Reports of Cases

OPINION OF ADVOCATE GENERAL
BOT
delivered on 8 January 2015 [1]

Cases C-605/13 P and C-630/13 P

Issam Anbouba
v

Council of the European Union

(Appeals — Restrictive measures against Syria — Measures directed against persons and entities benefiting from or supporting the regime — Freezing of funds and economic resources — Listing criterion — Broad discretion available to the Council — Burden of proof)

1. Since March 2011, President Bashar Al-Assad and the regime he leads have been opposed in Syria. The current regime's preferred method of responding to that opposition is repression, which has plunged the country into civil war.

2. In the face of the violence perpetrated by the Bashar Al-Assad regime, the European Union decided to introduce restrictive measures. Those measures are intended to exert pressure on the regime to renounce the violence against the civilian population. Their scope is either general, in that they consist, for example, of bans on the export of certain goods to Syria, or individual, in that they seek, inter alia, to freeze the funds and economic resources of natural and legal persons associated with the Syrian regime.

3. Thus, although the restrictive measures are formally targeted at a State, they actually affect natural or legal persons who are considered to be directly responsible for the situation that the European Union is seeking to combat, who contribute towards it or who have the power to affect its resolution. [2]

4. The restrictive measures adopted against the Syrian regime have developed over time. At the outset, they were directed at persons on account of their official functions within the State apparatus. Finding that, despite that initial set of measures, the civilian population was still the subject of repression, the European Union then extended the scope of the measures to other sections of the population, including a number of business heads.

5. That extension of the personal scope of the restrictive measures raises the issue of proof of a link between the persons on the funds-freezing list and the regime in the third State against which those measures are directed.

6. This is the very issue that lies at the heart of the present cases.

1 — Original language: French.

2 — See Beaucillon, C., *Les mesures restrictives de l'Union européenne*, Bruylant, Brussels, 2014, p. 445.

7. By his two appeals, Mr Anbouba claims that the Court should set aside two judgments of the General Court of the European Union in *Anbouba* v *Council*,[3] by which the General Court dismissed his actions for the annulment of a number of decisions to freeze funds that concerned him.

8. It its judgments, the General Court held that, in taking the view that the heads of the leading Syrian businesses could be classified as persons associated with the Syrian regime, since the commercial activities of those businesses could not prosper unless they enjoyed the favour of that regime and provided it with a degree of support in return, the Council of the European Union had intended to apply a presumption of support for the Syrian regime to the heads of the leading businesses in Syria.

9. The General Court considered, on the basis of a body of facts, that such a presumption could be applied to Mr Anbouba.

10. Within the limits inherent in appeal proceedings, the Court of Justice is asked to decide whether or not, by its judgments, the General Court infringed the rules relating to the burden of proof in matters concerning restrictive measures, as set out in the case-law of the Court of Justice.

11. In this Opinion, I shall propose, after having given an account of the recent case-law by which the Court of Justice has established such rules, that the present appeals be dismissed.

12. Even though the way in which the General Court constructs its reasoning in relation to the concept of presumption strikes me as questionable, I shall explain the reasons why I consider that the General Court was rightly able to reach the conclusion that the Council had discharged the burden of proof borne by it in matters concerning restrictive measures, in the light of, inter alia, the listing criterion which is laid down in the general rules relating to the restrictive measures directed against the Syrian regime, and for the determination of which the Council enjoys a broad discretion, the existence of a body of well-known and uncontested facts, the characteristics of that regime and the context of the civil war in Syria.

I – **The facts giving rise to the dispute**

13. In the judgments under appeal, the General Court describes the facts giving rise to the dispute as follows:

‘1 On 9 May 2011, the Council … adopted Decision 2011/273/CFSP concerning restrictive measures against Syria (OJ 2011 L 121, p. 11), on the basis of Article 29 TEU. Article 4(1) of that decision provides that all funds and economic resources belonging to, owned, held or controlled by persons responsible for the violent repression against the civilian population in Syria, and natural or legal persons and entities associated with them, as listed in the annex to that decision, are to be frozen. The detailed rules for the freezing of those funds are set out in the other paragraphs of that article. Article 5(1) of Decision 2011/273 provides that the Council is to establish the list.

2 By Decision 2011/522/CFSP of 2 September 2011 amending Decision 2011/273/CFSP (OJ 2011 L 228, p. 16), the Council, inter alia, extended the scope of Article 4(1) of Decision 2011/273 to all funds and economic resources belonging to, owned, held or controlled by persons responsible for the violent repression against the civilian population in Syria, persons and entities benefiting from or supporting the regime, and persons and entities associated with them, as listed in the

3 — T-563/11, EU:T:2013:429, ‘the judgment in T-563/11’, and T-592/11, EU:T:2013:427, ‘the judgment in T-592/11’ (together, ‘the judgments under appeal’).

annex. The name of the applicant, Issam Anbouba, was then included on that list. The reasons for his inclusion, given in the corresponding column of that list, are the following: "President of Issam Anbouba Est. for agro-industry. [4] Provides economic support for the Syrian regime".

3 Council 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) was adopted on the basis of Article 215(2) TFEU [5] and Decision 2011/273. Article 4(1) thereof provides for the freezing of all funds and economic resources belonging to, owned, held or controlled by the natural or legal persons, entities and bodies listed in Annex II thereto. Council Regulation (EU) No 878/2011 of 2 September 2011 amending Regulation (EU) No 442/2011 amended, inter alia, Annex II to Regulation No 442/2011 and included the name of the applicant on the list of persons, entities and bodies concerned by the measure at issue. The reasons given for his inclusion on the list contained in that annex are the same as those given in the annex to Decision 2011/522.

4 Council Decision 2011/628/CFSP of 23 September 2011 amending Decision 2011/273/CFSP (OJ 2011 L 247, p. 17) and Council Regulation (EU) No 1011/2011 of 13 October 2011 amending Regulation (EU) No 442/2011 (OJ 2011 L 269, p. 18) retained the applicant's name on the list referred to in paragraph 3 above and inserted information regarding his date and place of birth.

5 On 7 October 2011, the applicant submitted to the Council a request for reconsideration of the decision by which his name had been included on the list in question, a request which the Council turned down on 14 November 2011.

6 Council Decision 2011/684/CFSP of 13 October 2011 amending Decision 2011/273 (OJ 2011 L 269, p. 33) added the name of a new entity to the list of persons, entities and bodies concerned by the measures at issue and amended the substance of some provisions of Decision 2011/273. Council Decision 2011/735/CFSP of 14 November 2011 amending Decision 2011/273 (OJ 2011 L 296, p. 53) imposed additional restrictive measures with regard to persons included on that list.

7 On 14 October 2011, the Council published a notice for the attention of the persons and entities covered by the restrictive measures provided for in Decision 2011/273, as amended by Decision 2011/684, and by Regulation No 442/2011, as amended by Regulation No 1011/2011 (OJ 2011 C 303, p. 5).

8 Decision 2011/273 was repealed and replaced by Council Decision 2011/782/CFSP of 1 December 2011 concerning restrictive measures against Syria (OJ 2011 L 319, p. 56) following the adoption of new additional measures, the latter decision retaining the applicant's name on the list of persons, entities and bodies concerned by those measures.

9 Council Implementing Decision 2012/37/CFSP of 23 January 2012 implementing Decision 2011/782 (OJ 2012 L 19, p. 33) added other persons and entities to the list at issue and Council Decision 2012/122/CFSP of 27 February 2012 amending Decision 2011/782 (OJ 2012 L 54, p. 14) provided for new measures against the persons included on that list.

10 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) was itself amended by Council Regulation (EU) No 168/2012 of 27 February 2012 (OJ 2012 L 54, p. 1), which included other names on the list of persons, entities and bodies concerned by those measures and provided for new measures against the persons included on that list. Council

4 — 'SAPCO'.

5 — I note, however, that the legal bases cited for Regulation No 442/2011 refer to Article 215 TFEU but do not specify whether the measures adopted fall within the scope of paragraph 1 or paragraph 2 of that article.

> Implementing Regulation (EU) No 410/2012 of 14 May 2012 implementing Article 32(1) of Regulation No 36/2012 (OJ 2012 L 126, p. 3) amended the information regarding the applicant's date and place of birth, as well as the reasons for his inclusion on the list contained in Annex II to Regulation No 36/2012 as follows:

"Providing financial support for the repressive apparatus and the paramilitary groups exerting violence against the civil population in Syria. Providing property (premises, warehouses) for improvised detention centres. Financial relations with high Syrian officials."'

II – **The actions before the General Court**

14. Mr Anbouba brought two actions for annulment before the General Court.

15. In the first action (Case T-563/11), the acts the annulment of which was sought, whether in the original application or in the pleadings amending the form of order sought, were the following:

— Decision 2011/522;

— Decision 2011/628;

— Decision 2011/782;

— Regulation No 878/2011; and

— Regulation No 36/2012,

in so far as Mr Anbouba's name appeared on the list of persons subject to the restrictive measures adopted in view of the situation in Syria.

16. In the second action (Case T-592/11), the acts the annulment of which was sought, whether in the original application or in the pleadings amending the form of order sought, were the following:

— Decision 2011/684;

— Decision 2011/782;

— Regulation No 1011/2011;

— Regulation No 36/2012; and

— Implementing Regulation No 410/2012,

in so far as Mr Anbouba's name appeared on the list of persons subject to the restrictive measures adopted in view of the situation in Syria.

III – **The judgments under appeal**

17. In the first action (Case T-563/11), Mr Anbouba relied on six pleas for annulment but withdrew three of them. The General Court examined the three remaining pleas, that is to say, the second, alleging infringement of the rules concerning proof and manifest errors of assessment relating to the reasons for including Mr Anbouba on the list of persons subject to restrictive measures, the third, alleging infringement of the rights of the defence, and the fourth, alleging infringement of the obligation to state reasons.

18. In the second action (Case T-592/11), Mr Anbouba relied on six pleas for annulment, but withdrew the final two. The General Court examined the four remaining pleas, namely the first, alleging infringement of the principle of the presumption of innocence and a reversal of the burden of proof, the second, alleging manifest errors of assessment relating to the reasons for including Mr Anbouba on the list of persons subject to EU sanctions, the third, alleging infringement of the rights of the defence, and the fourth, alleging infringement of the obligation to state reasons.

19. In both cases, after having examined and rejected each of the pleas, the General Court dismissed the actions and ordered Mr Anbouba to pay the costs.

IV – **Forms of order sought before the Court of Justice**

20. In Cases C-605/13 P and C-630/13 P, Mr Anbouba claims that the Court should:

(1) set aside the judgments under appeal;

(2) giving judgment itself:

— declare that the decision to include Mr Anbouba on the list of persons and entities subject to economic sanctions is unlawful;

— annul the decisions and regulations at issue in Cases T-563/11 and T-592/11; and

— order the Council to pay the costs of both sets of proceedings.

21. The Council contends that the Court should:

— dismiss the appeals;

— if appropriate and in the alternative, dismiss the actions against the current acts; and

— order Mr Anbouba to pay the costs of the appeals.

