CURIA - Documents

JUDGMENT OF THE COURT (Eighth Chamber)

9 July 2020 (*)

(Appeal – Common foreign and security policy – Restrictive measures taken against Syria – Measures directed against leading businesspersons operating in Syria – List of persons subject to the freezing of funds and economic resources – Inclusion of the appellant's name – Action for annulment and compensation)

In Case C-241/19 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 18 March 2019,

George Haswani, residing in Yabroud (Syria), represented by G. Karouni, avocat,

appellant,

the other parties to the proceedings being:

Council of the European Union, represented by S. Kyriakopoulou and V. Piessevaux, acting as Agents,

defendant at first instance,

European Commission, represented initially by A. Bouquet, L. Baumgart and A. Tizzano, and subsequently by A. Bouquet and L. Baumgart, acting as Agents,

intervener at first instance,

THE COURT (Eighth Chamber),

composed of L.S. Rossi, President of the Chamber, J. Malenovský and F. Biltgen (Rapporteur), Judges,

Advocate General: E. Tanchev,

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

Judgment

1 By his appeal, George Haswani seeks to have set aside the judgment of the General Court of the European Union of 16 January 2019, *Haswani* v *Council* (T-477/17, not published;, EU:T:2019:7,'the judgment under appeal'), by which the General Court dismissed, first, his action under Article 263 TFEU, seeking the annulment of Council Decision (CFSP) 2016/850 of 27 May 2016 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2016 L 141, p. 125), Council Implementing Regulation (EU) 2016/840 of 27 May 2016 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2016 L 141, p. 30), Council Decision (CFSP) 2017/917 of 29 May 2017 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2017 L 139, p. 62), Council Implementing Regulation (EU) 2017/907 of 29 May 2017 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2017 L 139, p. 15), Council Implementing Decision (CFSP) 2017/1245 of 10 July 2017 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2017 L 178, p. 13), Council Implementing Regulation (EU) 2017/1241 of 10 July 2017 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2017 L 178, p. 1), Council Decision (CFSP) 2018/778 of 28 May 2018 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2018 L 131, p. 16) and Council Implementing Regulation (EU) 2018/774 of 28 May 2018 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2018 L 131, p. 1), in so far as those acts concern him, and second, his action under Article 268 TFEU, seeking compensation for the damage he allegedly suffered as a result of Decision 2017/917 and Implementing Regulation 2017/907.

Legal context

2 Article 27 of Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria (OJ 2013 L 147, p. 14) provided:

'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.

...'

3 Article 28 of Decision 2013/255 was worded as follows:

'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.

...'

4 Decision 2013/255 was amended by Council Decision (CFSP) 2015/1836 of 12 October 2015 (OJ 2015 L 266, p. 75, and corrigendum OJ 2016 L 336, p. 42; 'Decision 2013/255, as amended').

5 Recitals 2, 5 and 6 of Decision 2015/1836 state:

'(2) ... the Council has continued to strongly condemn the violent repression against the civilian population in Syria pursued by the Syrian regime. The Council has repeatedly expressed grave concern about the deteriorating situation in Syria and, in particular, the widespread and systematic violations of human rights and international humanitarian law.

...

(5) The Council notes that the Syrian regime continues to pursue its policy of repression and, in view of the gravity of the situation which persists, the Council considers it necessary to maintain and ensure the effectiveness of the restrictive measures in place, by further developing them while maintaining its targeted and differentiated approach and bearing in mind the humanitarian conditions of the Syrian population. The Council considers that certain categories of persons and entities are of particular relevance for the effectiveness of these restrictive measures, given the specific context prevailing in Syria.

(6) The Council has assessed that because of the close control exercised over the economy by the Syrian regime, an inner cadre of leading businesspersons operating in Syria is only able to maintain its status by enjoying a close association with, and the support of, the regime, and by having influence within it. The Council considers that it should provide for restrictive measures to impose restrictions on admission and to freeze all funds and economic resources belonging to, owned, held or controlled by those leading businesspersons operating in Syria, as identified by the Council and listed in Annex I, in order to prevent them from providing material or financial support to the regime and, through their influence, to increase pressure on the regime itself to change its policies of repression.'

6 Article 27 of Decision 2013/255, as amended, provides, in its paragraphs 1 to 4:

'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 Makhlouf 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,

…

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.’

7 Article 28(1) to (4) of that decision 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 Makhlouf 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,

…

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.'

Background to the dispute

8 The background to the dispute is set out in paragraphs 1 to 30 of the judgment under appeal. For the purposes of the present appeal, it may be summarised as follows.

9 The appellant is a businessman of Syrian nationality.

10 Strongly condemning the violent repression of peaceful protest in various locations across Syria and calling on the Syrian security forces to exercise restraint instead of force, on 9 May 2011, the Council of the European Union adopted Decision 2011/273/CFSP concerning restrictive measures against Syria (OJ 2011 L 121, p. 11).

