 2011/273 were grouped together with the additional measures into a single legal instrument. The applicant’s name appears in line 51 of the table in Annex I to that decision, together with the same information and reasons as in the Annex to Decision 2011/522.
- 9 On 2 December 2011, the Council published a Notice for the attention of the persons and entities to which restrictive measures provided for in Decision 2011/782 and Regulation No 442/2011, as implemented by Council Implementing Regulation (EU) No 1244/2011 concerning restrictive measures in view of the situation in Syria, apply (OJ 2011 C 351, p. 14).
- 10 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) lays down further restrictive measures and amends the list of persons and entities covered. The applicant’s name appears in line 51 of the table in Annex II to that regulation, together with the same information and reasons as in the Annex to Decision 2011/522.
- 11 On 24 January 2012, the Council published a Notice for the attention of the persons and entities to which restrictive measures provided for in Decision 2011/782, as implemented by Council Implementing Decision 2012/37/CFSP, and in Regulation No 36/2012, as implemented by Council Implementing Regulation (EU) No 55/2012 concerning restrictive measures against Syria, apply (OJ 2012 C 19, p. 5).
- 12 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 at issue were grouped together into a single legal instrument. The applicant’s name appears in line 49 of the table in Annex I to that decision, together with some of the same reasons and information as in the Annex to Decision 2011/522. The Council also mentioned a new reason, that is to say, it inserted the annotation ‘Vice-chairman of Cham Holding’.
- 13 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) amends Annex II to Regulation No 36/2012. The applicant’s name appears in line 1 of the table in that annex, together with the same information and reasons as in the Annex to Decision 2012/739.
- 14 On 30 November 2012, the Council published a Notice for the attention of the persons and entities to which restrictive measures provided for in Decision 2012/739 and Regulation No 36/2012, as implemented by Implementing Regulation No 1117/2012, apply (OJ 2012 C 370, p. 6).

- 15 Council Implementing Decision 2013/185/CFSP of 22 April 2013 implementing Decision 2012/739 (OJ 2012 L 111, p. 77) is intended to update the list, set out in Annex I to Decision 2012/739, of persons and entities subject to restrictive measures. The applicant's name appears in line 49 in that annex, together with the same information and reasons as in Decision 2012/739.
- 16 Council Implementing Regulation (EU) No 363/2013 of 22 April 2013 implementing Regulation No 36/2012 (OJ 2013 L 111, p. 1) amends Annex II to Regulation No 36/2012. The applicant's name appears in line 49 of the table in that annex, together with the same information and reasons as in the Annex to Decision 2012/739.
- 17 On 23 April 2013, the Council published a Notice for the attention of the persons and entities to which restrictive measures provided for in Decision 2012/739, as implemented by Implementing Decision 2013/185, and in Regulation No 36/2012, as implemented by Implementing Regulation No 363/2013, apply (OJ 2013 C 115, p. 5).
- 18 On 31 May 2013, the Council adopted Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2013 L 147, p. 14). The applicant's name appears in line 49 in Annex I to that decision, together with the same information and reasons as in the Annex to Decision 2012/739.
- 19 On 1 June 2013, the Council published a Notice for the attention of the persons and entities to which restrictive measures provided for in Decision 2013/255 and Regulation No 36/2012 apply (OJ 2013 C 155, p. 1).