22. The Commission contends that the Court should:

— dismiss the appeals; and

— order Mr Anbouba to pay the costs.

V – **The appeals**

23. Both of the appeals are based on the same two grounds.

24. By the first ground of appeal, Mr Anbouba challenges the use by the General Court of a presumption as to his association with the Syrian regime and, by the second, he challenges the failure by the General Court to carry out a normal review of the decisions and regulations at issue.

25. The appeals are directed against the following paragraphs of the judgments under appeal.

26. Paragraphs 32 and 33 of the judgment in T-563/11 (which are, in essence, identical to paragraphs 42 and 43 of the judgment in T-592/11) read as follows:

‘32 It is clear from the preamble to Decision 2011/522 that, since the restrictive measures adopted in Decision 2011/273 had not been able to stop the repression by the Syrian regime against the [Syrian] civilian population, the Council considered that those measures should be applied to additional persons and entities benefiting from or supporting the regime, in particular those who financed the regime or provided logistical support to the regime, particularly the security apparatus, or who undermined the efforts to secure a peaceful transition to democracy. It is thus apparent that Decision 2011/522 extended the restrictive measures to the leading Syrian business figures, the Council taking the view that [the heads of the leading Syrian businesses] could be classified as persons associated with the Syrian regime, since the commercial activities of [those] businesses could not prosper unless they enjoyed the favour of that regime and provided it with a degree of support in return. In so doing, the Council intended to apply a presumption of support for the Syrian regime to the heads of the leading businesses in Syria.

33 As regards the applicant, it is clear from the documents before the Court that the Council applied such a presumption to him on account of his roles as president of [SAPCO], a major company in the agri-food industry [which holds, inter alia, a 60% market share in the soya bean oil sector], as head of several companies operating in the property and education sectors, and as founding member of the board of directors of Cham Holding[, the largest private company in Syria,] created in 2007, and his functions as Secretary General of the Chamber of Commerce and Industry of Homs (Syria).’

27. In order to establish whether the Council had erred in law by using a presumption, the General Court referred, in paragraph 35 of the judgment in T-563/11 and paragraph 45 of the judgment in T-592/11, to the case-law in the field of competition law to the effect that the institutions may make use of presumptions that reflect the possibility for the authority on whom the burden of proof lies to draw certain conclusions from typical sequences of events on the basis of common experience. [6] It recalled, in paragraph 36 of the judgment in T-563/11 and paragraph 46 of the judgment in T-592/11, that a presumption, even where it is difficult to rebut, remains within acceptable limits so long as it is proportionate to the legitimate aim pursued, it is possible to adduce evidence to the contrary and the rights of the defence are safeguarded. [7]

28. In those paragraphs, the General Court also relied on the case-law of the European Court of Human Rights to the effect that Article 6(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, does not regard presumptions of fact or of law with indifference, but requires States to confine them within reasonable limits which take into account the importance of what is at stake and maintain the rights of the defence. [8]

6 — The General Court referred inter alia to the judgment in *Akzo Nobel and Others* v *Commission* (C-97/08 P, EU:C:2009:536, paragraphs 60 to 63).

7 — The General Court referred to the judgment in *Elf Aquitaine* v *Commission* (C-521/09 P, EU:C:2011:620, paragraph 62 and the case-law cited).

8 — The General Court referred to the judgments in *Salabiaku v. France*, 7 October 1988, § 28, Series A no. 141-A, and *Klouvi v. France*, no. 30754/03, § 41, 30 June 2011.

29. In paragraph 37 of the judgment in T-563/11 and paragraph 47 of the judgment in T-592/11, the General Court also referred to paragraph 69 of the judgment in *Tay Za* v *Council*,[9] from which, the General Court states, it is clear that, in the case of decisions concerning the freezing of funds, the use of presumptions is not precluded if the acts at issue have made provision for them and they serve the purpose of that legislation.

30. Applying that case-law to the present instance, the General Court first of all held, in paragraph 38 of the judgment in T-563/11 and paragraph 48 of the judgment in T-592/11, that, given the authoritarian nature of the Syrian regime and the State's tight control over the Syrian economy, the Council could rightly regard as constituting a matter of common experience the fact that the activities of one of the leading businessmen in Syria, who is active in numerous sectors, could not have prospered if he had not enjoyed the favour of that regime and provided it with a degree of support in return.

31. Secondly, the General Court examined whether that presumption was proportionate to the aim pursued by the Council, whether it was rebuttable and whether it preserved Mr Anbouba's rights of defence.

32. In paragraph 40 of the judgment in T-563/11 and paragraph 50 of the judgment in T-592/11, the General Court noted the objectives pursued by Decision 2011/522, the protective nature of the measures adopted, and the overriding considerations to do with the security or the conduct of the international relations of the European Union and its Member States which may militate against the disclosure of certain items of evidence to the persons concerned. It concluded that the Council's use of the presumption was to be proportionate.

33. In paragraph 41 of the judgment in T-563/11 and paragraph 51 of the judgment in T-592/11, the General Court held that the presumption was rebuttable since the Council had to inform the persons subject to the restrictive measures of the reasons for their listing and they could rely on facts and information which they alone might possess in order to demonstrate that they do not provide support for the current regime.

34. In paragraph 43 of the judgment in T-563/11 and paragraph 53 of the judgment in T-592/11, the General Court, thirdly, held that provision had been made for the presumption by the acts at issue and the presumption enabled the objectives pursued by those acts to be served.

35. In the light of the foregoing, the General Court concluded, in paragraph 44 of the judgment in T-563/11 and paragraph 54 of the judgment in T-592/11, that the Council had not erred in law in considering that Mr Anbouba's status as a leading businessman in Syria was in itself sufficient for it to presume that he provided economic support for the Syrian regime.

36. The General Court next examined, in connection with the second plea, the evidence adduced by Mr Anbouba to show that the Council had committed an error of assessment in taking the view that, in his capacity as a leading businessman in Syria, he provided economic support for the Syrian regime. Following that examination, the General Court considered that Mr Anbouba had not adduced any evidence capable of rebutting the presumption.

9 — C-376/10 P, EU:C:2012:138.

VI – **Arguments of the parties**

A – *The first ground of appeal*

37. Mr Anbouba submits that the General Court erred in law in taking the view that the Council had properly applied a presumption of support for the Syrian regime to the heads of the leading businesses in Syria, since that presumption has no legal basis, is disproportionate in relation to the legitimate aim pursued and is irrebuttable.

38. First, Mr Anbouba maintains that the use of the presumption has no legal basis. He submits that, contrary to the condition laid down in the case-law of the Court of Justice, the contested acts do not make provision for the use of the presumption. The second sentence of paragraph 32 of the judgment in T-563/11 and of paragraph 42 of the judgment in T-592/11 is an interpretation by the General Court of Decision 2011/522.

39. Secondly, Mr Anbouba maintains that the presumption is disproportionate to the objective pursued. The General Court, he argues, validated a prejudice on the part of the Council which exempted it from the need to establish a specific link between the persons covered by the restrictive measures and the Syrian regime. Mr Anbouba also disputes the reference made by the General Court to competition case-law. He submits that the concepts of 'common experience' and 'typical sequences of events' in paragraph 35 of the judgment in T-563/11 and paragraph 45 of the judgment in T-592/11 are vague and that competition cases, which relate to economic penalties, operate within a very different context from that of the freezing of funds. Mr Anbouba concludes that, because of its extremely general nature, the presumption in question is not within acceptable limits since it is disproportionate to the legitimate aim pursued.

40. Finally, Mr Anbouba contends that the presumption at issue is irrebuttable. Since he cannot deny being a business head in Syria and it is in practical terms impossible to prove the negative that support is not provided for the Syrian regime, the only possibility of challenging the presumption would be to adduce evidence of opposition to that regime. He challenges the fact that the presumption leaves no room for persons who do not fall within the category of supporters of the regime but are also not among the known opponents. The General Court was therefore wrong to reject as inadequate the evidence adduced by Mr Anbouba showing that he does not support the current regime.

41. The Council notes, first of all, that it has a general power to adopt restrictive measures against the members of the Syrian regime, which is responsible for serious human rights violations. Protective in nature, those restrictive measures seek only to exert pressure on the Syrian authorities and the persons associated with them to put an end to the campaign of violent repression which has caused thousands of deaths in Syria. To be effective, those measures must target the persons responsible for that repression and those suspected of having links with them.

42. The Council then submits that the foreign policy objective at issue in the present cases entails a broad discretion on the part of the EU legislature and limited judicial review.

43. Referring to point 40 of the Opinion of Advocate General Mengozzi in *Tay Za* v *Council*,[10] in which the Advocate General distinguished three circles of persons to whom restrictive measures were addressed, that is to say, first, the rulers, secondly, the persons associated with those rulers, in particular the persons benefiting from the economic policies, and thirdly, the family members of the persons benefiting from the economic policies, the Council states that Mr Anbouba belongs to the second circle of persons targeted.

10 — C-376/10 P, EU:C:2011:786.

44. It submits that Mr Anbouba is a leading businessman who forms part of the ruling economic class in Syria, that he is one of the current power bases, that he is a shareholder in Cham Holding, a company which is also subject to restrictive measures, that he is close to Rami Makhlouf, who is himself close to the regime, and that they both sit on the board of directors of Cham Holding, which is controlled by that board.

45. The Council points to the importance of family groupings in the exercise of power, both economic and political, in Syria, something which has been the case for decades. Study of political life in Syria and of the exercise of power by the Assad clan[11] shows the way in which those great families, including the mutually affiliated Anbouba and Makhlouf families, have historically shared both positions of power within government (the army for the Assad clan) and key posts in the service of a long-centralised economy. On the death of Hafez Al-Assad, and following the wave of economic liberalisation that had in part been initiated, those families, associated with the regime, came not only to exercise control over the public sector economy but also to dominate the brand new private sector.

46. The Council argues that, in the context of a decision adopted on the basis of Article 29 TEU, the European Union may, in accordance with international law, establish presumptions on which to base restrictive measures against a category of persons and entities. It states that it relied on the fact that Mr Anbouba belongs to a small group made up of the most important business heads in Syria and also the fact that his businesses have prospered under that regime, as the General Court established in paragraph 46 of the judgment in T-563/11 and paragraph 64 of the judgment in T-592/11. Those two factors put Mr Anbouba in a special position by comparison with other people.

47. To rebut that presumption, it is for Mr Anbouba to prove not that he opposes the regime but that he is not in a special position by comparison with other people, which he has not done.

48. As regards the proportionality of the presumption, the Council refers to paragraph 50 of the judgment in T-592/11.

49. In its statements in intervention, the Commission examines Article 4 of Decision 2011/522, which, in its view, distinguishes four categories of persons and entities capable of being the subject of restrictive measures, that is to say, those responsible for the violent repression, those who benefit from the regime's policies, those who support the regime and those who are associated with the foregoing persons and entities. It also recalls Mr Anbouba's functions (head of a number of companies; active in a number of sectors; member of the board of directors of Cham Holding, whose co-president was Rami Makhlouf, cousin of President Bashar Al-Assad; Secretary General of the Chamber of Commerce and Industry of Homs). The Commission submits that the common experience relates not to all Syrian business figures but to 'leading businessmen in Syria, who [are] active in numerous sectors.'

