JUDGMENT OF THE GENERAL COURT (Fifth Chamber)

1 June 2022 (*)

(Common foreign and security policy – Restrictive measures taken in view of the situation in Libya – Freezing of funds – List of persons and entities subject to the freezing of funds and economic resources – Restrictions on entry into and transit through the territory of the European Union – List of persons subject to restrictions on entry into and transit through the territory of the European Union – Initial inclusion and maintenance of the applicant's name on the lists of persons concerned – Obligation to state reasons – Errors of assessment – Rights of the defence – Proportionality – Foreseeability of acts of the European Union)

In Case T-723/20,

Yevgeniy Viktorovich Prigozhin, residing in Saint-Petersburg (Russia), represented by M. Cessieux, lawyer,

applicant,

v

Council of the European Union, represented by M.-C. Cadilhac and V. Piessevaux, acting as Agents,

defendant,

THE GENERAL COURT (Fifth Chamber),

composed of D. Spielmann (Rapporteur), President, U. Öberg and R. Mastroianni, Judges,

Registrar: I. Kurme, Administrator,

having regard to the written part of the procedure and further to the hearing on 1 February 2022,

gives the following

Judgment

Background to the dispute

1 By his action pursuant to Article 263 TFEU, the applicant, Mr Yevgeniy Viktorovich Prigozhin, a Russian national, seeks the annulment, first, of Council Implementing Decision (CFSP) 2020/1483 of 14 October 2020 implementing Decision (CFSP) 2015/1333 concerning restrictive measures in view of the situation in Libya (OJ 2020 L 341, p. 16), and Council Implementing Regulation (EU) 2020/1481 of 14 October 2020 implementing Article 21(2) of Regulation (EU) 2016/44 concerning restrictive measures in view of the situation in Libya (OJ 2020 L 341, p. 7), in so far his name was included in the lists of persons and entities set out in Annexes II and IV to Council Decision (CFSP) 2015/1333 of 31 July 2015 concerning restrictive measures in view of the situation in Libya, and repealing Decision 2011/137/CFSP (OJ 2015 L 206, p. 34), and Annex III to Council Regulation (EU) 2016/44 of 18 January 2016 concerning restrictive measures in view of the situation in Libya and repealing Regulation (EU) No 204/2011 (OJ 2016 L 12, p. 1) ('the lists in question') and, secondly, after modification of the application, of Council Decision (CFSP) 2021/1251 of 29 July 2021 amending Decision 2015/1333 (OJ 2021 L 272, p. 71), and of Council Implementing

Regulation (EU) 2021/1241 of 29 July 2021 implementing Article 21(2) of Regulation 2016/44 (OJ 2021 L 272, p. 1), in so far as his name was thereby maintained on the lists in question.

2 In accordance with United Nations Security Council Resolution 1970 (2011) and subsequent resolutions, on 28 February 2011 the Council of the European Union adopted Decision 2011/137/CFSP concerning restrictive measures in view of the situation in Libya (OJ 2011 L 58, p. 53) and, on 2 March 2011, Regulation (EU) No 204/2011 concerning restrictive measures in view of the situation in Libya (OJ 2011 L 58, p. 1). The Council thus provided for an arms embargo, a ban on internal repression equipment, as well as restrictions on the admission and the freezing of funds and economic resources of certain persons and entities involved in serious human rights abuses against persons in Libya, inter alia by their involvement in attacks, in violation of international law, on civilian populations and facilities.

3 On 27 March 2015, the United Nations Security Council adopted Resolution 2213 (2015), which provided, inter alia, for certain amendments to the listing criteria. On 26 May 2015, with a view to implementing that resolution, the Council adopted Decision (CFSP) 2015/818 amending Decision 2011/137 (OJ 2015 L 129, p. 13), and Regulation (EU) 2015/813 amending Regulation No 204/2011 (OJ 2015 L 129, p. 1).

4 On 31 July 2015, the Council then adopted Decision 2015/1333, based inter alia on Article 29 TEU.

5 Article 1 of Decision 2015/1333 provides as follows:

‘1. The direct or indirect supply, sale or transfer of arms and related material of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned, as well as equipment which might be used for internal repression, to Libya by nationals of Member States or from or through the territories of Member States or using their flag vessels or aircraft, shall be prohibited whether originating or not in their territories.

2. It shall be prohibited to:

(a) provide, directly or indirectly, technical assistance, training or other assistance, including the provision of armed mercenary personnel, related to military activities or to the provision, maintenance and use of items referred to in paragraph 1, to any natural or legal person, entity or body in, or for use in, Libya;

(b) provide, directly or indirectly, financial assistance related to military activities or to the provision, maintenance and use of items referred to in paragraph 1, to any natural or legal person, entity or body in, or for use in, Libya;

(c) participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions referred to in points (a) or (b).’

6 Under Article 8(2) of Decision 2015/1333:

‘Member States shall take the necessary measures to prevent the entry into, or transit through, their territories of persons:

…

(c) engaged in or providing support for acts that threaten the peace, stability or security of Libya, or obstructing or undermining the successful completion of its political transition, including by:

…

(v) violating, or assisting in the evasion of, the provisions of the arms embargo in Libya established in [United Nations Security Council Resolution] 1970 (2011) and Article 1 of this

Decision;

…

as listed in Annex II to this decision.’

7 Article 9(2) of Decision 2015/1333 provides:

‘All funds, other financial assets and economic resources, owned or controlled, directly or indirectly, by persons and entities:

…

(c) engaged in or providing support for acts that threaten the peace, stability or security of Libya, or obstructing or undermining the successful completion of its political transition, including by:

…

(v) violating, or assisting in the evasion of, the provisions of the arms embargo in Libya established in [United Nations Security Council Resolution] 1970 (2011) and Article 1 of this Decision;

…

as listed in Annex IV, shall be frozen.’

8 On 18 January 2016, the Council adopted Regulation 2016/44. Article 5(1) of Regulation 2016/44 provides that ‘all funds and economic resources belonging to, owned, held or controlled by the natural or legal persons, entities and bodies listed in Annexes II and III [to that regulation] shall be frozen’.

9 Article 6(2) of Regulation 2016/44 provides:

‘Annex III shall consist of natural or legal persons, entities and bodies, not covered by Annex II that:

…

(d) are engaged in or provide support for acts that threaten the peace, stability or security of Libya or obstruct or undermine the successful completion of Libya’s political transition, including by:

…

(v) violating, or assisting in the evasion of, the provisions of the arms embargo in Libya established in [United Nations Security Council Resolution] 1970 (2011) and Article 1 of this Regulation;

…’

10 Article 21(2) of Regulation 2016/44 provides that where the Council decides to subject a natural or legal person, entity or body to the measures referred to in Article 6(2), it is to amend Annex III accordingly.

11 Article 21(6) of Regulation 2016/44 provides that the list in Annex III is to be reviewed at regular intervals and at least every 12 months.

12 In Implementing Decision 2020/1483 and Implementing Regulation 2020/1481, the Council justified the adoption of restrictive measures against the applicant, a Russian national, by stating the following grounds:

‘Yevgeniy Viktorovich Prigozhin is a Russian businessman with close links, including financially, to the private military company Wagner Group.