Procedure and forms of order sought

- 20 By application lodged at the Court Registry on 28 September 2011, the applicant brought an action for the annulment of Decision 2011/522, Regulation No 878/2011, Council Decision 2011/684/CFSP of 13 October 2011 amending Decision 2011/273 (OJ 2011 L 269, p. 33), and Council Regulation (EU) No 1011/2011 of 13 October 2011 amending Regulation No 442/2011 (OJ 2011 L 269, p. 18) to the extent that they concern him, and any subsequent legislation designed to maintain those acts to the extent that those acts concern him.
- 21 By separate document, lodged at the Court Registry on the same date, the applicant applied for an expedited procedure in accordance with Article 76a of the Rules of Procedure of the Court.
- 22 By decision of 20 January 2012, the Court (Sixth Chamber) refused that application.
- 23 By order of 30 April 2012, the President of the Sixth Chamber of the Court granted the European Commission's application, lodged at the Court Registry on 16 March 2012, for leave to intervene in support of the form of order sought by the Council.
- 24 In the reply lodged at the Court Registry on 12 April 2012, the applicant amended the form of order sought, applying also for the annulment of Decision 2011/782 and Regulation No 36/2012, to the extent that those acts concern him. In its rejoinder, lodged at the Court Registry on 25 May 2012, the Council took formal note of the applicant's request.
- 25 By statement lodged at the Court Registry on 16 July 2013, the applicant amended the form of order sought, requesting solely the annulment of Decision 2012/739, Implementing Regulation No 1117/2012, Implementing Regulation No 363/2013 and Decision 2013/255, to the extent that those acts concern him, and of any subsequent legislation in so far as it maintains or replaces those acts to the extent that those acts concern him. In its observations, lodged at the Court Registry on

3 September 2013, on the statement amending the form of order sought, the Council took formal note of the applicant's request, although it disputed the applicant's argument that he was no longer Vice-Chairman of Cham Holding.

- 26 Following a change in the composition of the Chambers of the Court, the Judge-Rapporteur was assigned to the Seventh Chamber, to which the present case was accordingly allocated.
- 27 On hearing the report of the Judge-Rapporteur, the Court decided to open the oral procedure and, by way of measures of organisation of procedure, as provided for under Article 64 of its Rules of Procedure, called upon the Council and the applicant to reply to a number of written questions and to produce, as appropriate, certain documents. The parties complied with those requests.
- 28 At the hearing on 12 June 2014, the parties presented oral argument and answered the questions put by the Court. The applicant confirmed that he was withdrawing his application for the annulment also of any subsequent legislation to the extent that it maintains or replaces the acts whose annulment is sought. Formal note of this was taken in the minutes of the hearing.
- 29 The applicant claims that the Court should:
- annul Decision 2011/522, Regulation No 878/2011, Decision 2011/782, Regulation No 36/2012, Decision 2012/739, Implementing Regulation No 1117/2012, Implementing Regulation No 363/2013 and Decision 2013/255 (collectively, 'the contested acts');
 - order the Council to pay the costs.
- 30 The Council, supported by the Commission, contends that the Court should:
- dismiss the action;
 - order the applicant to pay the costs.

Law

- 31 In support of his application, the applicant initially puts forward four pleas in law: (i) infringement of the right to good administration and, in particular, breach of the obligation to state reasons; (ii) infringement of the rights of the defence and the right to effective judicial protection; (iii) infringement of fundamental rights, including the right to property, the right to respect for one's good name and reputation, the right to engage in work, the freedom to conduct a business and the right to the presumption of innocence; and (iv) infringement of the right to privacy and breach of the principle of proportionality. In his statement amending the form of order sought, the applicant also raises a fifth plea in law, alleging manifest error of assessment.
- 32 The Court will first examine the second plea, then the first and fifth pleas and, lastly, the third and fourth pleas, considered together.

Second plea in law: infringement of the rights of the defence and the right to effective judicial protection

- 33 The applicant submits that the Council infringed his rights of defence, together with his right to effective judicial protection, in that it was required to disclose to him, to the extent possible, the reasons why his name had been placed on the list of persons covered by restrictive measures. The

Council was required to do this at the time when the decision to place the applicant's name on the list was adopted, and also, at the latest, as soon as possible after that decision had been adopted, in order to enable the applicant to exercise his right to bring an action within the time allowed.