11 The names of the persons responsible for the violent repression against the civilian population in Syria and those of the natural or legal persons, and entities associated with them, are set out in the annex to Decision 2011/273. Pursuant to Article 5(1) 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.

12 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 largely identical to Decision 2011/273, but provides for the possibility of the release of frozen funds. The list of persons, entities and bodies identified as being either responsible for the repression in question or associated with those responsible, set out in Annex II to that regulation, is identical to the list in the annex to Decision 2011/273.

13 By Decision 2011/782/CFSP of 1 December 2011 concerning restrictive measures against Syria and repealing Decision 2011/273 (OJ 2011 L 319, p. 56), the Council considered it necessary, in view of the gravity of the situation in Syria, to impose additional restrictive measures. Decision 2011/782 provides, in Article 18, for restrictions on the entry into the territory of the European Union of persons whose names are included in Annex I to that decision, and in Article 19, for the freezing of funds and economic resources of persons and entities whose names are included in Annexes I and II to that decision.

14 Regulation No 442/2011 was replaced by Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria (OJ 2012 L 16, p. 1).

15 By Council Decision 2012/739/CFSP of 29 November 2012 concerning restrictive measures against Syria and repealing Decision 2011/782 (OJ 2012 L 330, p. 21), the restrictive measures in question were integrated into a single legal instrument.

16 Decision 2012/739 was replaced by Decision 2013/255. The latter decision was renewed until 1 June 2015 by Council Decision 2014/309/CFSP of 28 May 2014 amending Decision 2013/255 (OJ 2014 L 160, p. 37).

17 By Council Implementing Decision (CFSP) 2015/383 of 6 March 2015 implementing Decision 2013/255 (OJ 2015 L 64, p. 41), the appellant's name was introduced at line 203 in Section A of Annex I to Decision 2013/255, concerning the list of persons referred to in that decision, together with the date of the inclusion of his name on that list, that is to say 7 March 2015, and the following grounds:

'Prominent Syrian businessman, co-owner of HESCO Engineering and Construction Company, a major engineering and construction company in Syria. He has close ties to the Syrian regime.

George Haswani provides support and benefits from the regime through his role as a middleman in deals for the purchase of oil from ISIL by the Syrian regime.

He also benefits from the regime through favourable treatment including the award of a contract (as a subcontractor) with Stroytransgaz, a major Russian oil company.'

18 On 6 March 2015, the Council adopted Implementing Regulation (EU) 2015/375 implementing Regulation No 36/2012 (OJ 2015 L 64, p. 10). The appellant's name was added to the list in Section A of Annex II to Regulation No 36/2012, with the same information and grounds as those set out in Implementing Decision 2015/383.

19 On 28 May 2015, by Decision (CFSP) 2015/837, amending Decision 2013/255 (OJ 2015 L 132, p. 82), the Council renewed Decision 2013/255 until 1 June 2016. On the same day, the Council adopted Implementing Regulation (EU) 2015/828 implementing Regulation No 36/2012 (OJ 2015 L 132, p. 3).

20 On 12 October 2015, the Council adopted Decision 2015/1836 amending Decision 2013/255. On the same day, it adopted Regulation (EU) 2015/1828 amending Regulation No 36/2012 (OJ 2015 L 266, p. 1).

21 On 27 May 2016, the Council adopted Decision 2016/850. The appellant's name was retained at line 203 in Section A of Annex I to Decision 2013/255, concerning the list of persons referred to in that decision, together with the date of the inclusion of his name on that list, that is to say 7 March 2015, and the following grounds:

'Leading businessperson operating in Syria, with interests and/or activities in the engineering, construction and oil and gas sectors. He holds interests in and/or has significant influence in a number of companies and entities in Syria, in particular HESCO Engineering and Construction Company, a major engineering and construction company.

George Haswani has close ties to the Syrian regime. He provides support and benefits from the regime through his role as a middleman in deals for the purchase of oil from ISIL by the Syrian regime. He also benefits from the regime through favourable treatment including the award of a contract (as a subcontractor) with Stroytransgaz, a major Russian oil company.'

22 On 27 May 2016, the Council adopted Implementing Regulation 2016/840. The appellant's name was retained on the list in Section A of Annex II to Regulation No 36/2012, with the same information and grounds as those set out in Decision 2016/850.

23 By letter of 30 May 2016, addressed to the appellant's representative, the Council sent the appellant a copy of Decision 2016/850 and Implementing Regulation 2016/840.