In this way, Prigozhin is engaged in and providing support for Wagner Group’s activities in Libya, which threaten the country’s peace, stability and security.

In particular, Wagner Group is involved in multiple and repeated breaches of the arms embargo in Libya established in [United Nations Security Council Resolution] 1970 (2011) and transposed in article 1 of Decision … 2015/1333, including delivery of arms as well as deployment of mercenaries into Libya in support of the Libya National Army. Wagner Group has participated in multiple military operations against the UN-endorsed Government of National Accord and has contributed to damaging the stability of Libya and undermining a peaceful process.’

13 On 16 October 2020, the Council published in the *Official Journal of the European Union* a notice for the attention of persons subject to the restrictive measures provided for in Decision 2015/1333, as implemented by Implementing Decision 2020/1483, and in Regulation 2016/44, as implemented by Implementing Regulation 2020/1481 (OJ 2020 C 344, p. 12). That notice informed the applicant inter alia that he could submit a request to the Council that the decision to include his name on the lists in question should be reconsidered.

14 By letter of 20 November 2020, the applicant challenged the inclusion of his name on the lists in question and requested the Council to reconsider its decision. He also asked it to give him access to the documents on the basis of which the statement of reasons was drafted.

15 By letter of 1 December 2020, the Council replied to the applicant’s request for reconsideration of his inclusion, sent the applicant a number of documents in an evidence pack for the purpose of defending his interests and gave him the opportunity to make further observations.

16 By letter of 11 December 2020, the applicant submitted his observations.

17 By letter of 17 December 2020, the Council informed the applicant inter alia that none of his observations cast doubts on the inclusion of his name on the lists in question.

18 On 29 July 2021, the Council adopted Decision 2021/1251 and Implementing Regulation 2021/1241 maintaining, inter alia, the applicant’s name on the lists in question.

Forms of order sought

19 The applicant claims, in essence, that the Court should:

– annul Implementing Decision 2020/1483, Implementing Regulation 2020/1481, Decision 2021/1251 and Implementing Regulation 2021/1241 (together, ‘the contested acts’) in so far as they concern him;

– order the Council to pay the costs.

20 The Council contends that the Court should:

– dismiss the application;

– in the alternative, in the event of the annulment of the contested acts in so far as they concern the applicant, order that the effects of Implementing Decision 2020/1483 and Decision 2021/1251 be maintained until the partial annulment of Implementing Regulations 2020/1481 and 2021/1241 takes effect;

– order the applicant to pay the costs.

Law

21 In support of the action, the applicant relies on seven pleas in law, alleging (i) an error of fact, (ii) infringement of the obligation to state reasons, (iii) unsubstantiated reasons and manifest error of assessment, (iv) abuse of power, (v) infringement of the rights of the defence and of the right to effective judicial protection, (vi) disproportionate restriction of his fundamental rights and (vii) breach of the principle of foreseeability of European Union acts.

22 The Court considers it appropriate to examine, first of all, the second plea, then the first and third pleas together and, lastly, the following five pleas.

The second plea, alleging infringement of the obligation to state reasons

23 The applicant submits, first, that the statement of reasons, which must be appropriate to the nature of the restrictive measures in question and to the context in which they were adopted, contains no logical or certain link between the alleged acts of the applicant and the restrictive measures and does not show that those measures are appropriate or proportionate. Secondly, the statement of reasons fails to state the matters of fact and law which constitute the legal basis of the contested acts and the considerations which led the Council to adopt them. Thirdly, the statement of reasons does not identify the actual and specific reasons on which the contested acts are based. Fourthly, according to the applicant, the Council should have made actual and specific reference to the precise information or material contained in the relevant file which indicates that a decision has been taken in respect of him, together with any new evidence adduced in subsequent decisions. Fifthly, he claims that the reasons given must be individual, specific and concrete and must not be excessively vague. In the reply, the applicant submits, in essence, that the statement of reasons for the contested acts is inadequate, in particular as regards the identification of Wagner Group and his links to it.

24 The Council disputes that line of argument.

25 According to settled case-law, the statement of reasons required by Article 296 TFEU must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in such a way as to enable the persons concerned to ascertain the reasons for the measure for the purpose of assessing whether it is well founded and to enable the court having jurisdiction to exercise its power of review (judgment of 15 November 2012, *Council* v *Bamba*, C-417/11 P, EU:C:2012:718, paragraph 50; see, also, judgment of 22 April 2021, *Council* v *PKK*, C-46/19 P, EU:C:2021:316, paragraph 47 and the case-law cited).

26 The statement of reasons required by Article 296 TFEU must be appropriate to the measure at issue and the context in which it was adopted. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. In particular, it is not necessary for the reasoning to go into all the relevant facts and points of law or to provide a detailed answer to the considerations set out by the person concerned when consulted prior to the adoption of that same measure, since the question whether the statement of reasons is sufficient must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question. Consequently, the reasons given for a measure adversely affecting a person are sufficient if that measure was adopted in a context which was known to that person and which enables him or her to understand the scope of the measure concerning him or her (judgment of 15 November 2012, *Council* v *Bamba*, C-417/11 P, EU:C:2012:718, paragraph 53; see, also, judgment of 22 April 2021, *Council* v *PKK*, C-46/19 P, EU:C:2021:316, paragraph 48 and the case-law cited).

27 In the present case, it should be noted that Implementing Decision 2020/1483 and Decision 2021/1251 are based inter alia on the TEU and on Decision 2015/1333, itself based on Article 29 TEU, and amend Annexes II and IV to that decision by adding, as regards Implementing Decision 2020/1483, and by maintaining, as regards Decision 2021/1251, the name of the applicant among the persons listed in those annexes and covered by the restrictive measures concerning admission to the territory of the Member States (Article 8(2) of Decision 2015/1333) and the freezing of funds (Article 9(2) of Decision 2015/1333).

28 Likewise, Implementing Regulations 2020/1481 and 2021/1241 implement Article 21(2) of Regulation 2016/44 and amend Annex III thereto by adding, as regards Implementing Regulation 2020/1481, and maintaining, as regards Implementing Regulation 2021/1241, the name of the applicant among the persons referred to in that annex and covered by the restrictive measures concerning the freezing of funds provided for in Article 5 and Article 6(2) of Regulation 2016/44.

29 In recital 4 of Implementing Decision 2020/1483 and Implementing Regulation 2020/1481, the Council also emphasised its concern about the situation in Libya and in particular about acts that threaten the peace, security or stability of Libya, including violations of the United Nations arms embargo.

30 Lastly, the annexes to Implementing Decision 2020/1483 and Implementing Regulation 2020/1481, which add the applicant's name to the lists in question, state the reasons for the inclusion of that name in the terms set out in paragraph 12 above.

31 In that respect, it is clear from the statement of reasons that Wagner Group is involved in multiple and repeated breaches of the arms embargo in Libya established in United Nations Security Council Resolution 1970 (2011) and transposed in Article 1 of Decision 2015/1333, including the delivery of arms and the deployment of mercenaries into Libya in support of the Libya National Army, that it has participated in multiple military operations against the United-Nations-endorsed Government of National Accord and that it has contributed to damaging the stability of Libya and undermining a peaceful process. The applicant, a Russian businessman, is regarded as having close links, including financially, to that group, and therefore as endangering peace, stability and security in Libya.