50. The Commission notes that a presumption is a 'legal mechanism whereby an uncertain fact is inferred from a certain fact. That mechanism is employed when the uncertain fact is by its nature very difficult to establish and follows from a fact that is easier to establish'.[12] Its use is accepted by the Court and, in this regard, the Commission cites the judgment in *Aalborg Portland and Others* v *Commission*,[13] in paragraph 79 of which the Court held that, '[a]lthough … the legal burden of proof is borne either by the Commission or by the undertaking or association concerned, the factual evidence on which a party relies may be of such a kind as to require the other party to provide an explanation or justification, failing which it is permissible to conclude that the burden of proof has been discharged'.

11 — The Council refers, by way of example, to the publication by Haddad, B., *Business Networks in Syria — The political economy of authoritarian resilience*, Stanford University Press, 2012.

12 — It refers to the definition by Cabrillac, R., *Dictionnaire du vocabulaire juridique*, 2nd edition, Litec, Paris, 2004, p. 301.

13 — C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, EU:C:2004:6.

51. According to the Commission, a presumption is comparable to a set of indicia that have not been adequately rebutted by the other party. Moreover, the European Court of Human Rights has consistently held that proof 'beyond reasonable doubt' may 'follow from the coexistence of sufficiently strong, clear and concordant inferences ["indices" in the French text] or of similar unrebutted presumptions of fact',[14] thus putting a set of inferences (indicia) on an equal footing with unrebutted presumptions.

52. Presumptions are accepted by the European Court of Human Rights in criminal matters. According to that court, Article 6(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms requires States to confine them within reasonable limits which take into account the importance of what is at stake and maintain the rights of the defence.[15] The Court of Justice, too, accepts them in criminal matters.[16] A presumption should *a fortiori* be acceptable in a context such as that in the present case, involving a foreign and security policy measure, which, moreover, is necessarily subject to limited review.

53. According to the Commission, a decision may be based on information, such as public reports, press articles or intelligence reports, rather than on evidence, particularly in the absence of powers of investigation in third States. It submits that the appropriateness of applying a presumption is a matter of fact and is open to review in the context of an appeal only on a relatively exceptional basis.

54. With regard to the alleged lack of legal basis for the presumption, the Commission argues, first, that, even if the second sentence of paragraph 32 of the judgment in T-563/11 and of paragraph 42 of the judgment in T-592/11 is an interpretation by the General Court of Decision 2011/522, as Mr Anbouba submits, it is not apparent how such an interpretation is incorrect. It argues, secondly, that it is an error of law to state that a presumption must be provided for by legislation. Indeed, presumptions 'of fact' follow from the well-established principles concerning the assessment of evidence and are accepted by both the European Court of Human Rights and the Court of Justice. Lastly, the judgment in *Tay Za* v *Council* (EU:C:2012:138) concerned an entirely different presumption relating to the members of the family of a businessman, and the Court's comment in paragraph 69 of that judgment suggests that it might have been open to regarding such a presumption as permissible if provision had been made for it at least in the common position or regulation in question, which was not the case. The Commission concludes that the fact that a presumption is not explicitly provided for by the relevant legislation is immaterial, since presumptions of fact are, by definition, not provided for by law as they operate at the cognitive rather than the legislative level.

55. As regards the allegedly disproportionate nature of the presumption, the Commission disputes Mr Anbouba's argument, relating to presumptions in matters of competition law. It argues that proving something always involves acting on the basis of experience. Moreover, Mr Anbouba's argument overlooks the fact that neither the Council nor the General Court has relied on a 'general' presumption that is applicable to all regimes. The General Court takes as its basis the specific circumstances of the Syrian regime, which are not disputed in the appeals. The Commission further states that, unlike in the context of competition law, the Council does not have powers of investigation in Syrian territory and must therefore rely on indicia, a fact which justifies the proposition that there should be a broader acceptance of presumptions in a context which is not criminal. Finally, the Commission notes that the General Court took account of what was at stake (paragraph 40 of the judgment in T-563/11 and paragraph 50 of the judgment in T-592/11), in accordance with the case-law of the European Court of Human Rights.

14 — The Commission cites, inter alia, the judgment in *Öcalan v. Turkey* [GC], no. 46221/99, § 180, ECHR 2005-IV.

15 — Judgment in *Salabiaku v. France*, § 28.

16 — Judgment in *Spector Photo Group and Van Raemdonck* (C-45/08, EU:C:2009:806, paragraphs 43 and 44).

56. As regards the alleged irrebuttability of the presumption, the Commission takes the view that Mr Anbouba distorts the substance of the judgments under appeal. The General Court requires him to have demonstrated not that he is an opponent of the regime but that he does not support or benefit from the regime. It notes that the appeals do not call into question the assessments made in paragraphs 66 to 76 of the judgment in T-592/11. The fact that such proof may be difficult in the case of a leading businessman active in a number of sectors may also support the appropriateness of a presumption (a presumption presupposes a matter of common experience to which there are few or very few exceptions), rather than the contrary.

57. In response to the Commission's statements in intervention, Mr Anbouba points out that the Commission distinguishes four categories of persons/entities capable of being the subject of restrictive measures, whereas Advocate General Mengozzi distinguished only three in his Opinion in *Tay Za* v *Council* (EU:C:2011:786). He submits that it is for the Court of Justice to review whether the presumption has a legal basis, since the matter of common experience was established on the basis of allegedly well-known but unsubstantiated matters. Mr Anbouba disputes, inter alia, the conclusions which the Council and the Commission draw from the matters concerning him:

— it has not been established that he was capable of influencing the conduct imputed to Cham Holding and account has not been taken of his resignation from that company in April 2011, even though the listing of a natural person on account of his links with a person or entity which is itself included on the list cannot be based on presumptions that are not substantiated by the conduct of the person concerned; [17]

— with regard to his status as Secretary General of the Chamber of Commerce and Industry of Homs (between 2005 and 2008), Mr Anbouba submits that previous functions cannot justify inclusion on a list. [18] Mr Anbouba states, moreover, that he had been elected to that post by campaigning against another candidate who was close to the regime;

— as regards the diverse range of his investments in various unrelated economic sectors, Mr Anbouba submits that this in itself does not constitute proof of support for the regime; and

— with respect to his links with the family of the Syrian President, Mr Anbouba submits that the Commission is probably referring to the publication cited by the Council, which alludes to a number of great families associated with the Assad clan; he points out that that publication was cited only during the appeal proceedings and that he has not been able to assert his rights of defence in this regard; he notes, in any event, that that publication makes no mention of him.

58. The Council has not lodged any observations on the statements in intervention submitted by the Commission.

B – *The second ground of appeal*

59. Mr Anbouba submits that, in the absence of a presumption, it was for the Council to adduce the evidence on which its decision to include him on the list of persons subject to restrictive measures in Syria was based. By releasing the Council from the duty to provide evidence or the grounds justifying its decision not to disclose such evidence and by allowing it to take as the sole basis for its decision a presumption which it was none the less not properly entitled to employ, the General Court refrained from penalising a manifest infringement of the principle of *audi alteram partem* and his rights of defence.

17 — See the judgment in *Sedghi and Azizi* v *Council* (T-66/12, EU:T:2014:347, paragraph 69).

18 — See the judgment in *Alchaar* v *Council* (T-203/12, EU:T:2014:602, paragraph 155).

60. Relying on the judgment in *Commission and Others* v *Kadi*,[19] Mr Anbouba submits that, whilst the Council was able not to disclose to him the evidence in its possession on account of overriding considerations relating to security or the conduct of international relations, it none the less had a duty, first, to disclose that evidence to the General Court for assessment and, secondly, to demonstrate the existence of reasons precluding the disclosure of that evidence to Mr Anbouba.

61. The Council has not adopted a position on that second ground of appeal.

62. The Commission submits that a presumption changes the matters to be proved. The known facts were the personal situation of Mr Anbouba and the characteristics of the Syrian regime. Since those facts have not been disputed, it was not necessary to disclose the additional evidence to the General Court.

63. It states that the judgment in *Commission and Others* v *Kadi* (EU:C:2013:518), relied on by Mr Anbouba, is irrelevant. The case giving rise to that judgment concerns terrorism, in relation to which the evidential requirements are different. In that case, the person subject to the restrictive measure denied all of the facts and the Commission did not rely on information or presumptions the factual basis for which fell within the public domain or was accepted by that person. The judgment in *Council* v *Manufacturing Support & Procurement Kala Naft*,[20] on the other hand, illustrates the situation in which the evidence proving the matters alleged against the natural person at issue was not disputed and came from public documents. In those circumstances, as the Court held, the Council was not therefore required to prove the activities carried on by Manufacturing Support & Procurement Kala Naft ('Kala Naft') by means of other evidence.[21]

VII – **My assessment**

64. Although presented separately by Mr Anbouba, I consider that the two grounds of appeal put forward by him in each of his appeals are closely linked.

65. By the first ground of appeal, Mr Anbouba submits that his status as a leading businessman in Syria did not in itself enable the Council to apply to him a presumption of support for the regime of Bashar Al-Assad. He takes the view, and this forms the subject-matter of the second ground of appeal, that the Council should have furnished additional evidence in support of his inclusion on the list of persons subject to restrictive measures, in order to demonstrate that he supports the Syrian regime.

66. According to Mr Anbouba, in making do with his status as a leading businessman in Syria and not requiring additional evidence, the Council reversed the burden of proof by placing on him the burden of proving the negative that he does not support Bashar Al-Assad's regime.

67. Although, in the present appeals, Mr Anbouba has stated that he does not contest, as such, the use of presumption as a means of evidence, he has none the less explained why a presumption of support for Bashar Al-Assad's regime could not be applied to him. In his view, such a presumption has no legal basis and is disproportionate and irrebuttable.

19 — C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518.

20 — C-348/12 P, EU:C:2013:776.

21 — Paragraphs 89 and 105.

68. In short, the two grounds of appeal put forward by Mr Anbouba seek to call into question the way in which the General Court assessed whether the rules relating to the burden of proof in matters concerning restrictive measures had been observed, in so far as it recognised the existence of a presumption of support for the Syrian regime in his regard and, therefore, did not require the Council to adduce additional evidence to substantiate the existence of that support.

69. Given the close link between the two grounds of appeal put forward by Mr Anbouba in each appeal, I shall examine them together.

70. As a preliminary point, a clear definition should be provided of what falls within the jurisdiction of the Court of Justice in the context of appeal proceedings.

71. It is clear from the Court's case-law that an alleged failure to have regard to the rules of evidence is a question of law, which is admissible in an appeal. [22]

72. More specifically, the Court has held that, 'inasmuch as they relate to the assessment by the [General] Court … of the evidence adduced, the appellant's complaints cannot be examined in an appeal. However, it is incumbent on the Court to verify whether, in making that assessment, the [General] Court … committed an error of law by infringing the general principles of law, such as the presumption of innocence and the applicable rules of evidence, such as those concerning the burden of proof'. [23]

73. Thus, 'the question of the allocation of the burden of proof, although it may have an impact on the findings of fact by the [General] Court …, is a question of law'. [24]

74. In the light of that case-law, the Court must, in the present appeals, verify whether or not the General Court infringed the rules governing the allocation of the burden of proof in matters concerning restrictive measures.