24 Following an action brought by the appellant, the General Court, by judgment of 22 March 2017, *Haswani* v *Council* (T-231/15, not published, EU:T:2017:200), annulled Implementing Decision 2015/383, Implementing Regulation 2015/375, Decision 2015/837 and Implementing Regulation 2015/828, in so far as those acts concern the appellant. As regards the part of the action directed against Decision 2016/850 and Implementing Regulation 2016/840, the General Court dismissed it as inadmissible on the ground that the statement of modification did not meet the conditions set out in Article 86(4) of the Rules of Procedure of the General Court. Upon appeal, the Court of Justice censured the General Court's reasoning relating to the conditions that a statement of modification of the pleas in law and arguments put forward in support of an application initiating proceedings must meet and, by judgment of 24 January 2019, *Haswani* v *Council* (C-313/17 P, EU:C:2019:57), set aside that judgment of the General Court on that point. After the case was referred back to the General Court, that court dismissed, by order of 11 September 2019, *Haswani* v *Council* (T-231/15 RENV, not published, EU:T:2019:589), the part of the action directed against Decision 2016/850 and Implementing Regulation 2016/840 as in part manifestly inadmissible and in part manifestly unfounded.

25 On 29 May 2017, by Decision 2017/917, the Council renewed Decision 2013/255 until 1 June 2018. On 29 May 2017, it adopted Implementing Regulation 2017/907.

26 By letter of 19 June 2017, addressed to the appellant's representative, the Council informed the appellant of its intention to modify the grounds for including his name on the list in Section A of Annex I to Decision 2013/255 and Section A of Annex II to Regulation No 36/2012, after re-examining that inclusion. The Council set a time limit within which the appellant could submit any observations.

27 By letter of 29 June 2017, the appellant's representative took issue with the reinclusion of the appellant's name on those lists.

28 On 10 July 2017, the Council adopted Implementing Decision 2017/1245. The appellant's name was retained at line 203 in Section A of Annex I to Decision 2013/255, concerning the list of persons referred to in that decision, together with the date of the

inclusion of his name on that list, that is to say 7 March 2015, and the following grounds:

‘Leading businessperson operating in Syria, with interests and/or activities in the engineering, construction and oil and gas sectors. He holds interests in and/or has significant influence in a number of companies and entities in Syria, in particular HESCO Engineering and Construction Company, a major engineering and construction company.’

29 On 10 July 2017, the Council adopted Implementing Regulation 2017/1241. The appellant’s name was retained on the list in Section A of Annex II to Regulation No 36/2012, with the same information and grounds as those set out in Implementing Decision 2017/1245.

30 By letter of 11 July 2017, addressed to the appellant’s representative, the Council replied to his letter of 29 June 2017 and sent the appellant a copy of Implementing Decision 2017/1245 and Implementing Regulation 2017/1241.

31 On 28 May 2018, by Decision 2018/778, the Council renewed Decision 2013/255 until 1 June 2019. Furthermore, various entries in Annex I to Decision 2013/255, concerning persons other than the appellant, were amended. In accordance with Article 3, Decision 2018/778 entered into force on the day following that of its publication in the *Official Journal of the European Union*.

32 On 28 May 2018, the Council adopted Implementing Regulation 2018/774. Pursuant to Article 1 of that implementing regulation, Annex II to Regulation No 36/2012 was amended to take account of the amendments made to Annex I to Decision 2013/255 by Decision 2018/778. In accordance with Article 2, that implementing regulation entered into force on the day following that of its publication in the *Official Journal of the European Union*.

The procedure before the General Court and the judgment under appeal

33 By an application lodged at the Registry of the General Court on 31 July 2017, the appellant brought an action seeking, first, the annulment of Decision 2016/850, Implementing Regulation 2016/840, Decision 2017/917, Implementing Regulation 2017/907, Implementing Decision 2017/1245 and Implementing Regulation 2017/1241 and, second, compensation for the damage he claims to have suffered as a result of Decision 2017/917 and Implementing Regulation 2017/907.

34 On 15 November 2017, the Council lodged its defence at the Court Registry.

35 By decision of 11 January 2018, the European Commission was granted leave to intervene in the proceedings in support of the form of order sought by the Council and lodged its statement in intervention on 23 February 2018.

36 By document lodged at the Court Registry on 6 July 2018, the appellant sought leave to amend his heads of claim regarding the annulment of Decision 2018/778 and Implementing Regulation 2018/774.

37 In support of his action, the appellant relied on three pleas in law: the first alleging a breach of the obligation to state reasons, the second alleging an infringement of the principle of proportionality, and the third alleging, in essence, an error of assessment.

38 In paragraph 47 of the judgment under appeal, the General Court dismissed the application as inadmissible in respect of the action for annulment of Decision 2016/850 and Implementing Regulation 2016/840.

39 As regards the substance, the General Court, after analysing, in paragraphs 51 and 53 of the judgment under appeal, the modification of the criteria for applying the restrictive measures made by Decision 2015/1836, ruled, in paragraph 64 of that judgment, in respect of the plea alleging breach of the obligation to state reasons, that the criteria introduced in paragraph 2 of both Article 27 and Article 28 of Decision 2013/255, as amended, constitute objective, autonomous and sufficient criteria which enable restrictive measures to be applied to the persons in question, without there being any need to demonstrate the support given by those persons to the existing regime or the benefit that they derive from that regime's policies.