32 It follows that Implementing Decision 2020/1483 and Implementing Regulation 2020/1481 contain, first, an indication of the legal basis of the measures adopted by the Council and the general context of those measures, namely ensuring that the United Nations arms embargo is respected, and, secondly, a sufficiently precise statement of the factual circumstances justifying the applicant's inclusion on the lists in question.

33 Contrary to the applicant's submissions, that statement of reasons makes it possible to identify the actual and specific reasons why the Council considers that the applicant must be subject to the restrictive measures at issue. In particular, Implementing Decision 2020/1483 and Implementing Regulation 2020/1481 specify the activities of Wagner Group that were taken into account and mention the 'close' nature of the links 'including financially' between that group and the applicant, as well as the latter's engagement in and provision of support for Wagner Group's activities in Libya.

34 That statement of reasons does not constitute a general formulation, but rather specifies the matters taken into account, with the result that it must be regarded as sufficient to enable the applicant to ascertain whether the contested acts are well founded and to defend himself before the Court and to enable the Court to exercise its power of review.

35 In the light of foregoing considerations, it must be concluded that the contested acts state to the requisite legal standard the matters of fact and law on which, according to the Council, those acts are based.

36 The second plea, alleging infringement of the obligation to state reasons for the contested acts, must therefore be rejected.

The first and third pleas in law, alleging an error of fact and an unsubstantiated statement of reasons vitiated by a 'manifest error of assessment'

37 In its first plea, the applicant claims that the Council made an error of fact in considering that he had knowledge of an entity known as Wagner Group. In his reply, the applicant maintains that in referring to Wagner Group as a 'company', the Council made an error of fact which vitiates the lawfulness of the contested acts and prevented the applicant from understanding the statement of reasons for those acts.

38 In his third plea, the applicant claims that the factual basis of the statement of reasons is not sufficiently solid. He points to the difference between the statement of reasons proposed in the evidence pack and that ultimately used in the contested acts. He argues that the evidence does not identify Wagner Group, does not identify any close links, whether financial or otherwise, that the applicant may have to Wagner Group, does not identify or demonstrate any engagement with or support from the applicant in respect of Wagner Group and does not show that any act of the applicant has induced or caused that group to commit breaches of sanctions effective on Libya. The applicant also claims that, with the exception of Exhibits 1, 7 and 10, the material contained in the pack consists of media reports, that it does not contain any evidence obtained independently by the Council or on its behalf, and that none of the material indicates that the Council has undertaken any investigation as to the accuracy of those reports.

39 In his reply, the applicant contests the validity of the evidence pack produced by the Council on the following grounds: first, the pack, which was sent to him on 1 December 2020, bears the date 27 October 2020, which is after the date on which the contested acts were adopted, secondly, the United Nations Panel of Experts' Report to which reference is made was not included in the evidence pack and, thirdly, the pack contained hyperlinks to documents, the content of which it was impossible to determine on the date when the contested acts were adopted. Some of the material in the evidence pack should therefore be excluded from the evidence taken into account. Fourthly, he calls into question the sources used in the evidence pack.

40 The Council disputes that line of argument.

41 In the present case, in order to justify the inclusion of the applicant's name on the lists in question, the Council provided the file bearing the reference WK 11068/2020 DCL 1 EXT 1 of 27 October 2020, which contained 10 documents, namely:

– an extract from a report of 25 August 2020 of the United Nations Secretary-General concerning the United Nations Support Mission in Libya (Exhibit 1),

– press articles published by the BBC, Reuters and Al Jazeera in May and September 2020 concerning the United Nations Security Council Report (Exhibits 2, 3 and 4),

– articles published by Daily Sabah (Exhibit 5), Yahoo News (Exhibit 6) and Sofrep (Exhibit 8) in May to September 2020,

– extracts from the Twitter account of 'US Africa Command' of 26 May 2020 (Exhibit 7),

– an article from the research organisation Bellingcat, together with The Insider and Der Spiegel of 14 August 2020 appearing on the website 'Bellingcat.com' entitled 'Putin Chef's Kisses of Death: Russia's Shadow Army's State-Run Structure Exposed' (Exhibit 9),

– an article published by the Foreign Policy Research Institute of 4 October 2019 (Exhibit 10).

42 As an annex to its defence, the Council produced five documents to which the Bellingcat article – attached as Exhibit 9 in the evidence pack – refers by means of hyperlinks. Thus, it attaches the article of 15 July 2020 concerning the accusation of booby-trapped mines being placed in Libya (hyperlink 'placing booby-trapped mines', Annex B4), the investigation which appeared on 31 January 2019 on the Russian website

‘The Bell’ (hyperlink ‘2010 presentation by Eben Barlow’, Annex B6), the article of 16 July 2020 entitled ‘US slaps sanctions on 8 linked to Russia’s Wagner Group’ of the Turkish agency Anadolu (hyperlink ‘sanctioned’, Annex B7), the Scanner Project article of 10 May 2019 entitled ‘Part 3. Not “Wagner Group” but Prigozhin’s army’ (hyperlink ‘at least three companies’, Annex B8) and the Proekt article of 11 April 2019 entitled ‘Master and Chef, How Russia interfered in elections in twenty countries’ (hyperlink ‘investigation by the independent Russian website Proekt’, Annex B9).

43 The Council also produced documents containing press articles from July 2019 and June 2020 concerning the links between the applicant and Wagner Group, articles which the Council accessed on 1 March 2021 (Exhibits 12 and 11 respectively, attached to Annex B5 to the statement of defence) and which it submits merely corroborate the information in the evidence pack.

44 The applicant puts forward arguments which can be divided, in essence, into two parts. The first part concerns the admissibility of the evidence adduced while the second part concerns the erroneous nature of the assessments made.

First part: inadmissibility of the evidence adduced

45 The applicant disputes the evidence adduced, in essence, in four respects.

46 First, he submits that that evidence pack, which was sent to him on 1 December 2020, is dated 27 October 2020, which is after the date on which Implementing Decision 2020/1483 and Implementing Regulation 2020/1481 were adopted.

47 However, as the Council stated in its written pleadings, the evidence pack existed at the time of the adoption of the contested acts, but was classified. It was declassified after the adoption of the contested acts and the fact that the declassified version of the pack is dated 27 October 2020 does not in any way vitiate the establishment of the evidence. When questioned on that point at the hearing, the Council confirmed that there were no confidential documents in the classified evidence pack. Moreover, it must be noted that the evidence pack consists of 10 documents which all predate the adoption of Implementing Decision 2020/1483 and Implementing Regulation 2020/1481.

48 Secondly, the applicant submits that the United Nations Panel of Experts’ Report to which reference is made does not appear in the evidence pack.