75. As a first step, I shall, via an examination of three judgments, outline the rules which the Court has established with respect to the burden of proof in matters concerning restrictive measures. As a second step, I shall then examine whether the reasoning set out by the General Court is compatible with the case-law of the Court of Justice.

A – *The rules relating to the burden of proof in matters concerning restrictive measures*

76. At the present stage of development of the litigation concerning restrictive measures, the main guidelines on rules relating to the burden of proof are to be found in the judgments in *Tay Za* v *Council* (EU:C:2012:138), *Commission and Others* v *Kadi* (EU:C:2013:518) and *Council* v *Manufacturing Support & Procurement Kala Naft* (EU:C:2013:776).

1. The judgment in *Tay Za* v *Council*

77. The judgment in *Tay Za* v *Council* (EU:C:2012:138) concerns restrictive measures against the Republic of the Union of Myanmar. Measures to freeze funds had been adopted against persons benefiting from the economic policies of the government. The appellant's name, together with the information 'Son of Tay Za', and the name of his father, Mr Tay Za, together with the reason that he was a business leader, appeared on the list of persons whose funds had been frozen.

22 — See, inter alia, judgment in *Bertelsmann and Sony Corporation of America* v *Impala* (C-413/06 P, EU:C:2008:392, paragraph 44 and the case-law cited).

23 — Judgment in *Hüls* v *Commission* (C-199/92 P, EU:C:1999:358, paragraph 65).

24 — Judgment in *BAI and Commission* v *Bayer* (C-2/01 P and C-3/01 P, EU:C:2004:2, paragraph 61).

78. The appellant disputed the fact that his status as a member of the family of a business head could by itself be regarded as sufficient to justify his listing.

79. As the restrictive measures at issue had been adopted on the basis of Articles 60 EC and 301 EC, the Court set out the circumstances in which a person could be the subject of a measure to freeze his funds under those articles.

80. In this regard, the Court recalled that it had already held, in its judgment in *Kadi and Al Barakaat International Foundation* v *Council and Commission*,[25] that, 'having regard to the wording of Articles 60 EC and 301 EC, especially to the expressions "as regards the third countries concerned" and "with one or more third countries" used there, those provisions concern the adoption of measures vis-à-vis third countries, since that concept may include the rulers of such a country and also individuals and entities associated with or controlled, directly or indirectly, by them'.[26]

81. Consequently, in paragraph 55 of its judgment in *Tay Za* v *Council* (EU:C:2012:138), the Court stated that 'the possibility cannot be ruled out that those in charge of certain businesses may be subject to restrictive measures adopted on the basis of Articles 60 EC and 301 EC, *provided it is established that they are associated with the leaders of the Republic of the Union of Myanmar or that the activities of those businesses are dependent on those leaders*'.[27]

82. In the case giving rise to that judgment, the son of a business figure included on the contested list was subject to the measure freezing his funds for the sole reason that he belonged to the family of a person who could be regarded as being associated with the leaders of the Republic of the Union of Myanmar. The General Court had held that it could be presumed that the family members of persons in charge of businesses benefit from the functions exercised by those businessmen, so that there is nothing to prevent the conclusion that such family members also benefit from the economic policies of the government. The General Court had also found that that presumption could be rebutted if the applicant successfully demonstrated that he did not have a close link with the businessman who was part of his family.

83. The General Court therefore concluded that the restrictive measures, on the basis of targeted and selective sanctions applied to certain categories of persons deemed by the Council to be associated with the regime concerned, including the family members of leading business figures in the third country concerned, fell within the scope of Articles 60 EC and 301 EC.

84. The Court held that, by adopting that line of reasoning, the General Court had erred in law.

85. While it recognised that, in paragraph 166 of the judgment in *Kadi and Al Barakaat International Foundation* v *Council and Commission* (EU:C:2008:461), it had given a broad interpretation of Articles 60 EC and 301 EC, in so far as it had included in the concept of 'third country' used in those provisions the leaders of such countries as well as the individuals and entities associated with or controlled, directly or indirectly, by them, the Court none the less stated that such an interpretation was made subject to conditions designed to ensure that Articles 60 EC and 301 EC are applied in a manner that is consistent with the objective assigned to them.

86. According to the Court, in order for it to be possible for them to be adopted on the basis of Articles 60 EC and 301 EC as restrictive measures imposed on third countries, the measures in respect of natural persons must be directed only against the rulers of such countries and the persons associated with them.

25 — C-402/05 P and C-415/05 P, EU:C:2008:461.

26 — Judgment in *Tay Za* v *Council* (EU:C:2012:138, paragraph 53 and the case-law cited).

27 — Emphasis added.

87. In its view, that requirement ensures that there is a sufficient link between the persons concerned and the third country targeted by the restrictive measures adopted by the European Union, precluding too broad an interpretation of Articles 60 EC and 301 EC which would therefore be contrary to the Court's case-law.

88. The General Court was therefore criticised by the Court for having extended the category of natural persons who may be subject to targeted restrictive measures by presuming that the family members of leading business figures also benefit from the economic policies of the government. According to the Court, the application of such measures to natural persons on the sole ground of their family connection with persons associated with the leaders of the third country concerned, irrespective of the personal conduct of such natural persons, is at variance with the Court's case-law relating to Articles 60 EC and 301 EC.

89. In the Court's view, it is not easy to establish a link, even an indirect link, between the absence of progress towards democratisation and the continuing violation of human rights in Myanmar and the conduct of the family members of those in charge of businesses. Furthermore, the Court intended to restrict the categories of natural persons at whom targeted restrictive measures may be directed to those whose connection with the third country concerned is quite obvious, namely the leaders of third countries and the individuals associated with them.

90. The Court went on to say that the criterion used by the General Court in order to include the family members of those in charge of businesses was based on a presumption for which no provision was made in Regulation (EC) No 194/2008 [28] or in Common Positions 2006/318/CFSP [29] and 2007/750/CFSP, [30] to which that regulation refers, and which is inconsistent with the objective of the regulation.

91. The Court concluded from this that 'a measure to freeze funds and economic resources belonging to the appellant could have been adopted within the framework of a regulation intended to impose sanctions on a third country on the basis of Articles 60 EC and 301 EC *only in reliance upon precise, concrete evidence which would have enabled it to be established that the appellant benefits from the economic policies of the leaders of the Republic of the Union of Myanmar*'. [31]

92. The Court's reasoning in its judgment in *Tay Za* v *Council* (EU:C:2012:138) is centred on the legal bases that were in force at that time, that is to say, Articles 60 EC and 301 EC. To my mind, however, the main lines of reasoning in that judgment are still relevant.

93. It is true that the issue relating to the extent of the personal scope of measures adopted against a third State on the basis of Articles 60 EC and 301 EC is of less importance now that Article 215(2) TFEU allows restrictive measures to be adopted against natural or legal persons and groups or non-State entities. However, the interest attaching to the reasoning contained in that judgment, in particular so far as concerns the requirement for the Council to demonstrate the existence of a sufficient link between the person listed and the regime of the third State at issue, has not entirely disappeared, since the content of Article 301 EC is essentially reproduced in Article 215(1) TFEU.

28 — Council Regulation of 25 February 2008 renewing and strengthening the restrictive measures in respect of Burma/Myanmar and repealing Regulation (EC) No 817/2006 (OJ 2008 L 66, p. 1).

29 — Council Common Position of 27 April 2006 renewing restrictive measures against Burma/Myanmar (OJ 2006 L 116, p. 77).

30 — Council Common Position of 19 November 2007 amending Common Position 2006/318 (OJ 2007 L 308, p. 1).

31 — Emphasis added.

94. In my view, there is no reason why the latter provision should not be used, as Articles 60 EC and 301 EC previously were, as the legal basis for the adoption of measures against the leaders of third States and the persons associated with them. Article 215(2) TFEU would then apply to persons who could not be regarded as being associated with a third State, which, moreover, is consistent with the wording of that provision, which is directed at natural or legal persons as well as groups and 'non-State' entities.

95. In this instance, the regulations at issue in the present cases were adopted on the basis of Article 215 TFEU, without any indication as to whether the measures to freeze funds adopted against the persons considered to be associated with the Syrian regime are based on paragraph 1 or paragraph 2 of that article.

96. Be that as it may, the important point is to bear in mind that the key contributions made by the judgment in *Tay Za* v *Council* (EU:C:2012:138) still hold good even after the introduction of new legal bases in Article 215(1) and (2) TFEU.

97. Thus, that judgment illustrates the fact that 'the main difficulty with individual restrictive measures formally targeted at a State lies in the definition of the connecting factor between the actual individual target and the formal State target'. [32]

98. In this regard, the main contribution made by that judgment is that, where the listing criterion contained in the general rules relating to the restrictive measures at issue is based on the link between a category of persons and the regime in the third State concerned, such as the fact of benefiting from the economic policies of that regime, the Council is required, when applying that listing criterion, to demonstrate the existence of a sufficient link between the person it has chosen to list and that regime. It is, in fact, on that proviso that the inclusion of a person on a funds-freezing list may be regarded as being capable of attaining the policy objective pursued by the Council.

99. In particular, although the Court has acknowledged that those in charge of certain businesses may be subject to restrictive measures, this is on condition that it is established that they are associated with the leaders of the third country at issue or that the activities of those businesses are dependent on those leaders. [33]

100. The Court is not therefore satisfied with an allegation unsupported by information and evidence. In the absence of precise, concrete evidence enabling it to be established that a person benefits from the economic policies pursued by the leaders of a third State, the sufficient link with the regime does not exist and the listing must therefore be cancelled. [34]

32 — See Beaucillon, C., op. cit., p. 131.

33 — Judgment in *Tay Za* v *Council* (EU:C:2012:138, paragraph 55).

34 — See Simon, D., 'Mesures restrictives (Myanmar)', *Revue Europe*, May 2012, No 5, commentary 174, who states that 'the Court's approach … has the effect of limiting the category of persons capable of being targeted by requiring the existence of a reasonably strong link'.

101. As I shall have occasion to explain below in detail, it is clear that, in the present appeals, the link between Mr Anbouba and the Syrian regime is significantly closer and is not therefore open to the same censure as that expressed by the Court in the judgment in *Tay Za* v *Council* (EU:C:2012:138). Unlike in the case giving rise to that judgment, the Council has demonstrated that Mr Anbouba fell within the scope of the listing criterion, that is to say that, as a leading businessman in Syria, he belonged to the category of persons who benefit from or support the regime. [35]

2. The judgment in *Commission and Others* v *Kadi*

102. The judgment in *Commission and Others* v *Kadi* (EU:C:2013:518) concerns the restrictive measures adopted against persons and entities associated with Usama Bin Laden, the Al-Qaeda network and the Taliban.