40 As regards the plea alleging an infringement of the principle of proportionality, the General Court reiterated the applicable case-law and ruled in particular as regards the necessity of the restrictive measures adopted against the appellant, in paragraph 76 of the judgment under appeal, that alternative and less restrictive measures are not as effective in achieving the objective pursued.

41 After also rejecting the third plea alleging an error of assessment, and thus dismissing the action for annulment in its entirety, the General Court accordingly concluded that the action for compensation must be dismissed, as none of the arguments put forward in order to demonstrate the unlawfulness of the acts the annulment of which was sought had been upheld.

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

42 By his appeal, the appellant claims that the Court should:

– set aside the judgment under appeal;

– order that his name be removed from the lists in Section A of Annex I to Decision 2013/255 and Section A of Annex II to Regulation No 36/2012;

– annul Decision 2015/1836 and Regulation 2015/1828;

– order the Council to pay EUR 100 000 for the non-material damage he claims to have suffered; and

– order the Council to pay the costs.

43 The Council contends that the Court should:

– dismiss the appeal; and

– order the appellant to pay the costs.

44 The Commission contends that the Court should:

– dismiss the appeal; and

– order the appellant to pay the costs.

The appeal

45 In support of his appeal, the appellant relies on three grounds, alleging, respectively, a reversal of the burden of proof and an infringement of the principle of presumption of innocence, a breach of the obligation to state reasons and an infringement of the principle of proportionality.

Admissibility

46 As a preliminary point, the Commission argues that the grounds of appeal are inadmissible in so far as they are based on the same arguments as those put forward in the action before the General Court and that they do not clearly indicate in what way the judgment under appeal is wrong.

47 In that regard, it must be noted that, in accordance with Article 256 TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union, there is a right of appeal on points of law only and that appeal must be based on grounds alleging lack of competence of the General Court, a breach of procedure before it which adversely affects the interests of the appellant or an infringement of EU law by the General Court (see, to that effect, judgments of 26 June 2012, *Poland* v *Commission*, C-335/09 P, EU:C:2012:385, paragraph 23, and of 29 October 2015, *Commission* v *ANKO*, C-78/14 P, EU:C:2015:732, paragraph 21).

48 Furthermore, it follows from Article 256 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 elements of the judgment which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal (see, to that effect, inter alia, judgments of 26 June 2012, *Poland* v *Commission*, C-335/09 P, EU:C:2012:385, paragraph 25, and of 19 June 2014, *Commune de Millau and SEMEA* v *Commission*, C-531/12 P, EU:C:2014:2008, paragraph 47).

49 Thus, where an appeal merely repeats or reproduces verbatim the pleas in law and arguments previously submitted to the General Court, including those based on facts expressly rejected by that Court, it fails to satisfy the requirements to state reasons under those provisions. Such an appeal in reality amounts to no more than a request for re-examination of the application submitted to the General Court, which the Court of Justice does not have jurisdiction to undertake (see, to that effect, judgments of 26 June 2012,

Poland v *Commission*, C-335/09 P, EU:C:2012:385, paragraph 26, and of 19 June 2014, *Commune de Millau and SEMEA* v *Commission*, C-531/12 P, EU:C:2014:2008, paragraph 48).

50 However, provided that an appellant challenges the interpretation or application of EU law by the General Court, the points of law examined at first instance may be discussed again in the course of an appeal. If an appellant could not thus base his or her appeal on pleas in law and arguments already relied on before the General Court, an appeal would be deprived of part of its purpose (see, to that effect, judgment of 26 June 2012, *Poland* v *Commission*, C-335/09 P, EU:C:2012:385, paragraph 27).

51 In the present case, the appeal seeks, in essence, to call into question the General Court's position on several points of law which were submitted to it at first instance as regards, inter alia, the obligation to state reasons on the part of institutions under Article 296 TFEU or the application of the principle of proportionality. Furthermore, in so far as the appeal contains precise indications regarding the contested points of the judgment under appeal and the grounds and arguments upon which it is based, it cannot be declared inadmissible in its entirety.

52 Consequently, it is in the light of the criteria referred to in paragraphs 47 to 50 of the present judgment that, in the context of the analysis of each ground, the admissibility of the specific arguments put forward in support of the different grounds of appeal must be examined.

The first ground of appeal

Arguments of the parties

53 The first ground of appeal alleges that the General Court erred in law in its interpretation of Articles 27 and 28 of Decision 2013/255, as amended, reversed the burden of proof and infringed the principle of presumption of innocence.

54 The appellant submits that the General Court erred in law by ruling, in paragraph 64 of the judgment under appeal, that the condition expressly provided for in Articles 27 and 28 of Decision 2013/255, as amended, relating to the evidence of links between the person subject to restrictive measures and the regime in question, had become, with the amendment resulting from Decision 2015/1836, a presumption that such links exist.