49 However, as the Council stated on 22 January 2021 in its reply to the applicant’s first request for measures of organisation of procedure of 23 December 2020 and in its written pleadings, it was not in possession of that United Nations Panel of Experts’ Report, which is mentioned in certain documents in the evidence pack and which had not been made public on the date when Implementing Decision 2020/1483 and Implementing Regulation 2020/1481 were adopted. That is why only the extract from that report – which is included in the evidence pack and which was taken into account during the adoption of the contested acts – was communicated to the applicant, and not the report as such. That is confirmed, moreover, by Exhibit 2 in the evidence pack, a BBC article entitled ‘Wagner, shadowy Russian military group, “fighting in Libya”’, which refers to the fact that the report had not been made public yet, but had been seen by news agencies. There is therefore no need to grant the request for production of that report, which was not taken into account as such.

50 Thirdly, the applicant submits that the evidence pack contained 10 documents, some of which referred by ‘internal links’ to documents not included in that pack, the content of which it was impossible to determine on the date when Implementing Decision 2020/1483 and Implementing Regulation 2020/1481 were adopted. He therefore requests a copy of all the materials accessible from the hyperlinks contained in the evidence pack sent on 1 December 2020, as they appeared at the time when that pack was examined by the authors of Implementing Decision 2020/1483 and Implementing Regulation 2020/1481. According to the applicant, the documents produced by the Council in Annexes B3, B4 and B6 to B9 to the defence were not taken into account by the authorities which adopted Implementing Decision 2020/1483 and

Implementing Regulation 2020/1481 and cannot therefore constitute evidence on which those measures were based. Since Annex B5 is dated 5 March 2021, it is also irrelevant. It therefore maintains that those documents are inadmissible.

51 It should be noted that the legality of an act may be assessed only on the basis of the elements of fact and law on which it was adopted and not on the basis of information which was brought to the knowledge of its author after the adoption of that act (see, to that effect, judgments of 26 October 2012, *Oil Turbo Compressor* v *Council*, T-63/12, EU:T:2012:579, paragraph 29, and of 9 June 2021, *Borborudi* v *Council*, T-580/19, EU:T:2021:330, paragraph 50 (not published) and the case-law cited).

52 In addition, the review of substantive legality incumbent on the Court must be carried out, as regards in particular cases involving restrictive measures, in the light not only of the material set out in the statements of reasons of the acts at issue, but also in the light of the material provided by the Council, in the event of challenge, to the Court in order to establish that the facts alleged in those statements are made out (see, to that effect, judgments of 22 April 2021, *Council* v *PKK*, C-46/19 P, EU:C:2021:316, paragraph 64; of 22 September 2015, *First Islamic Investment Bank* v *Council*, T-161/13, EU:T:2015:667, paragraphs 49 to 58; and of 13 December 2016, *Al-Ghabra* v *Commission*, T-248/13, EU:T:2016:721, paragraph 140 and the case-law cited), provided that the Council had that material at its disposal when it adopted those acts (see, to that effect, judgment of 30 November 2016, *Rotenberg* v *Council*, T-720/14, EU:T:2016:689, paragraph 127 and the case-law cited).

53 In the present case, it must be noted that, as stated by the Council, the evidence pack, on the basis of which Implementing Decision 2020/1483 and Implementing Regulation 2020/1481 were adopted and which was communicated to the applicant by email on 1 December 2020, contained 10 documents. Each of those documents contained, in addition to their number and source, a document attached as screenshots, the complete internet link referring to that document, the date of that document, the date on which access to that document was granted and a summary of its content. Some of those documents themselves contained references, by means of hyperlinks, to other documents not included as such in the evidence pack.

54 It should be noted that Exhibit 9 in the evidence pack contains an article by the research organisation Bellingcat, together with The Insider and Der Spiegel published on 14 August 2020 on the website ‘Bellingcat.com’. That article, which the Council accessed on 8 September 2020, itself contains links to certain documents, as evidenced by the underlining, specific to internet links, appearing under certain words contained in the article. Furthermore, the date of the documents to which reference is thus made by means of hyperlinks and the date on which the Council accessed them are all prior to Implementing Decision 2020/1483 and Implementing Regulation 2020/1481. Lastly, those documents were communicated by the Council as Annexes B.3, B.4 and B.6 to B.9 to its statement of defence submitted to the Court.

55 Accordingly, Annexes B.3, B.4 and B.6 to B.9 to the statement of defence may be regarded as documents existing at the time of the adoption of Implementing Decision 2020/1483 and Implementing Regulation 2020/1481 and on the basis of which those acts were adopted. Moreover, since the Council communicated them in the course of the proceedings in annex to its statement of defence, it must be held that they may be taken into consideration for the purposes of verifying the substantive merits of the contested acts, even though they do not form an integral part of the evidence pack communicated to the applicant on 1 December 2020.

56 By contrast, Annex B5 to the statement of defence, which the Council accessed after the adoption of Implementing Decision 2020/1483 and Implementing Regulation 2020/1481, is inadmissible for the purposes of determining whether those acts are well founded.

57 It follows from the foregoing that the applicant’s argument that Annexes B.3, B.4 and B.6 to B.9 to the statement of defence should be declared inadmissible must be rejected.

58 Fourthly, the applicant calls into question the credibility of the sources used in the evidence pack. It maintains that, except for Exhibits 1, 7 and 10, the material in that pack is information disseminated in the media, that it contains no evidence obtained independently by the Council or on its behalf and that none of that material indicates that the Council carried out any investigation as to the accuracy of that information, even though it came almost exclusively from United States sources.

59 In that regard, it should be noted that, as the Council submits, in the absence of investigative powers in third countries, the assessment of the EU authorities must rely on publicly available sources of information, reports, articles in the press, intelligence reports or other similar sources of information (judgments of 14 March 2018, *Kim and Others* v *Council and Commission*, T-533/15 and T-264/16, EU:T:2018:138, paragraph 107, and of 16 December 2020, *Haswani* v *Council*, T-521/19, not published, EU:T:2020:608, paragraph 142). According to the case-law, press articles may be used in order to corroborate the existence of certain facts if they are sufficiently specific, precise and consistent as regards the facts there described (see judgment of 25 January 2017, *Almaz-Antey Air and Space Defence* v *Council*, T-255/15, not published, EU:T:2017:25, paragraph 147 and the case-law cited, and of 14 March 2018, *Kim and Others* v *Council and Commission*, T-533/15 and T-264/16, EU:T:2018:138, paragraph 108 and the case-law cited). In that regard, it would be excessive and disproportionate to require the Council itself to investigate on the ground the accuracy of facts which are relayed by numerous media (judgment of 25 January 2017, *Almaz-Antey Air and Space Defence* v *Council*, T-255/15, not published, EU:T:2017:25, paragraph 148).

60 Furthermore, the activity of the Courts of the European Union is governed by the principle of the unfettered assessment of the evidence, and it is only the reliability of the evidence before the Court which is decisive when it comes to the assessment of its value. In that regard, in order to assess the probative value of a document, regard should be had to the credibility of the account it contains and, in particular, to the person from whom the document originates, the circumstances in which it came into being, the person to whom it was addressed and whether, on its face, the document appears to be sound and reliable (see judgments of 31 May 2018, *Kaddour* v *Council*, T-461/16, EU:T:2018:316, paragraph 107 and the case-law cited, and of 12 February 2020, *Amisi Kumba* v *Council*, T-163/18, EU:T:2020:57, paragraph 95 (not published) and the case-law cited).