- 34 The applicant also alleges that his right to effective judicial protection has been infringed as a consequence of the infringement of his rights of defence, owing to the lack of any procedure enabling him to make his observations known and to the Council's refusal to allow him access, within a reasonable period after the enactment of those measures, to the file and in particular to the evidence relied on in order to justify the restrictive measures imposed.
- 35 The Council, supported by the Commission, disputes the applicant's arguments.
- 36 The first point to be borne in mind is that respect for the rights of the defence, enshrined in Article 41(2) of the Charter of Fundamental Rights of the European Union ('the Charter'), includes the right to be heard and the right to have access to the file, subject to legitimate interests in maintaining confidentiality (see Joined Cases C-584/10 P, C-593/10 P and C-595/10 P *Commission and Others v Kadi* [2013] ECR, '*Kadi II*', paragraph 99 and the case-law cited).
- 37 Moreover, the right to effective judicial protection, affirmed in Article 47 of the Charter, requires that the person concerned be able to ascertain the reasons upon which the decision taken in relation to him is based, either by reading the decision itself or by requesting and obtaining disclosure of those reasons, without prejudice to the power of the court having jurisdiction to require the authority concerned to disclose that information, so as to make it possible for the person concerned to defend his rights in the best possible conditions and to decide, with full knowledge of the relevant facts, whether there is any point in his applying to the court having jurisdiction, and in order to put the latter fully in a position to review the lawfulness of the decision in question (see *Kadi II*, paragraph 100 and the case-law cited).
- 38 Article 52(1) of the Charter nevertheless allows limitations on the exercise of the rights enshrined in the Charter, provided that the limitation concerned respects the essence of the fundamental right in question and that, in accordance with the principle of proportionality, it is necessary and genuinely meets objectives of general interest recognised by the European Union (see *Kadi II*, paragraph 101 and the case-law cited).
- 39 Further, the question whether there is an infringement of the rights of the defence must be examined by reference to the specific circumstances of each particular case, including the nature of the act at issue, the context of its adoption and the legal rules governing the matter in question (see *Kadi II*, paragraph 102 and the case-law cited).

Communication of the contested acts to the applicant

- 40 As regards the communication of the contested acts to the applicant, it should be noted that the EU Courts distinguish between, on the one hand, the initial entry, pursuant to a decision, of a person's name on a list of persons covered by restrictive measures and, on the other, the maintenance of that person's name on the list, pursuant to subsequent decisions.
- 41 First, with regard to the initial entry of a person's name on a list of persons covered by restrictive measures, the EU authorities cannot be required to communicate the grounds of those measures before the name of a person or entity is placed on such a list for the first time (see Case T-383/11 *Makhlouf v Council* [2013] ECR, paragraph 38 and the case-law cited). Such advance disclosure would be liable to jeopardise the effectiveness of the freezing of funds and resources imposed by those decisions (see *Makhlouf v Council*, paragraph 39 and the case-law cited).

- 42 Accordingly, in order to attain the objective pursued by Decision 2011/522 and Regulation No 878/2011, in the annexes to which the applicant's name was first listed, such measures must, by their very nature, take advantage of a surprise effect and apply with immediate effect (see, to that effect, *Makhlouf v Council*, paragraph 40 and the case-law cited).
- 43 For reasons also related to the objective pursued by Decision 2011/522 and to the effectiveness of the measures provided for therein, the EU authorities were therefore not under a duty to hear the applicant before his name was placed for the first time on the list set out in those annexes (see, to that effect, *Makhlouf v Council*, paragraph 41 and the case-law cited).
- 44 Secondly, as regards the prior notification of decisions maintaining a person's name on the list of persons covered by restrictive measures, it can be seen from paragraphs 101 and 103 of the judgment in *Kadi II*, read together, that, in cases where a decision maintains a person's name on such a list, as opposed to cases where the name is listed for the first time, the competent EU authority is in principle under a duty to disclose to that person, before the decision is adopted, the evidence on which it bases that decision, so that the person will be able to defend his rights.
- 45 However, where the Council supplements the reasons for placing the applicant's name on a list of persons covered by restrictive measures — as occurred in the present case when Decision 2012/739 and Implementing Regulation No 1117/2012 were adopted — a distinction must be made, according to the acts in question.
- 46 In the present case, it should be noted with regard to Decision 2011/782 and Regulation No 36/2012 - which maintain the applicant's name on the lists, set out in the annexes to those acts, of persons covered by restrictive measures, but which do not amend the reasons for the initial inclusion of those names - that although, in principle, new evidence must be notified and a hearing held before any subsequent decision freezing funds is adopted (Case C-27/09 P *France v People's Mojahedin Organization of Iran* [2011] ECR I-13427, paragraph 137, and Case T-49/07 *Fahas v Council* [2010] ECR II-5555, paragraph 48), that is not the position where the grounds of a subsequent decision freezing funds are in substance the same as those already relied on for the adoption of an earlier decision. Accordingly, a simple statement to that effect may suffice (Case T-341/07 *Sison v Council* [2009] ECR II-3625, paragraph 62, and *Fahas v Council*, paragraph 55).
- 47 In the light of that case-law, the rights of the defence are not adversely affected by dint of the fact that Decision 2011/782 and Regulation No 36/2012 — for which the Council simply repeated the reasons for the initial listing, without adding or amending anything — were not individually notified.
- 48 However, as regards Decision 2012/739 and Implementing Regulation No 1117/2012, for the purposes of which the Council amended the reasons for the initial inclusion of the applicant's name in the list in question, it should be observed that, before such acts are adopted, new evidence must be notified and the right to be heard respected (*France v People's Mojahedin Organization of Iran*, paragraph 63).
- 49 In that regard, it must be stated that the Council informed the applicant by letter of 29 May 2012 of its intention to amend the reasons for placing his name on the lists in question. The applicant was thus in a position to submit comments on the new reason proposed. The applicant was therefore wrong in asserting that the Council had infringed his right to be heard in relation to Decision 2012/739 and Implementing Regulation No 1117/2012.
- 50 As regards Decision 2013/255 and Implementing Regulation No 363/2013, since those acts faithfully repeat the reasoning in Decision 2012/739 and Implementing Regulation No 1117/2012, the fact that those acts were not individually notified does not adversely affect the rights of the defence.