55 The appellant considers that paragraph 2 of both Article 27 and Article 28 of Decision 2013/255, as amended, should be read in close conjunction with paragraph 3 of both those articles. Thus, in accordance with paragraph 3, the Council cannot include on the list of persons and entities subject to restrictive measures a person who is not, or is no longer, associated with the regime or who does not exercise influence over that regime. Articles 27 and 28 of Decision 2013/255, as amended, therefore always require the twofold condition of being a leading businessperson and having sufficient links with the regime to be met.

56 The appellant considers that, by misinterpreting the provisions of Decision 2013/255, as amended, the General Court infringed the principle of presumption of innocence and reversed the burden of proof.

57 The Council submits that the appellant's reading of Article 27(2)(a) and Article 27(3) and Article 28(2)(a) and Article 28(3) of Decision 2013/255, as amended, is manifestly wrong.

58 The Council accordingly concludes that the General Court correctly applied the criteria for inclusion on the list of persons and entities subject to restrictive measures and did not reverse the burden of proof.

59 At the outset, the Commission asserts that inclusion on the list of persons and entities subject to restrictive measures is governed by new criteria, introduced by Decision 2015/1836, which was adopted in response to the attempts of the Syrian regime to circumvent the existing restrictive measures of the European Union.

60 In that regard, according to the Commission, the mere reading of Articles 27 and 28 of Decision 2013/255, as amended, contradicts the appellant's arguments, in that those articles now establish, in their paragraph 2, an autonomous criterion for inclusion on that list in respect of seven categories of persons, including the category of leading businesspersons operating in Syria, and provide, in their paragraph 3, three cases where, despite the fact that a person falls within one of those seven categories, his or her inclusion on the list of persons and entities subject to restrictive measures does not take place or is not retained. According to the Commission, the relationship between paragraphs 2 and 3 of both those articles demonstrates that there is a form of rebuttable presumption which in no way infringes the presumption of innocence and which also does not constitute an unacceptable reversal of the burden of proof.

Findings of the Court

61 As regards the argument relating to the alleged infringement on the part of the General Court of Articles 27 and 28 of Decision 2013/255, as amended, it must be borne in mind that the initial criteria for inclusion on the list of persons and entities subject to restrictive measures were based on the individual conduct of the persons included, in that Articles 27 and 28 of that decision concerned, in their paragraph 1, exclusively 'persons benefiting from or supporting the regime, and persons associated with them'. That paragraph was not amended by Decision 2015/1836.

62 Since the criterion adopted in paragraph 1 of both Article 27 and Article 28 of Decision 2013/255, as amended, is of a general nature and those provisions do not contain any definition of the concept of 'benefit' derived from the Syrian regime or the concept of 'support' for that regime, nor any details on how those matters are to be proved, the determination whether the inclusion of a person on the list of persons and entities subject to restrictive measures is well founded always requires evidence capable of showing that the person in question provided economic support to the Syrian regime or

that he or she benefitted from that regime (see, by analogy, judgment of 7 April 2016, *Akhras* v *Council*, C-193/15 P, EU:C:2016:219, paragraphs 51, 52 and 60 and the case-law cited).

63 In the wording of that criterion, there is no presumption that either the heads of the leading businesses of Syria (see, by analogy, judgment of 7 April 2016, *Akhras* v *Council*, C-193/15 P, EU:C:2016:219, paragraph 53) or the leading businesspersons provide support to the Syrian regime.

64 The wording of Articles 27 and 28 of Decision 2013/255 was amended by Decision 2015/1836, which introduced in paragraph 2 of both those articles, in accordance with the assessments and determinations made by the Council in the context of the situation in Syria, seven categories of persons who belong to defined groups of persons, including, inter alia, in point (a) of that paragraph, 'leading businesspersons operating in Syria'.

65 While paragraph 1 of both Article 27 and Article 28 of Decision 2013/255, as amended, continues to allow a person to be included by applying the general criterion of that person benefitting from the Syrian regime or providing support to that regime, it is nevertheless apparent from the wording of paragraph 2 of both those articles that the new criteria are in addition to the initial criterion. In that regard, Article 27(2)(a) of Decision 2013/255, as amended, clearly states that 'Member States shall also take the necessary measures' vis-à-vis the seven new categories of persons concerned.

66 Since the criteria for applying restrictive measures to those seven categories of persons are autonomous in relation to the initial criterion provided for in paragraph 1 of both Article 27 and Article 28 of Decision 2013/255, the mere fact of belonging to one of those seven categories of persons is therefore sufficient to allow the necessary measures to be taken, without there being any need to provide evidence of the link between being a leading businessperson and the Syrian regime, or between being a leading businessperson and providing support to that regime or benefitting from it.

67 That interpretation is confirmed, moreover, by the objective pursued by the amendment of Articles 27 and 28 of Decision 2013/255.

68 The restrictive measures adopted initially by Decision 2011/273 did not enable the repression pursued by the Syrian regime to be brought to an end since that regime systematically circumvented those measures in order to continue to finance and support its policy of violent repression against the civilian population. As is apparent from recital 5 of Decision 2015/1836, the Council considered that, in view of the gravity of the situation which persisted, it was necessary to maintain the restrictive measures in place, by further developing them while maintaining a targeted and differentiated approach in order better to identify certain categories of persons and entities of particular relevance.