61 In the present case, the evidence used by the Council comes from the report of the United Nations Secretary-General in the form of extracts (Exhibit 1), press articles from various sources including news agencies such as the BBC (Exhibit 2) and Reuters (Exhibit 3) or media organisations such as the Qatari media organisation Al Jazeera (Exhibit 4) and the Turkish media organisation Daily Sabah (Exhibit 5), the 'Yahoo news' website, containing inter alia satellite photographs released by the United States (Exhibit 6), statements from the 'US AFRICOM' Twitter account (Exhibit 7), a military information report from the 'Special Operations Forces Report' (Exhibit 8), documents from an independent research organisation, Bellingcat, an investigative journalism website (Exhibit 9), which itself refers to various internet sources such as 'US Africa Command' (Annexes B3 and B4), 'The Bell' (Annex B6), the Turkish news agency 'Anadolu' and its website 'aa.com' (Annex B7), 'Scanner project' and its website 'munscanner.com' (Annex B8) or 'proekt.media' (Annex B9), and the 'think tank' Foreign Policy Research Institute (Exhibit 10).

62 It follows that, as the Council states, those sources are all accessible to the public and, while some of them are based, in certain specific respects, on information shared by official sources of the United States, it is apparent from the documents before the Court that the origin of the information is in no way limited to those sources.

63 Thus, as regards the articles from the news agencies Al Jazeera and The Daily Sabah (Exhibits 4 and 5), the applicant's claims that those sources are not credible because they are dependent on the State of Qatar and the Republic of Turkey respectively, which are not beyond reproach with regard to the situation in Libya, must be rejected. Apart from the fact that the applicant does not substantiate his claim that those sources lack independence, it is clear from the articles at issue (Exhibits 4 and 5) that they are themselves

based on sources independent of those States, such as the report of the United Nations Secretary-General or the statements which they report.

64 As regards the investigative journalism network Bellingcat (Exhibit 9), it appears from the information in the file that the National Endowment for Democracy (NED) was only one of the entities which granted it subsidies and that the NED is, moreover, not a 'US agency', but an 'independent, nonprofit foundation dedicated to the growth and strengthening of democratic institutions around the world'. As regards Current Time, the applicant submits that, upon announcing its formation, Radio Free Europe/Radio Liberty (RFE/RL) published a press release mentioning the advancement of the national interests of the United States of America. However, RFE/RL's official website highlights its editorial independence and states that its mission is to promote democratic values and institutions and to advance human rights by reporting the news in countries where a free press is banned by the government or not fully established. As regards the Russian websites 'Proekt' and 'The Bell', the fact that their respective founders moved to the United States and studied at Stanford University, as the applicant submits, does not support the conclusion that those sources are not independent or constitute official or quasi-official US sources. Lastly, as regards the article of the Foreign Policy Research Institute, which appears to be a 'think tank', the applicant's argument that it was written by a student intern whose objectivity is questionable is in no way substantiated. The applicant submits that the accusations of interference in the 2016 US presidential election concerning him were rejected by the Commission for the Control of Interpol's Files, as shown by the decision which he produces as an annex. However, that assertion, which concerns an issue which is not relevant in the present case, is not sufficient to call into question the objectivity of the article by Foreign Policy Research Institute on the pretext that that institute allegedly helped to identify the influence of Russian social media during that election. Likewise, the article cited by the applicant, entitled 'Protracted Conflict: The Foreign Policy Research Institute "Defense Intellectuals" and Their Cold War Struggle with Race and Human Rights', published in September 2015, is also insufficient to support the applicant's claim calling into question the objectivity of that institute in the present case.

65 In addition, the press articles in the evidence pack, which are addressed to the general public, are also based, in some cases, on photographs and statements and cite their sources, with the result that the applicant's assertions do not support the conclusion that the content of those documents, whether they come from the United States or not, cannot be regarded as sound and reliable.

66 In the light of the foregoing and in the absence of any evidence in the file capable of calling into question the reliability of the sources used by the Council, it must be considered that they appear sound and reliable and therefore have some probative value, within the meaning of the case-law referred to in paragraph 60 above.

67 The first part, alleging the inadmissibility of evidence adduced, must therefore be rejected.

The second part: erroneous assessment of the facts

68 The applicant submits that the evidence (i) does not identify Wagner Group; (ii) does not identify the close links, whether financial or otherwise, which he is alleged to have with that group; (iii) neither identifies nor demonstrates his engagement with or provision of support to that group; (iv) does not prove that any act of his has induced Wagner Group to commit breaches of sanctions effective on Libya.

69 The Council disputes that line of argument.

70 It should be borne in mind that, in accordance with the case-law, the Council has a degree of discretion to determine on a case-by-case basis whether the legal criteria on which the restrictive measures at issue are based are met. However, the Courts of the European Union must ensure the review, in principle the full review, of the lawfulness of all European Union acts in the light of the fundamental rights forming an integral part of the European Union legal order (see judgment of 3 July 2014, *National Iranian Tanker Company* v *Council*, T-565/12, EU:T:2014:608, paragraphs 54 and 55 and the case-law cited).

71 The effectiveness of the judicial review guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union requires in particular that the Courts of the European Union ensure that the decision by which restrictive measures were adopted or maintained, which affects the person or entity concerned individually, 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 (judgment of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 119, and of 5 November 2014, *Mayaleh* v *Council*, T-307/12 and T-408/13, EU:T:2014:926, paragraph 128).

72 That assessment must be carried out by examining the evidence and information not in isolation but in its context. 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 entity subject to a measure freezing its funds and the regime or, in general, the situations, being combated (see judgment of 20 July 2017, *Badica and Kardiam* v *Council*, T-619/15, EU:T:2017:532, paragraph 99 and the case-law cited).

73 It is the task of the competent European Union authority to establish, in the event of challenge, that the reasons relied on against 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 should support the reasons relied on against the person concerned (judgments of 18 July 2013, *Commission* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraphs 121 and 122, and of 3 July 2014, *National Iranian Tanker Company* v *Council*, T-565/12, EU:T:2014:608, paragraph 57).

74 In the first place, the applicant disputes that the documents produced identify Wagner Group.

75 As the Council submits, the documents produced almost all refer to Wagner Group, sometimes under a slightly modified designation such as ‘ChVK Wagner’, which makes it possible to identify it as a private military entity existing since 2014, linked to Russia, which, although it does not correspond to a specific legal structure, comprises between 800 and 1 500 operatives and mercenaries in Lybia. It is thus apparent from all the documents produced that Wagner Group consists of a private army that employs mercenaries. In that regard, the applicant submits in the reply that the press articles can be used only to corroborate the existence of certain facts and that the existence of Wagner Group is not a fact. However, in the present case, the extract from the report of the United Nations Secretary-General (Exhibit 1) refers to Wagner Group and is not a press article. In addition, the Council’s approach in the present case is consistent with the case-law (see paragraph 59 above) according to which press articles may corroborate a fact if they are sufficiently specific, precise and consistent as regards the fact there described, which is the case for the existence of Wagner Group.