103. In accordance with the case-law arising from that judgment, the effectiveness of the judicial review guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union requires, inter alia, that, 'as part of the review of the lawfulness of the grounds which are the basis of the decision to list or to maintain the listing of a given person …, the Courts of the European Union are to ensure that that decision … is taken on a *sufficiently solid factual basis* …. That entails a verification of the factual allegations in the summary of reasons underpinning that decision …, with the consequence that judicial review cannot be restricted to an assessment of the cogency in the abstract of the reasons relied on, but must concern *whether those reasons*, or, at the very least, one of those reasons, deemed sufficient in itself to support that decision, *is substantiated*'. [36]

104. It is the task of the competent EU authority to establish, in the event of challenge, that the reasons relied on in connection with the person concerned are well founded, and not the task of that person to adduce evidence of the negative, that those reasons are not well founded. It is necessary that the information or evidence produced by the authority in question should support the reasons relied on in connection with the person concerned. If that material is insufficient to allow a finding that a reason is well founded, the Courts of the European Union are to disregard that reason as a possible basis for the contested decision to list or maintain a listing. [37]

105. Thus, 'respect for [the rights of the defence and the right to effective judicial protection] implies that, in the event of a legal challenge, the Courts of the European Union are to review, in the light of the information and evidence which have been disclosed inter alia whether the reasons relied on [in support of the decision to list or maintain a listing] are sufficiently detailed and specific and, where appropriate, whether the *accuracy of the facts* relating to the reason concerned *has been established*'. [38]

35 — In point 39 of his Opinion in *Tay Za* v *Council* (EU:C:2011:786), Advocate General Mengozzi described the link between the appellant's father, who was a business head, and the regime of the third State at issue:
'In the present case, it is already apparent, from an assessment by the Council which there is no reason to call in question, that the appellant's father is associated with the Burmese regime but does not, for all that, belong to the government itself. His status as a "person associated" with the Burmese regime follows from the real benefits which the two undertakings which he directs derive from Burma's economic policies, and it is in this sense that there appears to be a sufficient link between him and the aforementioned regime. None the less, with regard still to the appellant's father, that link, although sufficient, is primarily indirect, since he is described as the passive beneficiary of economic policies on which he does not himself decide.'

36 — Paragraph 119. Emphasis added.

37 — Paragraphs 121 to 123.

38 — Paragraph 136. Emphasis added.

106. Viewed in the context of the situation of leading businessmen in an authoritarian regime, such a requirement is, in my opinion, co-extensive with that formulated by the Court in paragraph 55 of its judgment in *Tay Za* v *Council* (EU:C:2012:138), namely that 'the possibility cannot be ruled out that those in charge of certain businesses may be subject to restrictive measures … *provided it is established* that they are associated with the leaders [of the third country concerned] or that the activities of those businesses are dependent on those leaders'. [39]

107. In this regard, the demonstration of a link between the person listed and the regime in the third State at issue must, in order to be considered sufficient, be founded on a sufficiently solid factual basis.

108. As will be seen below, in the cases giving rise to the present appeals, the factual basis is composed of both well-known facts and uncontested facts, with the result that the existence of a sufficient link between Mr Anbouba and the Syrian regime could rightly be regarded as being established.

3. The judgment in *Council* v *Manufacturing Support & Procurement Kala Naft*

109. Reference should be made to the judgment in *Council* v *Manufacturing Support & Procurement Kala Naft* (EU:C:2013:776), since it applies, in the context of restrictive measures aimed at a third country, the reasoning contained in the judgment in *Commission and Others* v *Kadi* (EU:C:2013:518), which concerned an anti-terrorism measure.

110. The other point of interest in this important judgment is that it not only refers to the preventive nature of the restrictive measures without drawing any inferences from it, but also takes full account of their nature as such in its examination of the validity of the contested fund-freezing measure.

111. The preventive rather than punitive nature of restrictive measures does of course have a bearing on the nature, form and degree of the proof that the Council may be asked to provide.

112. The case in question concerned the inclusion of Kala Naft on the list of persons and entities whose funds are frozen because they provide support for the Islamic Republic of Iran's proliferation-sensitive nuclear activities or for the development of nuclear weapon delivery systems. Kala Naft is an Iranian company owned by the National Iranian Oil Company ('NIOC') and whose function is to act as the central purchasing body for the oil, gas and petrochemical divisions of the NIOC group.

113. In the Opinion which I delivered in that case, I focused on the preventive nature of restrictive measures aimed at the Islamic Republic of Iran and the inferences that were to be drawn from this from the point of view of evidence. As regards the assessment of the validity of the reasons given, I argued that, where, on the basis of all the information before it relating to the case and its context, the EU judicature is able to determine that the risk posed by a person or entity in the light of the campaign against nuclear proliferation is sufficiently established, that person or that entity may rightly be regarded as supporting nuclear proliferation and may therefore be the subject of a fund-freezing measure.

114. The Court's judgment seems to me to take the same approach.

115. In its judgment, the Court first examined the way in which the General Court had identified and interpreted the general rules of the relevant legislation, before looking more specifically at the way in which it had reviewed the statement of reasons for, and validity of, the acts at issue.

39 — Emphasis added.

116. As regards the general rules, the Court started from the following two-fold finding. First, those general rules established a link between the procurement of prohibited goods and technology — in the case in point the procurement of key equipment and technology for key sectors of the oil and gas industry in Iran — and nuclear proliferation. [40]

117. Second, the general rules included as a listing criterion the engagement in, direct association with, or the provision of support for, Iran's proliferation-sensitive nuclear activities. In this regard, the Court held that '"support" implies a lesser degree of connection to Iran's nuclear activities than "engagement" or "direct association", and that it is capable of covering the procurement of or trade in goods and technology linked to the gas and oil industry'. [41] To corroborate that interpretation, the Court took into account several acts mentioning the revenues derived from the energy sector and the risk attached to material intended for the oil and gas industry. On the basis of those factors, the Court was able to find that 'the acts at issue related to the Iranian oil, gas and petrochemical industry owing to the risk that that industry presented with regard to nuclear proliferation, both by virtue of the revenue generated and through the use of equipment and materials which have much in common with those used for certain sensitive nuclear fuel cycle activities'. [42]

118. The Court concluded from this that the General Court had erred in law in finding that 'the adoption of restrictive measures against an entity presupposes that that entity has actually previously acted reprehensibly, the mere risk that the entity concerned may do so in the future being insufficient'. [43] 'The various provisions of the acts at issue providing for funds to be frozen are worded in general terms ("being engaged in, directly associated with, or providing support for …") and make no reference to conduct prior to a decision to freeze funds'. [44] According to the Court, it follows from this that, 'even where those provisions relate to a specific entity, the reference to a general objective as disclosed by the statutes of that entity may be sufficient to justify the adoption of restrictive measures'. [45]

119. It was in the light of the general rules defining the listing criterion that the Court then held that the first ground for listing, to the effect that Kala Naft trades in equipment for the oil and gas sectors that can be used for Iran's nuclear programme, was sufficiently detailed and specific to enable Kala Naft to verify whether the acts at issue were well founded and to defend itself before the General Court and to enable the General Court to review the legality of those acts. As regards the validity of the measure and, more specifically, the accuracy of the facts alleged in the first ground, the Court held, still in the light of the general rules defining the criterion for listing, that 'the Council was entitled to consider that the measures could be adopted against Kala Naft inasmuch as it was trading in equipment for the oil and gas sectors that could be used for Iran's nuclear programme'. [46]

120. In this regard, the Court took into account the following factual basis, that is to say, that Kala Naft is the central purchasing body of the Iranian national oil company, NIOC. It pointed out that this was mentioned in the statutes of that company and was not disputed by it. Kala Naft itself stated that its exclusively oil, gas and petrochemical-related functions were clearly apparent from its working methods. [47] In addition, Kala Naft itself stated that it was regularly involved in the procurement of alloy gates for NIOC or its subsidiaries. [48]

40 — Paragraphs 76 and 77.
41 — Paragraph 80.
42 — Paragraph 112.
43 — Paragraph 84.
44 — Paragraph 85.
45 — Ibid.
46 — Paragraph 88.
47 — Paragraph 89.
48 — Paragraph 90.

121. In the light of those matters, the Court held that the facts alleged in the first ground had been established to the requisite legal standard and that that first ground in itself justified the listings in the acts at issue.

122. In paragraph 105 of its judgment, the Court also noted, in connection with the evidence proving the matters alleged against Kala Naft, that Kala Naft's function as central purchasing body of the NIOC group is evident both from its statutes and from the brochures which it produces. The Council was not, therefore, required to prove Kala Naft's activities by means of other evidence.

123. That judgment is important because it shows that the rigour demonstrated by the Court in its judgment in *Commission and Others* v *Kadi* (EU:C:2013:518) in terms of the degree of proof does not automatically lead to the annulment of fund-freezing measures. The concept of a 'sufficiently solid factual basis' is sufficiently broad and flexible to enable the Courts of the European Union to adjust the type and degree of proof required according to the context in which such measures are adopted.

124. Moreover, the way in which the Court structured its reasoning must be endorsed in so far as it first carried out a precise analysis of the scope of the criterion for listing contained in the general rules relating to the restrictive measures at issue before drawing the necessary inferences from it in its examination of the validity of the individual measure directed at Kala Naft. As that case shows, the examination of the validity of a restrictive measure is thus closely linked to the way in which the listing criterion contained in the general rules is designed.

125. It must be noted in this regard that the Court emphasised the fact that the Council enjoys a broad discretion in the determination of the listing criterion contained in the general rules. It thus stated in paragraph 120 of its judgment in *Council* v *Manufacturing Support & Procurement Kala Naft* (EU:C:2013:776) that, while the applicant challenged the proportionality of the general rules on the basis of which it had been decided to enter it on the lists, 'it must be noted that, with regard to judicial review of compliance with the principle of proportionality, the Court has held that the EU legislature must be allowed 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 this 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'. [49]

126. More specifically, that judgment illustrates the point that objective and well-known matters of fact derived from an undertaking's activity, combined with the existence of uncontested facts, may be sufficient to hold that the Council discharged the burden of proof borne by it.

4. Summary of the requirements relating to the burden of proof in matters concerning restrictive measures

127. With regard to measures intended to exert pressure on a third State, the listing criteria are normally based on an association-based link between categories of persons and that State. In this regard, those in charge of certain businesses may be subject to restrictive measures provided that it is established that they are associated with the leaders of that State or that the activities of those businesses are dependent on those leaders.

128. The demonstration of such an association-based link must be founded on sufficiently solid factual basis. In other words, the reasons supporting a person's inclusion on a funds-freezing list must be sufficiently substantiated.

49 — Emphasis added.

129. Where a restrictive measure is adopted in accordance with a listing criterion based on the link between a category of persons and the regime in the third State at issue, such as the benefit derived from the policies pursued by that regime or the support provided to it, that measure may be taken only in reliance upon precise, concrete evidence enabling it to be established that the person concerned benefits from the economic policies pursued by the leaders of that third State or supports those leaders.