69 According to recital 6 of that decision, it was necessary to modify the criteria for the inclusion of persons on the list of persons and entities subject to restrictive measures. Due to the fact that the Syrian economy was closely controlled by the Syrian regime and that the business community and the regime had established a relationship of

interdependence since President Bashar Al-Assad's initiation of the process of liberalisation of the economy, it was appropriate to consider, first, that the existing regime could not continue to exist without the support of the heads of businesses and, second, that an inner cadre of leading businesspersons operating in Syria was only able to maintain its status by enjoying a close association with the Syrian regime.

70 In that context, it was necessary to choose criteria for inclusion on the list of persons and entities subject to restrictive measures based on the status of certain persons, inter alia the status of 'leading businesspersons operating in Syria', in order to prevent those persons from continuing to provide material or financial support to the existing regime and, through their influence, to increase pressure on the regime itself.

71 Consequently, the General Court did not err in law by analysing, in paragraph 64 of the judgment under appeal, paragraph 2 of both Article 27 and Article 28 of Decision 2013/255, as amended, to the effect that the newly introduced criteria, and more specifically those relating to being a leading businessperson operating in Syria, are autonomous and sufficient in themselves to justify the application of restrictive measures, without there being any need also to provide evidence of the support that those persons provide to the existing regime or the benefit that they derive from it.

72 That conclusion cannot be called into question by the argument put forward by the appellant, alleging that the General Court analysed paragraph 2 of both Article 27 and Article 28 of Decision 2013/255 in isolation, whereas it ought to have interpreted it in close conjunction with paragraph 3 of both those articles.

73 In that regard, it is true that paragraphs 2 and 3 of both Article 27 and Article 28 of Decision 2013/255, as amended, must be read in conjunction, since in particular, under that paragraph 3, persons falling within one of the categories referred to in that paragraph 2 are not to be included or retained on the list of persons and entities subject to restrictive measures if there is sufficient information that they are not, or are no longer, associated with the Syrian regime, do not exercise influence over that regime, or do not pose a real risk of circumvention.

74 Nevertheless, it does not in any way follow from such a joint reading of paragraphs 2 and 3 of both Article 27 and Article 28 of Decision 2013/255, as amended, that there is an obligation on the part of the Council to provide evidence that the twofold condition of being a leading businessperson and having sufficient links with the Syrian regime is met.

75 In any event, it is important to note that the General Court did not apply Articles 27(2) and 28(2) of Decision 2013/255, as amended, in an isolated manner, but that it also took into consideration paragraph 3 of both those articles.

76 The General Court stated, in paragraph 84 of the judgment under appeal, which, however, is not referred to in the present appeal, that the criteria for inclusion on the list of persons and entities subject to restrictive measures set out in paragraph 2(a) and paragraph 3 of both Article 27 and Article 28 of Decision 2013/255, as amended, provide that the category of leading businesspersons in Syria is subject to restrictive measures

unless there is sufficient information that those persons are not, or are no longer, associated with the Syrian regime, do not exercise influence over that regime, or do not pose a real risk of circumvention.

77 In paragraph 98 of the judgment under appeal, which was not addressed in the appeal either, the General Court further explained that, first, there was nothing in the documents submitted by the Council to indicate that the appellant was in one of the abovementioned situations justifying the removal of his name from the list of persons and entities subject to restrictive measures and, second, the appellant himself had not submitted any information of such a nature.

78 The appellant's argument to the effect that the General Court erred in law by analysing in an isolated manner paragraph 2 of both Article 27 and Article 28 of Decision 2013/255, as amended, must therefore be rejected as unfounded.

79 As regards the arguments relating to the infringement, on the part of the General Court, of the principle of presumption of innocence and the reversal of the burden of proof, it is important to bear in mind that, in paragraph 64 of the judgment under appeal, the General Court did not refer to any presumption but based its findings on an objective, autonomous and sufficient criterion only, justifying the inclusion of the appellant on the list of persons and entities subject to restrictive measures (see, to that effect, judgment of 11 September 2019, *HX* v *Council*, C-540/18 P, not published, EU:C:2019:707, paragraph 38).

80 In the present case, the General Court specifically examined, in paragraphs 92 to 96 of the judgment under appeal, whether the ground that the appellant was a leading businessman operating in Syria, justifying his reinclusion on the list of persons and entities subject to restrictive measures, was sufficiently substantiated by the documents submitted by the Council, which dated from 2011 to 2015. By stating, in paragraph 97 of that judgment, that the appellant had not provided any information such as to call into question the Council's claims and the documents substantiating those claims, that court in no way failed to examine the exhibits submitted by the interested party or reversed the burden of proof, but considered that those exhibits were not such as to invalidate the conclusion drawn from those documents (see, to that effect, judgment of 11 September 2019, *HX* v *Council,* C-540/18 P, not published, EU:C:2019:707, paragraph 50).