76 Moreover, it is not erroneous to consider that the name ‘ChVK Wagner’ – ‘ChVK’ being the Russian acronym for ‘private military company’ – designated the same entity as Wagner Group, since it is clear from the documents before the Court, and in particular from Exhibits 3, 4 and 8 of the evidence pack, that the names ‘Wagner’, ‘Wagner Group’ and ‘ChVK Wagner’ are used in the same document, such as, for example, Exhibits 4 and 8 in the evidence pack.

77 Furthermore, the applicant’s argument alleging an error of fact or contradictions, on the ground that Wagner Group is not a ‘company’ and does not correspond to an existing legal structure, must be rejected. Even if an error could be found in that that group was designated as a ‘company’, that would nevertheless not be sufficient to vitiate the substantive legality of the contested measures, since Wagner Group was indeed identified in the evidence pack. Moreover, the ground for the applicant’s inclusion on the lists in question is independent of the legal form or the legal existence of the group in question.

78 Lastly, as regards the applicant's argument based on the Council document entitled '[European Union] Best Practices for the effective implementation of restrictive measures', in the version applicable in the present case, it should be borne in mind that that document must be regarded as containing non-exhaustive recommendations of a general nature for effective implementation of restrictive measures in accordance with prevailing EU law and applicable national legislation. They are not legally binding and should not be read as recommending any action which would be incompatible with EU law (see, to that effect, judgment of 12 June 2014, *Peftiev*, C-314/13, EU:C:2014:1645, paragraph 8). Moreover, as the Council submits, the matters relating to identification referred to in that Council document are applicable to listed persons and entities and not to Wagner Group, which has been identified as concretely as possible in the present case, inter alia in view of the fact that it has no legal existence.

79 Furthermore, as regards the activities of Wagner Group, the evidence pack contains precise and consistent information, from various sources, on the activities of that group, inter alia in Libya in support of General Haftar and the Libyan National Army against the United-Nations-endorsed Government of National Accord. As the Council submits, it is apparent from numerous documents in the evidence pack, and in particular from the articles which refer to the report of the United Nations Secretary-General of 25 August 2020 (Exhibit 1) and to a Panel of Experts' Report on Libya which had not yet been published, that those activities consist of, inter alia, providing technical support for the repair of military vehicles, participating in combat operations, acting as artillery and air observers, providing electronic countermeasures expertise and deploying sniper teams. A chemical attack is also mentioned, although not confirmed by independent sources, and the use of landmines. As the Council submits, it may be inferred that the evidence pack contained sufficient details, accompanied by credible information, that the activities of Wagner Group, which were sufficiently identified, threatened peace, security and stability in Libya.

80 It must therefore be held that, particularly in view of the fact that it has no legal existence, Wagner Group and its activities threatening peace, security and stability in Libya were sufficiently identified in the present case.

81 In the second place, the applicant maintains that the evidence does not show that any act of his induced Wagner Group to commit breaches of sanctions effective on Libya.

82 Contrary to the applicant's submission, the listing criterion applied in the present case does not require that it be established that Wagner Group was induced to commit breaches of the sanctions effective on Libya.

83 The conditions of the listing criterion are therefore met if it was demonstrated that the applicant supported the activities of Wagner Group, even if he did not induce Wagner Group to commit breaches of sanctions effective on Libya (see, by analogy, judgment of 25 January 2017, *Almaz-Antey Air and Space Defence* v *Council*, T-255/15, not published, EU:T:2017:25, paragraph 141).

84 That argument is therefore ineffective.

85 In the third place, the applicant maintains that the documents produced do not identify the close links, whether financially or otherwise, that he allegedly had with Wagner Group.

86 The Council disputes that line of argument.

87 It should be borne in mind that the Council must provide evidence before the Courts of the European Union of the close links referred to in the ground for listing and maintaining the name of the person concerned on the lists in question. That proof must be based on a set of sufficiently specific, precise and consistent indicia and the assessment must be carried out by examining the evidence and information not in isolation but in its context (see, to that effect, judgments of 21 April 2015, *Anbouba* v *Council*, C-605/13 P, EU:C:2015:248, paragraphs 50 to 54; of 26 October 2016, *Kaddour* v *Council*, T-155/15, not published, EU:T:2016:628, paragraphs 97 and 101; and of 20 July 2017, *Badica and Kardiam* v *Council*, T-619/15, EU:T:2017:532, paragraph 99). In addition, press articles may be used in order to corroborate

the existence of certain facts where they come from several different sources and they are sufficiently specific, precise and consistent as regards the facts there described (see judgment of 25 January 2017, *Almaz-Antey Air and Space Defence* v *Council*, T-255/15, not published, EU:T:2017:25, paragraph 147 and the case-law cited).

88 In the present case, the Council contends that the evidence pack reveals the applicant's close and multiple links to Wagner Group, of which he is the central figure, and refers inter alia to Exhibits 9 and 10 of that evidence pack.

89 As regards the Bellingcat article (Exhibit 9), the Council refers inter alia to a journalistic investigation conducted by the Russian website 'The Bell' of 31 January 2019 (Annex B6), entitled 'A Private Army for the President: The Tale of Evgeny Prigozhin's Most Delicate Mission'. The applicant is described there as a restaurateur, linked to the Russian President Vladimir Putin and to the Ministry of Defence of the Russian Federation ('the Russian Ministry of Defence') in the context of the catering services provided by his companies to Wagner Group, the Kremlin and the Russian army. It is apparent in particular from that investigation that Wagner Group, deployed in various places such as Syria or other countries on the African continent, receives logistical support from the applicant's companies.

90 Section II of that 'The Bell' investigation is entitled 'Prigozhin is asked to organise a private military company'. It states, inter alia, that 'the idea to make St. Petersburg restaurateur Evgeny Prigozhin responsible for financing and operational issues originated in the General Staff, sources close to the [Russian] Ministry of Defence told The Bell'. It also notes that '[the applicant's] companies started winning government contracts to provide cleaning, catering and heating services to military bases, and to perform construction works at military towns'. The investigation also refers, in Section III thereof, entitled 'The private military company's biggest success and failure', to sources indicating that 'the private military company (PMC) [that is to say Wagner Group] began to be formed in 2013' and that, in the applicant's view, the project of a private military company was dangerous, but that 'these were orders [he] couldn't refuse', because of his pre-existing service relationship with the Russian Ministry of Defence.

91 The investigation also states that, 'through a representative', the applicant denied such ties and said that he did not have companies that supply services to the army, he added the words 'with the exception of rare events in the context of catering services'.

92 As regards the financial links between the applicant and Wagner Group, it is apparent from the investigation by 'The Bell' that, according to sources close to the Russian Minister for Defence, 'some of the money received from the state [by the applicant's companies] was spent as it was intended, but the rest was used to organise private military companies'.

93 Furthermore, it is apparent from a photograph and the comment of 'The Bell' that at the end of 2018 the applicant organised and took part in an official lunch in Moscow (Russia) between the Russian Minister for Defence and the commanding general of the Libyan army, Mr Khaftar, in the context of 'the visit's cultural programme for the Libyan delegation'.