The right to be heard and to have sight of the evidence

- 51 According to the case-law on decisions maintaining a person's name on a list of persons covered by restrictive measures, where the individual or the entity concerned makes comments on the reasons stated, the competent EU authority is under an obligation to examine, carefully and impartially, whether the reasons relied on are well founded, in the light of those comments and of any exculpatory evidence provided with those comments (see, to that effect, *Kadi II*, paragraph 114 and the case-law cited).
- 52 As the Council has argued, Article 21 of Decision 2011/782, Article 32 of Regulation No 36/2012, Article 27 of Decision 2012/739 and Article 30 of Decision 2013/255 provide that, where observations are submitted or where substantial new evidence is presented, the Council must review its decision and inform the person or entity concerned accordingly.
- 53 Moreover, it must be made clear that it is only at the request of the party concerned that the Council is required to provide access to non-confidential official documents concerning the measure at issue (Case C-548/09 P *Bank Melli Iran v Council* [2011] ECR I-11381, paragraph 92).
- 54 Furthermore, it should be recalled that the publication of a notice for the attention of the persons to whom such restrictive measures apply is sufficient to draw the attention of the persons concerned by the restrictive measures to the possibility open to them of contesting the Council's decision (see, to that effect, Joined Cases C-478/11 P to C-482/11 P *Gbagbo and Others v Council* [2013] ECR, paragraph 62).
- 55 In the present case, such a notice was published in the *Official Journal of the European Union* on 3 September 2011 — the date on which Decision 2011/522 and Regulation No 878/2011 were published — informing the persons concerned of the possibility of requesting disclosure of the evidence on which the acts adopted had been based. The Council followed the same approach in relation to Decision 2011/782 and Regulation No 36/2012, publishing a notice to similar effect in the Official Journal. The applicant was therefore wrong in asserting that he had not had the opportunity or the chance to defend himself.
- 56 As regards Decision 2012/739, Implementing Regulation No 1117/2012, Decision 2013/185 and Implementing Regulation No 363/2013, the Council informed the applicant by two letters of individual notification, dated 30 November 2012 and 13 May 2013, that it was open to him to request disclosure of the evidence which had prompted the adoption of those measures. The applicant was therefore in a position to request such disclosure and to prepare his defence.
- 57 Moreover, it does not emerge from the documents before the Court that the applicant made use of the procedures referred to in paragraph 54 above. Consequently, he has no grounds for asserting that the Council infringed his right to effective judicial protection.
- 58 The second plea must therefore be rejected.