130. Such precise, concrete evidence may be well-known facts and/or uncontested facts. Evidence derived from an economic activity carried on or a post occupied by a particular person may, depending on the context, constitute sufficient indicia that his listing is capable of attaining the objective pursued by the European Union. In that case, the Council is not required to adduce additional evidence.

131. It must now be examined whether the line of reasoning followed by the General Court in the judgments under appeal is compatible with the rules relating to the burden of proof as set out in the case-law of the Court of Justice.

B – *The compatibility of the General Court's reasoning with the rules relating to the burden of proof in matters concerning restrictive measures*

132. In order to reject the complaint alleging that the Council reversed the burden of proof, the General Court put forward in the judgments under appeal a line of reasoning based on the concept of presumption.

133. The line of reasoning followed by the General Court may be summarised as follows.

134. First of all, the General Court started from the finding, based on the preamble to Decision 2011/522, that, since the restrictive measures adopted in Decision 2011/273 had not been able to stop the repression by the Syrian regime against the Syrian civilian population, the Council considered that those measures should be applied to additional persons and entities benefiting from or supporting the regime, in particular those who financed the regime or provided logistical support to the regime, particularly the security apparatus, or who undermined the efforts to secure a peaceful transition to democracy. It inferred from this that Decision 2011/522 extended the restrictive measures to the leading Syrian business figures, the Council taking the view that the heads of the leading Syrian businesses could be classified as persons associated with the Syrian regime, since the commercial activities of those businesses could not prosper unless they enjoyed the favour of that regime and provided it with a degree of support in return. The General Court held that, in so doing, the Council had intended to apply a presumption of support for the Syrian regime to the heads of the leading businesses in Syria.

135. It was therefore when examining the listing criterion as defined by Decision 2011/522 that the General Court formed the idea that the extension of the criterion is based on a presumption of support for the Syrian regime on the part of the leading business figures in Syria. The General Court then set out the factual reasons why, in the case of Mr Anbouba, the Council had applied a presumption of support for that regime.

136. The General Court continued its line of reasoning by examining whether the Council could apply such a presumption of support to Mr Anbouba without erring in law. It was at that stage that the General Court held that the presumption applied to him by the Council was founded on a legal basis, was proportionate and was rebuttable. The General Court concluded that the Council had not erred in law in considering that Mr Anbouba's status as a leading businessman in Syria was in itself sufficient for it to presume that he provided economic support for the Syrian regime.

137. It must be ascertained whether or not, by applying that reasoning, the General Court infringed the rules relating to the burden of proof as defined by the Court of Justice.

138. In this regard, I take the view that, even though the use of the concept of presumption on which the General Court founded its reasoning is not contemplated in the case-law of the Court of Justice cited above, with the exception of the judgment in *Tay Za* v *Council* (EU:C:2012:138), in which it was ultimately regarded as being insufficient to justify the measure at issue, the General Court's evaluation of the burden of proof borne by the Council, in the light of the Syrian context and the evidence and information available to it, was largely correct.

139. In order to explain the reasons why I share the conclusion arrived at by the General Court, I shall, as a first step, identify the listing criterion defined by the general rules relating to the restrictive measures at issue, and then, as a second step, examine how that listing criterion was applied.

1. The general listing criterion

140. In order to review the lawfulness of the individual measures providing for inclusion on funds-freezing lists, the Courts of the European Union must first examine what general listing criterion was laid down by the Council. It is in the light of that criterion that the Courts of the European Union must assess, on a case-by-case basis, whether the reasons given in the contested acts are sufficiently detailed and specific, whether the facts corresponding to the reason concerned are accurate in the light of the evidence furnished and, ultimately, whether the facts alleged are sufficient to justify the listing.

141. I would point out at the outset that the General Court did indeed start its examination of whether or not the rules relating to the burden of proof had been observed on the basis of an analysis of the listing criterion contained in Decision 2011/522.

142. It is clear from that examination that, in the context of the restrictive measures adopted in order to exert pressure on the Syrian regime, the inclusion of persons on the funds-freezing lists was extended over time to cover not only the ruling class in the Syrian Arab Republic but also persons and entities benefiting from or supporting the regime in that third State.

143. By Decision 2011/273, the European Union sought to express its firm condemnation of the violent repression, including through the use of live ammunition, of peaceful protests in various locations across Syria, as manifested by the death of several demonstrators, injuries and arbitrary arrests. The European Union thus appealed to the Syrian security forces to exercise restraint instead of repression (recital 2 in the preamble to that decision). Recital 3 in the preamble to that decision states that, in view of the seriousness of the situation, restrictive measures should be imposed against Syria and against the persons responsible for the violent repression against the civilian population in Syria. Article 4(1) of Decision 2011/273 therefore provides that all funds and economic resources belonging to persons responsible for the violent repression perpetrated against the civilian population in Syria and to natural or legal persons and entities associated with them are to be frozen.

144. Then, in Decision 2011/522, the Council recalled, in recital 2 in the preamble thereto, that, on 18 August 2011, the European Union had condemned in the strongest terms the brutal campaign which Bashar Al-Assad and his regime were waging against their own people and which had led to the killing or injury of many Syrian citizens. The European Union had repeatedly emphasised that the brutal repression had to be stopped, detained protesters released, free access by international humanitarian and human rights organisations and the media allowed, and a genuine and inclusive national dialogue launched. The Council noted in the same recital that the Syrian leadership had,

however, remained defiant with regard to calls from the European Union as well as from the broad international community. It was in those circumstances that the European Union decided, as is clear from recital 3 in the preamble to that decision, to adopt additional restrictive measures against the Syrian regime.

145. Thus, recital 4 in the preamble to Decision 2011/522 states that '[t]he restrictions on admission and the freezing of funds and economic resources should be applied to *additional persons and entities benefiting from or supporting the regime*, in particular persons and entities *financing the regime*, or providing logistical support to the regime, in particular the security apparatus, or who undermine the efforts towards a peaceful transition to democracy in Syria'. [50]

146. That intention was reflected in an amendment to Article 4(1) of Decision 2011/273, which provided thereafter that: '[a]ll funds and economic resources belonging to … 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 … shall be frozen'. [51]

147. That extension of the listing criterion was reflected in Regulation No 878/2011, which amended Regulation No 442/2011. Article 5(1) of Regulation No 442/2011, as amended, thus applies not only to the category of persons responsible for the violent repression perpetrated against the civilian population in Syria, but also to 'persons and entities *benefiting from or supporting the regime*, or persons and entities associated with them'. [52]

148. Decision 2011/782 then repealed Decision 2011/273 and brought together in a single legal instrument the measures imposed by the latter decision and additional measures. Article 18(1) of Decision 2011/782, on restrictions on admission, and Article 19(1) of that decision, concerning the freezing of funds and economic resources, target the category of persons 'benefiting from or supporting the regime'. Decision 2011/782 was implemented by Regulation No 36/2012, repealing Regulation No 442/2011.

149. That extension of the criterion for inclusion on the list of persons whose funds are frozen was accompanied by the introduction of additional restrictive measures such as the ban on investing in the crude oil sector, the ban on participating in certain infrastructure projects and investments in those projects, and the ban on delivering Syrian-denominated banknotes and coinage to the Central Bank of Syria.

150. Since 2011, the European Union's strategy has therefore been to introduce both general restrictive measures, such as the bans on investment in economic sectors, and individual restrictive measures, such as measures for the freezing of funds and economic resources. Further measures are introduced for as long as the repression perpetrated against the civilian population continues, in order to increase the pressure on the Syrian regime and force it to change its behaviour. The gravity of the situation in Syria and the lack of any recorded progress thus call for the introduction of additional restrictive measures.

151. As regards the fund-freezing measures, the listing criterion was extended to the category of persons and entities benefiting from or supporting the regime.

152. As is clear from recital 4 in the preamble to Decision 2011/522, that extension of the listing criterion is intended to block the financial and logistical support provided to the regime by certain persons and entities. Disabling such support is indeed, in the Council's assessment, the way to achieve the objective of stopping the violence perpetrated by the Bashar Al-Assad regime.

50 — Emphasis added.

51 — See Article 1(3) of Decision 2011/522. Emphasis added.

52 — See Article 1(3) of Regulation No 878/2011. Emphasis added.

153. In introducing that listing criterion, the Council considered that the freezing of funds belonging to persons and entities benefiting from the regime could help to weaken that regime by reducing the support provided to it by that category of persons.

154. In this regard, it is important to recognise that the Council enjoys a broad discretion in defining the general rules relating to listing criteria. I would point out that this was the view expressed by the Court in paragraph 120 of its judgment in *Council* v *Manufacturing Support & Procurement Kala Naft* (EU:C:2013:776).

155. It is clear from recitals 2 to 4 in the preamble to Decision 2011/522 that the Council's aim is to put an end to the brutal repression perpetrated by the Syrian President Bashar Al-Assad and his regime against their own people, to secure the release of detained protesters, to grant free access to Syrian territory to humanitarian and international human rights organisations and the media and to launch a genuine and inclusive national dialogue.

156. Having regard to the significance and the nature of the objectives thus pursued, the Council was entitled to consider it necessary to extend the personal scope of the restrictive measures beyond the circle of the leaders of the third State in question. It is for it to assess whether or not, in the light of the results achieved by the preceding restrictive measures, it is necessary to extend the scope of those measures so as to increase the pressure on the third State concerned.

157. Moreover, it is permissible for the Council to take the view that, if the restrictive measures at issue were directed only at the leaders of the Syrian regime, but not also at the persons benefiting from or supporting that regime, the achievement of the objectives pursued by the Council might be frustrated, since those rulers could easily obtain the support, particularly financial, that they need to continue the repression against the civilian population, through the intermediary of other persons who either perform executive functions in institutions of the Syrian State [53] or hold an important economic position within that State. Consequently, it was legitimate for the Council to take the view that the adoption of restrictive measures against the category of persons and entities who benefit from the regime in the third State in question and are for that reason associated with that regime would help exert on the regime a pressure capable of stopping or alleviating the repression against the civilian population. [54] The choice made by the Council to extend the personal scope of the restrictive measures to persons who benefit from the policies pursued by the regime is therefore consistent with the primary function of measures intended to put a stop to the violence perpetrated by an authoritarian regime such as the Syrian regime, that is to say, a coercive function aimed at changing a situation or behaviour. [55]

158. The Council's definition of the general rules relating to listing criteria is necessarily based on presumptions, since those rules are established on the basis of an evaluation of the link which a category of persons maintains with the regime and, therefore, the influence that the restrictive measures might have on the pursuit of the objective set by the Council, in this instance to put an end to the bloody repression against the civilian population in Syria. In other words, when establishing a listing criterion, the Council necessarily relies on an evaluation of the potential effect that the listing of persons belonging to a certain category might have on the objective pursued.

53 — See, in this regard, the judgment in *Mayaleh* v *Council* (T-307/12 and T-408/13, EU:T:2014:926, paragraph 147).

54 — Ibid. (paragraph 148).

55 — See Beaucillon, C., cited above, p. 485.