94 In addition, the Bellingcat article (Exhibit 9) refers to an article of 16 July 2020, entitled 'US slaps sanctions on 8 linked to Russia's Wagner group' from the Turkish agency, Anadolu, concerning US sanctions imposed on natural and legal persons on account of links to Wagner Group (Annex B7). That article indicates that those sanctions affect individuals and businesses with close ties to the applicant, who is described as a businessman with links to the President of the Russian Federation, Mr Putin, and believed to be the financier behind Wagner Group. A company is thus referred to as being owned by the applicant and as being involved in the operations of Wagner Group in Sudan.

95 The Bellingcat article also refers to the use of companies linked to the applicant as payroll providers for Wagner Group mercenaries and refers to an article of 10 May 2019 from Scanner Project reflecting an investigation concerning financial links between companies linked to the applicant and Wagner Group

(Annex B8). Furthermore, the links between Wagner Group and the Russian military intelligence apparatus (GRU) are also highlighted there.

96 The Bellingcat article also refers to transactions between the applicant and Wagner Group (joint air-travel bookings of the applicant's employees with known officers of that group), without, however, giving details of the dates, destinations or company names in question. That article also refers to the analysis of the Russian website 'Proekt', which relies on documents and interviews with employees in order to demonstrate the applicant's commercial interests in Africa, in addition to his political influence and his paramilitary presence.

97 The financial links between the applicant and Wagner Group are also mentioned in the article of the Foreign Policy Research Institute (Exhibit 10 of the evidence pack), in the context of the description of that group's activities around the world. According to that article, the applicant had a monetary incentive for the deployment of Wagner Group. Similarly, that article states that the source of Wagner Group's funds remains unclear, but that the applicant apparently diverted significant revenue from his construction and catering contracts in order to establish that group and mentions contracts indicating that the applicant leases military aircraft for contractors.

98 Lastly, the article of the Foreign Policy Research Institute refers to the expansion of Wagner Group's operations in Africa in order to protect the applicant's investments. Thus, according to that article, a company linked to the applicant secured mining concessions, and the mines are now guarded by Wagner Group fighters. Similarly, the article refers to dividends inherent in the applicant's role in the Russian geopolitics which are paying off, and Wagner Group provides the 'muscle' to defend them.

99 The article of the Foreign Policy Research Institute and 'The Bell' also mention another company, linked to the applicant, which concluded an oil deal with the Syrian Government in order to participate in oil and gas projects in Syria. The specific conditions of that deal are not known, but, according to the investigation, it is believed that the company had to free oil and gas fields and oil and gas refining assets which were under the control of enemies of the Syrian Government, in return for which it could claim a quarter of the oil and gas produced in those territories. The articles link that agreement to attacks by Wagner Group against (oil and gas) installations in Syria one month later and refer to telephone calls intercepted by the United States intelligence services, which show that the applicant participated in the planning of those attacks. The investigation by 'The Bell' adds that that episode is, according to a source close to the Russian Ministry of Defence, one of the most painful for Wagner Group and for the applicant personally.

100 It follows from the foregoing that those elements are neither vague nor general; rather, on the contrary, they are specific, precise and consistent and are the result of investigations based on serious and in-depth research. Even though all the information contained therein is not expressly proved by concrete and tangible evidence, it is clear that the sources are mentioned (including from sources close to the Russian Ministry of Defence and based on leaks, online chats or telephone intercepts) and that the information is precise and consistent. Moreover, having regard to the nature of the activities of Wagner Group, it is conceivable, contrary to what the applicant claims, that the journalistic sources remain anonymous.

101 It is true that the Council has not adduced any evidence relating inter alia to the companies mentioned in the investigations as being owned by the applicant.

102 However, the context of the measures at issue must be taken into account and the standard of proof which may be required of the Council must be adapted in the light of the difficulty of obtaining evidence and objective information (see, to that effect, judgment of 21 April 2015, *Anbouba* v *Council*, C-630/13 P, EU:C:2015:247, paragraphs 47 and 51 to 53).

103 At the time of the adoption of the contested acts, despite the ceasefire agreement of October 2020, Libya was still marked by tensions and clashes. Besides the difficulty of carrying out investigative measures, the Council itself does not have investigative powers in that respect (see the case-law cited in paragraph 59

above). Furthermore it can be accepted that, as the Council stated at the hearing, very specific investigations would have been difficult to carry out without giving rise to suspicions on the part of the entities concerned and undermining the desired surprise effect of the initial inclusion of the applicant's name on the lists in question.

104 Moreover, the fact that Wagner Group has no legal existence makes it in practice, if not impossible, at the very least difficult, to obtain concrete proof of specific commercial, financial or functional links with such a group, as the Council also highlighted at the hearing.

105 Thus, the applicant's argument, based on paragraph 74 of the judgment of 30 November 2016, *Rotenberg* v *Council* (T-720/14, EU:T:2016:689), according to which it is necessary to establish a direct or indirect link between the activities of the person concerned and the situation underpinning the adoption of the restrictive measures at issue must be rejected, in so far as that argument relates to the question whether the statement of reasons is well founded. In that judgment, the ground relied on by the Council in respect of the first relevant criterion related to the fact that the applicant had been considered to be an important shareholder, or indeed the majority shareholder, of a company. Proof that the applicant was a shareholder or controlled that company had not been adduced by the Council. In the present case, however, the listing criterion on the basis of which the applicant is designated refers to his close links to Wagner Group, the existence of which is apparent from the various documents adduced. Accordingly, in the light of the listing criterion applicable in the present case, the applicant's argument based on the judgment of 30 November 2016, *Rotenberg* v *Council* (T-720/14, EU:T:2016:689), must be rejected.

106 In those circumstances, in the light of the context and in accordance with the case-law referred to in paragraph 102 above, the documents in the file, and in particular the two articles produced in Exhibits 9 and 10 of the evidence pack, which refer inter alia to the investigation of 'The Bell', are sufficient to constitute a precise and consistent set of indicia capable of demonstrating the close links, including financially, between the applicant and Wagner Group.

107 Lastly, and for the sake of completeness, it should be noted that the final report S/2021/229 of 8 March 2021 of the Panel of Experts on Libya, submitted in accordance with Resolution 1973 (2011) and addressed to the President of the United Nations Security Council, which has now been published and which was mentioned at the hearing by the Council, corroborates the contents of the various pieces of documents in the evidence pack produced by the Council in the present case.

108 That report confirms the existence of Wagner Group and its areas of intervention and operations, which include Ukraine, Syria, Libya and the Central African Republic. Furthermore, it is apparent from that report that Wagner Group was present in Libya since October 2018 and had initially been deployed to provide technical support for the repair and maintenance of armoured vehicles. The number of Wagner Group operatives increased from 800 in 2019 to 1 200 in 2020 and they were found to have engaged in specialised military tasks such as acting as artillery forward observation officers and forward air controllers, providing electronic counter-measures expertise and deploying as sniper teams. That report concludes that their deployment acted as an effective force multiplier for forces affiliated with General Haftar during 2019 and early in 2020. Notwithstanding the ceasefire agreement of 25 October 2020, there have been no indications that Wagner Group has withdrawn from Libya. The report also states that verifiable open source information as to the organisation, structure, operational tasks and casualties of that group is limited. Annex 77 to that report also contains precise and detailed information according to which Wagner Group operates using an opaque shell of similarly named and interlinked shell companies as cover for the organisation's activities to disguise the direct involvement of the applicant and establishes that Wagner Group is indeed financed by companies and organisations under his control.