First plea in law: breach of the obligation to state reasons

- 59 The applicant submits that the Council adopted restrictive measures concerning him without first giving him reasons, framed in such a way as to enable him to put forward his pleas in defence or otherwise to make observations, and that it had instead framed its reasons in general, stereotypical terms, without specifying the matters of fact and law warranting the inclusion of his name in the lists in question or giving the precise reason for the adoption of the contested acts.
- 60 The Council, supported by the Commission, disputes the applicant's arguments.

- 61 The first point to be borne in mind is that, according to settled case-law, the purpose of the obligation to state the reasons on which an act adversely affecting an individual is based, which is a corollary of the principle of respect for the rights of the defence, is, first, to provide the person concerned with sufficient information to make it possible to ascertain whether the act is well founded or whether it is vitiated by a defect which may permit its legality to be contested before the Courts of the European Union and, secondly, to enable those Courts to review the legality of that act (see *Makhlouf v Council*, paragraph 60 and the case-law cited).
- 62 According to similarly well-established case-law, the statement of reasons required under Article 296 TFEU must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the act in question in such a way as to enable the persons concerned to ascertain the reasons for the measure taken and to enable the court having jurisdiction to exercise its power of review (see *Makhlouf v Council*, paragraph 61 and the case-law cited).
- 63 In cases where the person or entity concerned is not afforded the opportunity to be heard before the adoption of an initial decision to freeze funds and economic resources, observance of the obligation to state reasons is all the more important because it constitutes the sole safeguard enabling the person concerned, at least after that decision has been adopted, to make effective use of the legal remedies available to him in order to challenge the lawfulness of that decision (see *Makhlouf v Council*, paragraph 62 and the case-law cited).
- 64 Accordingly, the statement of reasons for an act of the Council freezing funds and economic resources must identify the actual and specific reasons why the Council considers, in the exercise of its discretion, that that measure must be adopted in respect of the person concerned (see *Makhlouf v Council*, paragraph 63 and the case-law cited).
- 65 However, the requirement of a statement of reasons must be viewed by reference to the circumstances of the case, and in particular to the content of the act in question, the nature of the reasons relied on and the interest which the addressees may have in obtaining explanations (see *Makhlouf v Council*, paragraph 64 and the case-law cited).
- 66 It is not necessary, therefore, for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see *Makhlouf v Council*, paragraph 65 and the case-law cited).
- 67 In particular, the reasons given for a decision are sufficient if it was adopted in circumstances known to the party concerned which enable him to understand the scope of the measure adversely affecting him (see *Makhlouf v Council*, paragraph 66 and the case-law cited).
- 68 In the present case, as regards the applicant's knowledge of the overall context in which the restrictive measures at issue were imposed, it should be noted that recitals 1 to 3 in the preamble to Decision 2011/273, which refers to Decision 2011/522 and Regulation No 878/2011, set out clearly the general reasons for the adoption of restrictive measures against Syria by the European Union, stating as follows:
- (1) On 29 April 2011, the European Union expressed its grave concern about the situation unfolding in Syria and the deployment of military and security forces in a number of Syrian cities.
- (2) The Union strongly condemned the violent repression, including through the use of live ammunition, of peaceful protest in various locations across Syria resulting in the death of several demonstrators, wounded persons and arbitrary detentions, and called on the Syrian security forces to exercise restraint instead of repression.