81 Furthermore, the General Court stated, in paragraph 98 of the judgment under appeal, after having noted that the restrictive measures vis-à-vis the person included on the list cannot be retained if there is sufficient information that that person is not, or is no longer, associated with the Syrian regime, that the documents submitted by the Council did not contain any information indicating that the appellant was in such a situation, and the appellant had also not provided any information to that effect.

82 By making such an assertion, the General Court did in no way consider, as the appellant appears to be suggesting, that the appellant bore the burden of proving the error in the Council's determinations in the decisions the annulment of which was sought, or of proving that there was, in respect of him, sufficient information within the meaning

of Articles 27(3) and 28(3) of Decision 2013/255, as amended, that he was not, or was no longer, associated with the Syrian regime (see, to that effect, judgment of 14 June 2018, *Makhlouf* v *Council*, C-458/17 P, not published, EU:C:2018:441, paragraph 86).

83 Therefore, the arguments relating to the infringement of the principle of presumption of innocence and the reversal of the burden of proof must also be rejected as unfounded.

84 In the light of the foregoing considerations, the first ground of appeal must be rejected as unfounded.

The second ground of appeal

Arguments of the parties

85 By his second ground of appeal, the appellant submits that the General Court, by failing to ascertain whether he was truly associated with the Syrian regime, omitted to provide any reasoning in the judgment under appeal and confirmed decisions that are in themselves irregular due to a failure to state reasons, since the decisions taken against him, the annulment of which was sought, were not motivated by existing links between him and the regime in question.

86 The Council contends that, contrary to what is claimed by the appellant, the information submitted proving that he is a leading businessman operating in Syria was examined by the General Court and declared by it to be sufficient.

87 The Commission takes the view that, in so far as the second ground of appeal is based on a premiss which, in the context of the first ground of appeal, has been shown to be wrong, it must be rejected as unfounded. In any event, it is apparent from the analysis of the first ground of appeal that the General Court analysed the situation in detail and that it gave sufficient reasons for the judgment under appeal.

Findings of the Court

88 At the outset, it must be stated that the second ground of appeal is based on the premiss that there were no statements of reasons provided for the Council's decisions the annulment of which was sought and that the General Court failed to ascertain whether there were links between the appellant and the Syrian regime.

89 As previously stated in the context of the examination of the first ground of appeal, the General Court analysed the situation in question in detail and gave sufficient reasons for its decision, according to which the Council could rely, in its application of the restrictive measures in accordance with Articles 27(2) and 28(2) of Decision 2013/255, as amended, on the appellant being a leading businessperson operating in Syria without having to provide evidence of links between the interested party and the Syrian regime.

90 Consequently, the second ground of appeal is based on an incorrect premiss and must therefore be rejected as unfounded.

The third ground of appeal

Arguments of the parties

91 In the context of the third ground of appeal, alleging an infringement of the principle of proportionality and a failure to state reasons, the appellant states that, under Articles 27(4) and 28(4) of Decision 2013/255, as amended, all decisions concerning inclusion on the list of persons and entities subject to restrictive measures are to be taken on a case-by-case basis, taking into account the proportionality of the measure, which is assessed individually, with regard to its duration and necessity.

92 In that regard, the appellant submits that the inadequate nature of the criterion relating only to his Syrian nationality and the duration of the restrictive measures applied to him in the course of 2015 demonstrate in themselves the disproportionate nature of those measures.

93 As regards the necessity of those measures, the appellant claims that the judgment under appeal is also vitiated by an error in law, given that the General Court ruled, in paragraph 76 of the judgment under appeal, in a general manner and not, as required, on an individual basis.

94 Furthermore, the appellant requests that the Court rule, in the context of its power to reserve the case for determination by itself, that Decision 2015/1836 and Regulation 2015/1828 are unlawful in that they impose financial sanctions of a criminal nature, in violation of Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950.

95 While relying on the documents submitted before the General Court, the appellant also requests that the Court of Justice grant his claims for damages.

96 The Council contends that the third ground of appeal must be rejected as unfounded, since the General Court examined the proportionality of the individual restrictive measures in question, by reiterating, in paragraphs 73 and 74 of the judgment under appeal, the case-law on the subject matter and applying it, in paragraphs 75 to 77, to the particular case.

97 The Commission also considers that the third ground of appeal must be rejected as unfounded.

Findings of the Court

98 It is important to note that, in accordance with Article 52(1) of the Charter of Fundamental Rights of the European Union, any limitation on the exercise of the rights and freedoms laid down by that charter must be provided for by law and must respect the essence of those rights and freedoms, and, subject to the principle of proportionality, limitations may be made to those rights and freedoms only if they are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others.

99 In accordance with the Court's case-law, the principle of proportionality requires that measures implemented through provisions of EU law should be appropriate for attaining the legitimate objectives pursued by the legislation concerned and do not go beyond what is necessary to achieve them (judgment of 31 January 2019, *Islamic Republic of Iran Shipping Lines and Others* v *Council*, C-225/17 P, EU:C:2019:82, paragraph 102 and the case-law cited).