159. In the instance at issue here, the Council formed the view, when establishing the general listing criterion, that the fact of benefiting from the policies pursued by the Syrian regime implied the existence of a relationship of proximity to that regime. By targeting that category of persons, the fund-freezing measures could therefore help weaken the regime. In making such an assessment, the Council remained within the limits of the broad discretion which, as we have seen, it must be accorded.

2. Application of the general listing criterion

160. The adoption of restrictive measures against Mr Anbouba reflects the Council's intention to include certain business heads in the category of persons benefiting from the policies pursued by the Syrian regime or supporting that regime.

161. In this regard, the Council took the view, as is clear from paragraph 32 of the judgment in T-563/11 and paragraph 42 of the judgment in T-592/11, that the heads of the leading Syrian businesses could be classified as persons associated with the Syrian regime, since the commercial activities of those businesses could not prosper unless they enjoyed the favour of that regime and provided it with a degree of support in return.

162. The Council therefore established a relationship between the two components of the listing criterion, which, it may be recalled, concern, in the alternative, the category of persons benefiting from or supporting the regime. The Council thus took the view that a person could not benefit from the regime's policies without supporting that regime.

163. That relationship between the two components of the listing criterion was reflected in the initial reasons for Mr Anbouba's listing, that is to say, 'President of [SAPCO]. Provides economic support for the Syrian regime'. The reasons given in Annex II to Regulation No 36/2012 are also, in part, based on the existence of financial support provided by Mr Anbouba to the Syrian regime.

164. As is apparent from those reasons, the Council relied on Mr Anbouba's economic position in order to infer therefrom that he provided economic support for the Bashar Al-Assad regime.

165. The proceedings before the General Court enabled the Council to support those reasons by recourse to various matters of fact demonstrating that Mr Anbouba occupied an important economic position, that he had business links with a person close to Bashar Al-Assad and, finally, that he performed executive functions in the economic sector. Those matters of fact are contained in paragraph 33 of the judgment in T-563/11 and paragraph 43 of the judgment in T-592/11.

166. The General Court also relied, in paragraph 38 of the judgment in T-563/11 and paragraph 48 of the judgment in T-592/11, on the authoritarian nature of the Syrian regime and the State's tight control over the Syrian economy in order to form the view that the Council could rightly regard as constituting a matter of common experience the fact that the activities of one of the leading businessmen in Syria, who is active in numerous sectors, could not have prospered if he had not enjoyed the favour of that regime and provided it with a degree of support in return.

167. It was on the basis of those facts that the General Court considered that the Council had applied to Mr Anbouba a presumption of support for the Syrian regime.

168. Although I agree with the broad conclusion which the General Court reached, that is to say, that the Council discharged its burden of proof, I am not, on the other hand, convinced that, once the listing criterion has been identified, the examination of the application of such a criterion must be carried out by recourse to the concept of presumption and by assessing on each occasion whether the presumption has a legal basis and whether it is proportionate and rebuttable.

169. The present cases demonstrate, in my view, that a line of reasoning constructed entirely on the concept of presumption complicates the analysis rather than simplifies it. Moreover, the use of that concept leads to the paradoxical situation in which the more the presumption is based on a solid factual basis, the more it will prompt the accusation of being irrebuttable and therefore open to challenge as a matter of principle.

170. Consequently, it strikes me as being clearer and more in line with the case-law of the Court of Justice to take the simpler approach of ascertaining whether or not, in the light of the listing criterion contained in the general rules relating to the restrictive measures at issue, the Council discharged the burden of proof borne by it. In order to do so, the Courts of the European Union must determine whether, in the light of the information and evidence produced by the Council, the view may be taken that the grounds on which a person's listing is based are sufficiently substantiated. More specifically, in a situation such as that at issue in the present appeals, the Courts of the European Union must ascertain whether the measure at issue was adopted in reliance upon precise, concrete evidence enabling it to be established that the person listed benefits from the economic policies pursued by the leaders of the third State or supports those leaders.

171. The Courts of the European Union must of course, if they wish to carry out a realistic review, take full account of the context of the restrictive measures at issue. As I shall explain in more detail in the reasoning that follows, it is clear that, where such measures are directed at a third State which is engaged in civil war and under the leadership of an authoritarian regime, the urgency of the situation and the difficulties connected with investigation prevent the Courts of the European Union from demanding a high degree of proof. In those circumstances, the Courts of the European Union should take the view that the Council discharges its burden of proof as soon as it presents to the Court a set of precise, specific and consistent indicia in support of the reasons for listing.

172. My reticence with regard to the use of the concept of presumption when it comes to applying the listing criterion prompts me to take the view that the General Court has erred in law in constructing the demonstration of its position entirely on that concept. That said, it should be borne in mind that it is settled case-law that, if the grounds of a judgment of the General Court disclose an infringement of EU law but its operative part is shown to be well founded on other legal grounds, the appeal must be dismissed. [56] Since I agree with the broad conclusion reached by the General Court, namely that the Council discharged the burden of proof borne by it, the present appeals should not be upheld.

173. In accordance with the conclusion reached by the General Court, the reasons on which Mr Anbouba's listing is based may be regarded as being sufficiently substantiated.

174. Since it was presented with facts that were both well-known and undisputed, the General Court was entitled to hold that the burden of proof borne by the Council had been discharged.

175. In addition, in view of the particular characteristics of the Syrian regime and the context of the civil war in Syria, the General Court cannot be criticised for not having required the Council to adduce additional evidence.

a) The well-known facts

176. The General Court was right, in paragraph 38 of the judgment in T-563/11 and paragraph 48 of the judgment in T-592/11, to give emphasis to the relationship of interdependence between the business community in Syria and the Bashar Al-Assad regime.

56 — See, inter alia, judgment in *Artegodan* v *Commission* (C-221/10 P, EU:C:2012:216, paragraph 94 and the case-law cited).

177. According to the General Court, the existence of such a relationship constitutes a matter of 'common experience'. In other words, it is a well-known fact.

178. It should be pointed out in this regard that, in principle, the case-law precludes the review on appeal of the question of whether or not a fact is well known, other than in cases where the facts are distorted. [57]

179. In any event, I would point out that the existence of a relationship of interdependence between the business community and Bashar Al-Assad's regime is apparent from numerous studies concerning that regime.

180. It is thus well known that, under that authoritarian regime, dominated by the Ba'athist leadership, access to political and economic resources is secured via institutions such as the Ba'ath party, the intelligence services and the army.

181. Since the 1990s, the regime has managed to attract the support of the business class, particularly in the context of elections, granting it access to the People's Council. [58] That social group has therefore been able to defend sectoral interests within the regime. [59] That system of colluding interests has provided and continues to provide the foundation for the Ba'athist regime. [60]

182. Moreover, the process of liberalising the economy initiated by Bashar Al-Assad must not obscure the persistence of the State's tight control over the Syrian economy. [61] Since the economy has remained highly regulated and subsidised, the liberalisation process is characterised by its selectiveness. [62] That phenomenon has contributed to the emergence of a 'clientelistic business class', [63] the regime being marked by the corruption of the administration. [64]

57 — According to the Court, 'it should be pointed out … that it is normally for the person alleging facts in support of a claim to adduce proof of such facts (see, to that effect, [judgment in] *Brunnhofer*, [C-381/99, EU:C:2001:358], paragraph 52), and that, although that rule is derogated from when the allegation concerns facts which are well known, the finding that the facts concerned are well known or not is the task of the [General] Court … and constitutes a finding of fact which, save where the facts or evidence are distorted, is not subject to review on appeal (see, to that effect, [judgment in] *OHIM* v *Celltech*, [C-273/05 P, EU:C:2007:224], paragraphs 39 and 45 and the case-law cited)' (see the order in *Provincia di Ascoli Piceno and Comune di Monte Urano* v *Apache Footwear and Others*, C-464/07 P(I), EU:C:2008:49, paragraph 9).

58 — See Belhadj, S., *La Syrie de Bashar al-Asad — Anatomie d'un régime autoritaire*, Belin, Paris, 2013, pp. 267 and 268.

59 — Ibid. (pp. 270 and 271).

60 — Ibid. (p. 272).

61 — Ibid. The author states that, despite the stated wish to move from a controlled and protected economy towards an open, market economy, 'the majority of senior [Ba'athist] officials and, first and foremost, Bashar [Al-Assad] do not hide the fact that they wish to retain complete control over the process of transforming the structures of the national economy' (pp. 297 and 298).

62 — See Friberg Lyme, R., 'Sanctioning Assad's Syria — Mapping the economic, socioeconomic and political repercussions of the international sanctions imposed on Syria since March 2011', Danish Institute for International Studies Report 2012:13. The author indicates at pp. 15 and 18 respectively:
'The liberalisation process proved, however, selective and partial as the economy overall remained highly regulated and subsidised. ... the economy remained restrained by a bloated, corrupt and ineffective public administration.'
'The process [of liberalisation] largely benefited the educated, urban, upper middle class and saw the rise of economic oligarchs who extracted considerable wealth from virtual monopolies on newly opened business opportunities, particularly in sectors like oil, telecoms, pharmaceuticals and chemicals, electronics, agro-business and tourism, while midrange investment activity was lacking'.

63 — See Belhadj, S., op. cit., p. 344.

64 — See 'Syria Under Bashar (II): Domestic Policy Challenges', International Crisis Group, Middle East Report No 24, 11 February 2004, at pp. 3 and 11 respectively:
'Syria developed a quasi-corporatist system, built around patron-client relations and a widespread network of economic allegiance and corruption'.
'[T]he economic and the political are interlinked: deep public sector reforms would undermine patronage and clientelism. ... Likewise, widespread corruption is a central feature of the system, affecting all administrative levels and regulating entire facets of the economy. ... [P]rivate sector businessmen who took advantage of economic liberalisation have become major beneficiaries of corruption. As a result, they have monopolised most of the new lucrative markets.'

183. Close links, often involving family ties, have thus been forged between businessmen anxious to profit from the opening up of the Syrian economy and the regime in power. While the regime thus secured the political and financial support of business heads, the latter were able to use their connections with the regime to grow their business activities.[65] It is in this way that a relationship of interdependence has developed between the business community and the existing regime.[66] The business elite have thus become an essential crutch for that regime.[67]

184. In the light of the foregoing, the General Court could rightly rely on the relationship of interdependence between the business community and the Syrian regime in order to take the view that this constituted a strong indication of the support provided by a business head such as Mr Anbouba to the Syrian regime.

185. The General Court also based its reasoning on a number of uncontested facts.

b) The uncontested facts

186. Mr Anbouba is the president of SAPCO, a major company in the agri-food industry (SAPCO holds a 60% market share in the soya bean oil sector).

187. Mr Anbouba is also the head of a number of companies operating in the property and education sectors.

188. It is not disputed, as these facts bear out, that Mr Anbouba has seen his businesses prosper in tandem with the process of opening up the Syrian economy initiated by the Bashar Al-Assad regime. For that reason alone, it is established from the outset that Mr Anbouba's listing satisfies the first component of the listing criterion, which is concerned with the category of persons benefiting from the Syrian regime.