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

- 69 Furthermore, under Article 4 of Decision 2011/273, as amended by Decision 2011/522, ‘[a]ll funds and economic resources belonging to, or owned, held or controlled by persons responsible for the violent repression against the 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’.
- 70 Additionally, Article 25(1) of Decision 2012/739 provides that measures may be taken against persons responsible for the violent repression of the civilian population in Syria, persons and entities benefiting from or supporting the regime, and persons and entities associated with them.
- 71 According to case-law, it could be presumed that the general context to which the contested acts referred is familiar to leading figures in Syrian society (see, to that effect, *Makhlouf v Council*). As can be seen in the present case from the documents before the Court and from his own statements, the applicant is a prominent businessman in Syria, involved mainly in the pharmaceutical, agri-foodstuffs and financial sector. He is also President of the Aleppo (Syria) Chamber of Industry. Thus, the general context to which those acts relate must have been familiar to the applicant.
- 72 As regards the specific context of the entry of the applicant’s name in the lists annexed to the contested acts, the Court has consistently held that, in order correctly to discharge its obligation to give reasons for an act imposing restrictive measures, the Council must mention the elements of fact and law on which the legal justification of those measures depends and the considerations which have led it to take those measures (see, to that effect, *Bank Melli Iran v Council*, paragraph 81 and the case-law cited). It follows that, in principle, the statement of reasons for such an act must cover not only the legal conditions for applying restrictive measures, but also the actual and specific reasons why the Council considers, in the exercise of its broad discretion, that the person concerned should be subject to such measures (see, to that effect and by analogy, Case T-228/02 *Organisation des Modjahedines du peuple d’Iran v Council* [2006] ECR II-4665, paragraph 146; *Fahas v Council*, paragraph 53; and Case T-15/11 *Sina Bank v Council* [2012] ECR, paragraph 68).
- 73 However, according to case-law, detailed publication of the complaints put forward against the parties concerned might not only conflict with the overriding considerations of public interest related to the security of the European Union and its Member States, or the conduct of their international relations, but also jeopardise the legitimate interests of the persons and entities in question, in that it would be capable of causing serious damage to their reputation, and it must be found, exceptionally, that only the operative part of the decision and a general statement of reasons need appear in the version of the decision freezing funds published in the Official Journal, it being understood that the actual, specific statements of reasons for that decision must be formalised and brought to the knowledge of the parties concerned by any other appropriate means (see, to that effect and by analogy, *Organisation des Modjahedines du peuple d’Iran v Council*, paragraph 147, and Case T-86/11 *Bamba v Council* [2011] ECR II-2749, paragraph 53).
- 74 In the present case, in Decision 2011/522, Regulation No 878/2011, Decision 2011/782 and Regulation No 36/2012, the Council relied on the following reasons as regards the entry of the applicant’s name in the lists of persons covered by restrictive measures:

‘President of Aleppo Chamber of Industry. Supports economically the Syrian regime.’

75 In Decision 2012/739, Implementing Regulation No 1117/2012, Implementing Regulation No 363/2013 and Decision 2013/255, the Council relied on the following reasons as regards the entry of the applicant's name in the lists of persons covered by restrictive measures:

'President of Aleppo Chamber of Industry. Vice-chairman of Cham Holding. Supports economically the Syrian regime.'

76 It should be noted that the reasons referred to in paragraphs 74 and 75 above are sufficiently clear and precise. Given the criterion for listing persons benefiting from or supporting the Syrian regime (see paragraph 5 above) and the fact that the lists annexed to the contested acts concern several other well-known figures from the Syrian business community, the applicant was in a position to grasp that it was because of the important role that he played in business life that he was considered to support the Syrian regime, and that it was for that reason that his name had been placed on the lists. Moreover, in the context of the present action, the applicant challenged the reasons for entering his name on those lists.

77 Consequently, the statement of reasons for the contested acts was sufficient to satisfy the Council's obligation under the second paragraph of Article 296 TFEU to state reasons. The first plea must therefore be rejected.

Fifth plea in law: error of assessment

78 The applicant submits that, in referring to him as the Vice-Chairman of Cham Holding, the Council made an error in its assessment of the facts, given that, at the time when Implementing Regulation No 1117/2012 and Decision 2012/739 were adopted, and subsequently, he did not hold that position, as the appointment by the Annual General Meeting of a new Vice-Chairman became effective on 18 September 2012.

79 The Council, supported by the Commission, disputes the applicant's arguments.

80 The first point to note is that the plea relating to the error of assessment was not raised in the application initiating proceedings, but only in the application of 16 July 2013 to amend the form of order sought. That plea relates to the words 'Vice-chairman of Cham Holding', and not to the reasons relied on by the Council when the applicant's name was first placed on a list of persons covered by restrictive measures.

81 In that regard, it has been observed in paragraph 49 above that, by letter of 29 May 2012, the Council had informed the applicant of its intention to supplement the reasons for including his name in a list of persons covered by restrictive measures, by citing from then on, as an additional reason, the applicant's position as Vice-Chairman of Cham Holding.