100 As regards judicial review of compliance with the principle of proportionality, the Court has acknowledged that the EU legislature has a broad discretion in areas which involve political, economic and social choices on its part, and in which it is called upon to undertake complex assessments. It concluded from that that the legality of a measure adopted in those fields can be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institution is seeking to pursue (see, inter alia, judgment of 28 November 2013, *Council* v *Manufacturing Support & Procurement Kala Naft*, C-348/12 P, EU:C:2013:776, paragraph 120 and the case-law cited).

101 In the present case, it is important to note that the appellant does not dispute, as is apparent from paragraph 72 of the judgment under appeal, the lawfulness of restrictive measures in general or that of measures taken to combat violence against civilian populations.

102 The General Court stated, in paragraph 75 of the judgment under appeal, that, in that particular case, the adoption of restrictive measures is appropriate, since it is a step taken in pursuit of an objective of general interest as fundamental to the international community as the protection of civilian populations.

103 In paragraph 76 of that judgment, the General Court added, as regards the necessity of the restrictive measures in question, that alternative and less restrictive measures, such as a system of prior authorisation or an obligation to justify, a posteriori, how the funds transferred were used, are not as effective in achieving the objective pursued, particularly given the possibility of circumventing such restrictions.

104 Therefore, and contrary to what is submitted by the appellant, the General Court did not rule in a general manner but adopted a position regarding the individual situation at issue in the particular case.

105 As regards the argument alleging a nationality criterion, it is important to note that inclusion on the list of persons and entities subject to restrictive measures is not linked with the condition of having Syrian nationality, but with that of being a leading businessperson operating in Syria.

106 As regards the criticism relating to the duration of the restrictive measures in question, it must be noted that, in the context of such restrictive measures, the Council is required to carry out a periodic re-examination which entails, each time, the possibility for the person concerned to put forward arguments and submit facts supporting his or her assertions.

107 It is on that basis that the General Court took into account the existence of a periodic re-examination in order to guarantee that the persons and entities which no longer meet the criteria to be included on the list of persons and entities subject to restrictive measures are removed, and it ruled, in paragraph 77 of the judgment under appeal, that the reinclusion of the appellant's name on those lists cannot be classified as disproportionate on the basis of such inclusion potentially being for an unlimited period of time.

108 Consequently, the General Court cannot be criticised of having erred in its application of the principle of proportionality.

109 As regards the appellant's request that the Court rule, in the context of its power to reserve the case for determination by itself, that the measures adopted are unlawful since they include financial sanctions of a criminal nature, in violation of Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, it is important to note that the General Court held, in paragraph 65 of the judgment under appeal, that the appellant did not dispute the lawfulness of the criterion for inclusion on the list of persons and entities subject to restrictive measures.

110 Having regard to Article 170(1) of the Rules of Procedure of the Court of Justice, pursuant to which the subject matter of the proceedings before the General Court may not be changed in the appeal, the appellant's arguments seeking a ruling that the provisions of Articles 27(2) and 28(2) of Decision 2013/255, as amended, are contrary to EU law, must be rejected as inadmissible.

111 As regards the appellant's request that the Court order the removal of his name from the list of persons and entities subject to restrictive measures, as is apparent from the appeal document, without it being otherwise outlined, it must be noted that, in the context of an appeal, the Court has no power to issue directions to the institutions (see, to that effect, order of 12 July 2012, *Mugraby* v *Council and Commission*, C-581/11 P, not published, EU:C:2012:466, paragraph 75, and judgment of 25 July 2018, *Orange Polska* v *Commission*, C-123/16 P, EU:C:2018:590, paragraph 118).

112 As regards the appellant's request that the Court grant his claims for damages, it must be noted that the reasoning of that request merely refers to all of the claims made before the General Court, in particular the claims for damages.

113 Such a request clearly does not satisfy the requirements to state reasons set out in the case-law referred to in paragraph 49 of the present judgment, particularly since it fails to adopt any position in respect of the arguments of the General Court for rejecting the claim for damages at first instance, in paragraphs 101 to 108 of the judgment under appeal, where that court sets out the settled case-law on the European Union's non-contractual liability, within the meaning of the second paragraph of Article 340 TFEU, for unlawful conduct on the part of its institutions, in order to conclude that the requisite conditions are not met in the particular case.

114 Therefore, the appellant's claim for damages must be rejected as inadmissible.

115 Consequently, the third ground of appeal must be rejected as in part inadmissible and in part unfounded.

116 In the light of all of the aforementioned considerations, the appeal must be dismissed in its entirety.

Costs

117 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. Since the Council and the Commission have applied for costs and the appellant has been unsuccessful, the appellant must be ordered to pay the costs.

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

1. Dismisses the appeal;

2. Orders Mr George Haswani to pay the costs.

[Signatures]

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* Language of the case: French.