189. Mr Anbouba submits that the application of the restrictive measures to natural persons on account of their economic and social situation and irrespective of their personal conduct is at variance with the Court's case-law on fund-freezing measures. I do not think so. The sufficiently solid factual basis that the Court has required since the judgment in *Commission and Others* v *Kadi* (EU:C:2013:518) is strictly dependent on the listing criterion contained in the general rules relating to

65 — See Friberg Lyme, R., op. cit. The author indicates at pp. 20 and 21 respectively:
'[A]n organic alliance between elites within military, security and civilian state institutions and an emerging class of private sector entrepreneurs became a vital pillar of regime power. The selective liberalisation process provided instruments for co-opting and re-organising networks of allegiance and patronage as the resources generated by the economic openings and economic regulation were, first and foremost, exploited by regime elites and their close allies .... The new organic networks often involved close kinship between security, military and state officials and a new generation of business entrepreneurs.'
'The lion's share of the new opportunities and market openings went to a small group of individuals associated with the regime, either through family ties and/or through public governmental positions in the military and security services. The new entrepreneurial elite received licensing and concessions within the public services and could delegate management to gain the most profitable projects, benefit from tailor-made regulation, and enjoy privileged access to foreign investments and expatriate Syrian and Arab business communities .... They were therefore the ones largely benefitting from the opportunities arising from liberalisation, especially within sectors such as energy (oil and gas), telecoms and IT, duty free zones, pharmaceuticals, chemicals, electronics, agro-business, tourism and car dealerships. ... These people therefore owed their fortunes (or large parts thereof) to their organic relationship with regime insiders. By gathering patronage networks ..., the regime not only undercut any other collective action to rally private sector businesspeople against the regime, but by creating strategic openings to benefit its allies (and family members), the regime also assured themselves of allies through interdependence.'

66 — Ibid. The author mentions at p. 24:
'[T]he lucrative business openings, brought about by the liberalisation process, primarily benefitted an emerging entrepreneurial business class due to its organic and tightly knit (often family) ties to the inner core of the regime, creating a high degree of interdependence — and to some degree blurring of the distinction — between the two.'

67 — Ibid. The author states in the footnote on page 21:
'The new elites even challenged the Ba'ath traditionalists as they began seeking political representation. The party's importance as a mobilising driver for the regime declined and was to some degree taken over by the new commercial elite. This was clearly demonstrated in the presidential referendum in 2007 where the business elite mobilised regime support, covering the costs of all meeting venues in the country. These networks have been highly active in organising and financing demonstrations and *shabihas* in favour of the regime during the uprising of 2011.'

the restrictive measures at issue, in the determination of which the Council, as we have seen, enjoys a broad discretion. In the present instance, the benefit from the policies pursued by that regime can readily be demonstrated by the Council by reference, substantiated by objective factors such as the commercial activities carried on by Mr Anbouba, to the economic position which he has secured under the current regime, without the need to demonstrate any particular personal conduct.

190. Moreover, other uncontested facts show that Mr Anbouba does indeed fall within the personal scope of the other component of the listing criterion, which is concerned with persons providing support for the Syrian regime.

191. Mr Anbouba has conceded that, from 2007 to April 2011, he was one of the nine members of the board of directors of Cham Holding, the largest private company in Syria, whose co-president was Rami Makhlouf, the cousin of the Syrian President, Bashar Al-Assad.

192. Rami Makhlouf is a leading businessman in Syria, as is his brother, Ehab. They both control a number of leading companies. The Commission states in its statements in intervention, without challenge, that some of those businesses operate on the basis of licences granted after a process of opening up the economy to private companies often controlled by the family members of the Syrian President.

193. As the Commission states, without objection from Mr Anbouba, Cham Holding, which operates in numerous economic sectors through its subsidiaries, is linked to the Bashar Al-Assad regime, not least on account of the family ties between Bashar Al-Assad and Rami Makhlouf. Mr Anbouba himself states that that entity is 'known for being close to the Syrian State apparatus'. [68]

194. Consequently, Mr Anbouba's membership of the board of directors of Cham Holding until recently demonstrates, in itself, the existence of a close relationship between Mr Anbouba and the Bashar Al-Assad regime.

195. In the light of that uncontested fact, the General Court could legitimately infer from the existence of business links between Mr Anbouba and a person close to Bashar Al-Assad that, given the authoritarian nature of the regime and the tight control exercised by the State over the Syrian economy, Mr Anbouba would not have been able to pursue his commercial activities without benefiting from the regime and without providing it with a degree of support in return.

196. The General Court also took into account in its assessment the fact that Mr Anbouba's position was not comparable to that of just any business head. In other words, Mr Anbouba's position is distinguished by the diverse range of economic sectors in which he has prospered and the business relations he has maintained with a businessman who is close to the ruling regime.

197. A further feature of Mr Anbouba's position is that he has conceded that he was the Secretary General of the Chamber of Commerce and Industry of Homs from 2004 to 2008. That uncontested fact constitutes a strong indication of the influence exerted by Mr Anbouba in connection with the process of the selective opening up of the Syrian economy. Given the nature of the Syrian regime and the way in which the process of liberalising the economy has been carried out, it is reasonable to take the view that Mr Anbouba was able to take advantage of that post occupied by him to grow his businesses and that, in any event, the holding of that post is evidence of a definite link with the Bashar Al-Assad regime. [69]

68 — See p. 7 of his replies to the Commission's statements in intervention.

69 — See, in this regard, Friberg Lyme, R., cited above, who states in the footnote on page 20:
'Membership of the chambers began in the 1980s where it became a de facto prerequisite for acquiring a commercial, industrial record and business licences .... [T]he chambers of commerce have always been tied to the regime and have played a limited role in representing the interests of the wider merchant class.'

198. Finally, it must be pointed out that Mr Anbouba has not disputed either the authoritarian nature of the Syrian regime or the tight control exercised by the State over the Syrian economy. The 'totalitarian' nature of the regime is, moreover, acknowledged by Mr Anbouba himself in his pleadings. [70]

c) The existence of a sufficiently solid factual basis

199. In the light of all the well-known and uncontested facts, the General Court was entitled to take the view that the Council had discharged burden of proof borne by it.

200. Those facts were, by themselves, capable of demonstrating that Mr Anbouba did indeed fall within the personal scope of the listing criterion, that is to say, persons benefiting from or supporting the regime.

201. Moreover, those facts constituted precise, specific and consistent indicia of the existence of support provided by Mr Anbouba for the Bashar Al-Assad regime. The reasons for Mr Anbouba's inclusion on the funds-freezing list could therefore be regarded as being sufficiently substantiated.

202. Faced with a sufficiently solid factual basis of this kind, the General Court was therefore in no way bound to require the Council to adduce additional evidence or information.

203. In the light of the situation in Syria, it would be inappropriate to increase the burden of proof borne by the Council and to require it to go beyond the objective material which it put before the General Court.

204. In order to adjust the degree of proof that may be required from the Council to the actual situation in Syria, the Courts of the European Union must take account of the fact that the Syrian Arab Republic is engaged in civil war, which makes access to evidence and objective information difficult. The war context is further exacerbated by the current ferocity of the terrorist group known as 'Islamic State'. Mr Anbouba himself concedes that the current situation in Syria complicates the task of adducing evidence incumbent on the Council. [71]

205. Moreover, the regime targeted by the restrictive measures is still in place, which rules out any collaboration between the European Union and the national authorities to obtain the necessary information or evidence.

206. Finally, the repression perpetrated against the civilian population makes it difficult, not to say impossible, in practice to take evidence from opponents living or with family in Syria who are willing to be identified. The investigative difficulties which this creates and the danger faced by those who provide information make it impossible to adduce detailed evidence of personal conduct in support of the regime.

207. The state of war in Syria should therefore prompt an adjustment of the burden of proof borne by the Council. Indeed, when questioned on this subject at the hearing, Mr Anbouba conceded that the state of war in Syria made it more difficult to adduce evidence and therefore made it necessary to change the principles governing the provision of evidence.

70 — See paragraph 33 of his appeals.

71 — See p. 3 of his replies to the Commission's statements in intervention.

208. In the light of that situation, the Council discharges the burden of proof borne by it if it presents to the Courts of the European Union a set of indicia sufficiently specific, precise and consistent to establish that there is a sufficient link between the person subject to a measure freezing his funds and the regime being combated.

209. The situation previously described thus calls for a measure of equilibrium in the burden of proof. While it is certainly not consistent with the Court's case-law resulting from the judgment in *Commission and Others* v *Kadi* (EU:C:2013:518) to place on the person included on a funds-freezing list the burden of proving the negative that the reasons for listing are not sound, that case-law should also not, by requiring an excessively high degree of proof, place on the Council the burden of adducing evidence that is impossible to provide.

210. In the light of the foregoing considerations, I take the view, as the General Court held, in essence, in the judgments under appeal, that the Council discharged the burden of proof borne by it under Article 47 of the Charter of Fundamental Rights of the European Union, as interpreted by the Court in its judgment in *Commission and Others* v *Kadi* (EU:C:2013:518), by substantiating the reasons for Mr Anbouba's listing by reference to a set of well-known and uncontested facts adequately demonstrating the existence of a link between Mr Anbouba and the Syrian regime.

211. Moreover, the General Court observed the principle that any person listed who contests a measure to freeze his funds must be given the opportunity to adduce evidence showing that, despite the existence of strong indicia placing him in the category of persons and entities satisfying the listing criterion, he none the less has no links with the regime in the third State in question.

212. The line of reasoning contained in the judgments under appeal shows at a number of points that the General Court took account of the opportunity thus available to Mr Anbouba to adduce evidence to the contrary, that is to say, to show that he does not benefit from the policies pursued by the regime and does not support the regime. I refer in this regard to paragraphs 41 and 42 of the judgment in T-563/11 and paragraphs 51 and 52 of the judgment in T-592/11, as well as to paragraphs 45 to 60 of the judgment in T-563/11 and paragraphs 63 to 76 of the judgment in T-592/11, where the General Court emphasised the opportunity available to Mr Anbouba to adduce evidence to the contrary, and then carried out a specific examination of the material provided by him, which was intended to show that the Council had committed an error of assessment in taking the view that, in his capacity as a leading businessman in Syria, he provided economic support for the Syrian regime.

213. Contrary to what Mr Anbouba alleges, the General Court did therefore observe the principle of *audi alteram partem* and the rights of the defence.

214. By his appeals, Mr Anbouba has not genuinely sought to call into question the assessment of the evidence to the contrary carried out by the General Court in its examination of the material supplied by him in order to contest the existence of support on his part for the Syrian regime. In any event, since, as we have seen, the Council discharged the burden of proof borne by it in matters concerning restrictive measures, it does not fall within the jurisdiction of the Court of Justice in appeal proceedings to examine the way in which the General Court assessed the evidence to the contrary submitted to it by Mr Anbouba.[72]

VIII – **Conclusion**

215. In the light of the foregoing considerations, I propose that the Court should:

— dismiss the appeals; and

72 — Judgment in *Hüls* v *Commission* (EU:C:1999:358, paragraph 65).

— order Mr Anbouba to pay the costs.