82 Moreover, the documents before the Court reveal that, at the Annual General Meeting of Cham Holding on 18 September 2012, the applicant did not submit his candidacy for re-appointment as Vice-Chairman.

83 Furthermore, on 29 November 2012, the Council adopted Decision 2012/739 and Implementing Regulation No 1117/2012. The reasons for placing the applicant's name on the list, set out in the annex to those acts, of persons covered by the restrictive measures were amended along the lines indicated by the Council in its earlier letter.

84 It must therefore be found that, at the date on which the contested acts were adopted, the applicant no longer carried out the duties of Vice-Chairman of Cham Holding.

- 85 Nevertheless, in view of the fact that, on the date on which the change within the governing bodies of Cham Holding had taken place, the applicant had been notified of the proposed amendment to the reasons given in Decision 2012/739 and Implementing Regulation No 1117/2012, the Council cannot be criticised for having used those reasons in the annexes to those measures.
- 86 However, as regards Implementing Regulation No 363/2013 and Decision 2013/255, respectively adopted on 22 April and 31 May 2013, it must be found that the Council was in a position to rectify the reasons stated for those measures, given that approximately eight months had elapsed between the General Assembly and the adoption of the contested acts.
- 87 It should also be noted that the applicant has never disputed the validity of the reasons given for the contested acts in so far as they relate to his position as President of the Aleppo Chamber of Industry. As it is, according to settled case-law, a single valid reason constitutes sufficient support for those acts (see, to that effect, *Kadi II*, paragraph 119). Accordingly, the error of assessment found in paragraph 86 above, concerning the soundness of the supplementary reason given for the listing, cannot lead to the annulment of those acts.
- 88 The fifth plea must therefore be rejected.

Third and fourth pleas in law: infringement of fundamental rights, including the right to property, the right to respect for one's good name and reputation, the right to engage in work, freedom to conduct a business and the right to the presumption of innocence; infringement of the right to privacy and breach of the principle of proportionality

- 89 First, the applicant submits that the restrictions of indefinite duration of his right to property, imposed by the contested acts, amount to a disproportionate and intolerable interference with his right to property, as do the inappropriate reasons given and the lack of adequate evidence to justify those restrictions.
- 90 Secondly, the applicant submits that the contested acts unlawfully restrict his right to respect for his good name and reputation, his right to engage in work, his freedom to conduct his business and, lastly, his right to the presumption of innocence.
- 91 Thirdly, the applicant submits that the contested acts infringe his right to privacy, 'in that the measures freezing funds and restricting freedom of movement also constitute a disproportionate interference with [his] fundamental right to privacy as well as an infringement of the general principle of proportionality'.
- 92 The Council, supported by the Commission, disputes the applicant's arguments.
- 93 First, it is inappropriate to uphold the argument relating to the alleged infringements of the applicant's right to respect for his good name and reputation, his right to engage in work and his freedom to conduct his business, and breach of the principle of the presumption of innocence.
- 94 Under Article 44(1)(c) of the Rules of Procedure, the application initiating proceedings must state the subject-matter of the dispute and a summary of the pleas in law on which the application is based, and that statement must be sufficiently clear and precise to enable the defendant to prepare his defence and the Court to rule on the application. It is therefore necessary for the essential points of law and of fact on which a case is based to be indicated coherently and intelligibly in the application itself (see, by analogy, Case C-178/00 *Italy v Commission* [2003] ECR I-303, paragraph 6). The application must accordingly specify the nature of the grounds on which it is based and, accordingly, a mere abstract statement of the grounds does not satisfy the requirements of the Rules of Procedure (Case T-102/92 *Viho v Commission* [1995] ECR II-17, paragraph 68).

- 95 However, in the present case, it should be noted that the argument relating to the alleged infringements of the fundamental rights referred to in paragraph 90 above does not convey in a sufficiently clear and precise manner the criticisms which the applicant seeks to make. It follows that the Council has not been enabled to prepare its defence properly and that the Court is unable, on the basis of that argument, to exercise its jurisdiction to review legality.
- 96 It should be added that, since the requirements under Article 44(1) of the Rules of Procedure are a matter of public policy, it is for the Court to raise of its own motion the argument that those requirements have not been satisfied (Case T-64/89 *Automec v Commission* [1990] ECR II-367, paragraph 74, and Case T-267/06 *Italy v Commission* [2012] ECR, paragraphs 35 to 38). The argument relating to the fundamental rights referred to in paragraph 90 above must therefore be rejected as inadmissible.
- 97 Secondly, as regards the argument relating to the alleged infringement of the right to property, it must first of all be noted that the right to property is one of the general principles of EU law and is enshrined in Article 17 of the Charter.
- 98 Furthermore, according to settled case-law, the rights enshrined in the Charter do not, under EU law, enjoy absolute protection, but must be viewed in relation to their function in society. Consequently, the exercise of those rights may be restricted, provided that those restrictions correspond to objectives of public interest pursued by the European Union and do not constitute, in relation to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of the rights thus guaranteed (*Makhlouf v Council*, paragraphs 97 to 101 and 105).
- 99 As regards the application of those principles in the present case, it should be noted that the applicant's arguments are the same as those which the Court rejected in the case that gave rise to the judgment in *Makhlouf v Council*. The adoption of restrictive measures against the applicant is appropriate, since it is a step taken in pursuit of an objective of public interest as fundamental to the international community as the protection of civilian populations. The freezing of the funds, financial assets and other economic resources, and the prohibition of entry into the territory of the European Union, of persons identified as being involved in supporting the Syrian regime cannot, *tales quales*, be regarded as inappropriate.
- 100 Moreover, the restrictive measures at issue are also necessary because the alternative and less restrictive measures possible, such as a system of prior authorisation or an obligation to justify, a posteriori, how the funds transferred were used, do not enable the objective pursued — namely, combating the financing of the Syrian regime — to be achieved as effectively, particularly given the possibility of circumventing such restrictions.
- 101 Furthermore, the contested acts, which introduce the restrictive measures at issue, were adopted in compliance with all the safeguards enabling the applicant to exercise his rights of defence, as has already been pointed out in paragraphs 36 to 58 above in the context of the Court's examination of the second plea.
- 102 Lastly, the contested acts provide for the possibility of authorising the use of frozen funds in order to meet basic needs or to meet certain commitments and of granting specific authorisations permitting the release of funds, other financial assets or other economic resources and of revising periodically the entries in that list in order to ensure that, where persons or entities no longer meet the necessary criteria for inclusion, those persons or entities are removed from the list at issue.
- 103 Thirdly, as regards the argument relating to an infringement of the right to respect for private life, it should be stated that the contested acts also provide that the competent authority of a Member State may authorise entry to its territory on urgent humanitarian grounds (Case T-202/12 *Al Assad v Council* [2014] ECR, paragraph 119).

104 Consequently, given the paramount importance of the protection of civilian populations in Syria and of the derogations provided for by the contested acts, the restrictions imposed by the contested acts on the applicant's right to property and his right to respect for private life are not disproportionate in relation to the objective pursued.

105 The third and fourth pleas must therefore be rejected.

106 It is therefore appropriate to dismiss the action, there being no need to rule on the admissibility of the applications, lodged at the reply stage and in the statement of 16 July 2013, for amendment of the form of order sought.

Costs

107 Under the first subparagraph of 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, he must be ordered to bear his own costs and to pay those of the Council, including those relating to the application for interim measures, in accordance with the form of order sought by the Council.

108 However, in accordance with the first subparagraph of Article 87(4) of the Rules of Procedure, the institutions which intervened in the proceedings must bear their own costs. The Commission must accordingly bear its own costs.

On those grounds,

THE GENERAL COURT (Seventh Chamber)

hereby:

- 1. Dismisses the action;**
- 2. Orders Mr Fares Al-Chihabi to bear his own costs and to pay those incurred by the Council of the European Union;**
- 3. Orders the European Commission to bear its own costs.**

Van der Woude

Wiszniewska-Białecka

Ulloa Rubio

Delivered in open court in Luxembourg on 30 April 2015.

[Signatures]