109 Accordingly, the second part, alleging incorrect assessment of the facts, must be rejected and, accordingly, the first and third pleas in law must be rejected in their entirety.

The fourth plea, alleging abuse of power

110 The applicant submits that, having been under intense political pressure to apply sanctions against him, the Council deployed the sanctions process for political purposes, under pressure from bodies outside the Council and the Member States, and in breach of the basic principles. In particular, the Council neither consulted the United Nations Security Council concerning Wagner Group, nor targeted that group with sanctions. He requests the disclosure of documents held by various entities that were involved in the decision-making process.

111 The Council disputes that line of argument.

112 According to settled case-law, a measure is vitiated by misuse of powers only if it appears, on the basis of objective, relevant and consistent evidence, to have been taken solely, or at the very least chiefly, for ends other than those for which the power in question was conferred or with the aim of evading a procedure specifically prescribed by the Treaties for dealing with the circumstances of the case (see judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 135 and the case-law cited).

113 In accordance with Article 23 TEU, in conjunction with Article 21 TEU, the European Union's action on the international scene, pursuant to the Common Foreign and Security Policy (CFSP), is to be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

114 It follows, in essence, from the contested acts that they were adopted, inter alia, in the light of the situation in Libya and the threats which that situation posed to the peace, security and stability of that country.

115 In the present case, there is no evidence to support the idea that the procedure which led to the adoption of the contested acts was initiated solely, or at the very least chiefly, for ends other than those referred to in paragraphs 113 and 114 above.

116 The fact that the Council did not consult the United Nations Security Council concerning Wagner Group does not alter that conclusion, since it has not been shown that such an obligation to consult was applicable in the present case. Moreover, the fact that the House of Representatives of the United States of America allegedly urged the European Union to adopt sanctions against the applicant, or that the Government of the Republic of Lithuania prepared a proposal for a decision to impose sanctions against the applicant, is not sufficient to show that the contested acts were adopted solely, or at the very least chiefly, for ends other than those set out in the statement of reasons for those acts.

117 The fourth plea must therefore be rejected.

The fifth plea, alleging infringement of the rights of the defence and of the right to effective judicial protection

118 The applicant asserts that he showed, in the context of his third and fourth pleas, that the evidence on which the Council relied does not constitute an adequate basis for the adoption of the contested measures and that those measures are vitiated by abuse of power. The applicant requests access to the documents relating to his designation in order to ensure that his rights of defence and right to effective judicial protection are respected.

119 The Council disputes that line of argument.

120 The principle of observance of the rights of the defence requires, inter alia, that the evidence adduced against the entity concerned to justify the measure adversely affecting it must be communicated to it, in so far as possible, either concomitantly with or as soon as possible after the adoption of an initial decision to freeze its funds. Furthermore, inasmuch as an initial decision to freeze an entity's funds must be able to take advantage of a surprise effect, it is not a requirement that, before the decision at issue was adopted,

the evidence adduced against the entity concerned should have been communicated to it or that that entity should be heard (judgments of 21 December 2011, *France* v *People's Mojahedin Organisation of Iran*, C-27/09 P, EU:C:2011:853, paragraph 61, and of 14 October 2009, *Bank Melli Iran* v *Council*, T-390/08, EU:T:2009:401, paragraphs 92 and 93).

121 In the present case, it must be noted that the initial decision to include the applicant on the lists in question was communicated to him by means of a notice published in the Official Journal of 16 October 2020, that the documents in the evidence pack were communicated to the applicant, at his request, on 1 December 2020 and that he was able to submit observations on 11 December 2020, which were examined by the Council, as shown by its letter of 17 December 2020.

122 In addition, in the context of the adoption of a decision to maintain the name of a person or an entity in a list of persons or entities subject to restrictive measures, the Council must respect the right of that person or entity to be heard beforehand where that institution is including in that decision new evidence against that person or entity, namely evidence which was not included in the initial listing decision (see, to that effect, judgments of 18 June 2015, *Ipatau* v *Council*, C-535/14 P, EU:C:2015:407, paragraph 26; of 5 November 2014, *Mayaleh* v *Council*, T-307/12 and T-408/13, EU:T:2014:926, paragraph 115; and of 30 April 2015, *Al-Chihabi* v *Council*, T-593/11, EU:T:2015:249, paragraph 46 and the case-law cited).

123 That is not the case here, since the reasons are the same as those relied on at the time of the initial listing. The amendments to the lists in question do not concern the applicant, whose listing therefore remains identical to the initial listing.

124 Moreover, in his statement modifying the form of order sought, the applicant does not put forward any specific argument, which means that he refers to the pleas raised against the initial listing, without any particular new element.

125 Moreover, the applicant had the opportunity to submit his observations to the Council on his own initiative, without a fresh invitation being expressly formulated prior to the adoption of each subsequent act, in the absence of new evidence admitted with respect to him (see, to that effect, judgment of 5 November 2014, *Mayaleh* v *Council*, T-307/12 and T-408/13, EU:T:2014:926, paragraph 117), which he did not do.

126 Consequently, the applicant's rights of defence and his right to effective judicial protection were not infringed as regards either the initial listing or the retention of his name on the lists in question.

127 The fifth plea must therefore be rejected.

Sixth plea, alleging disproportionate restriction of fundamental rights

128 The applicant claims that the Council infringed his right to property, his freedom to pursue a trade or profession and his freedom of movement, in an unjustified and disproportionate manner. The effects of the contested acts are that he cannot carry on business in the European Union, own real property there, make any investment or other transaction there, or travel to or within it. Those measures are disproportionate, in the light of the reasons for his designation as compared to the originally proposed statement of reasons and in view of the failure to sanction Wagner Group or any other person allegedly directly involved in the group's activities.

129 The Council disputes that line of argument.

130 It is apparent from the case-law that the fundamental rights relied on by the applicant, namely the right to property, enshrined in Article 17 of the Charter of Fundamental Rights, and the right to pursue an economic activity, enshrined in Articles 15 and 16 thereof, are not absolute rights and that their exercise may be subject to restrictions justified by objectives of general interest pursued by the European Union. Thus, any restrictive economic or financial measure entails, *ex hypothesi*, consequences affecting the right

to property and the freedom to pursue an economic activity of the person or entity subject to that measure, so causing harm to that person or entity. The importance of the aims pursued by the restrictive measures at issue is, however, such as to justify negative consequences, even of a substantial nature, for the persons or entities concerned (judgment of 28 April 2021, *Sharif* v *Council*, T-540/19, not published, EU:T:2021:220, paragraph 198).

131 Similarly, by adopting acts coming within the CFSP, the Council may in principle limit the right of third country nationals to freedom of movement within the European Union (judgment of 20 September 2016, *Alsharghawi* v *Council*, T-485/15, not published, EU:T:2016:520, paragraph 89).

132 While respect for fundamental rights is a condition for the legality of EU acts, according to established case-law, those fundamental rights do not enjoy absolute protection under EU law, but must be viewed in relation to their function in society. Consequently, the exercise of those rights may be restricted, provided that those restrictions in fact correspond to objectives of public interest pursued by the European Union and do not constitute, in relation to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of the rights thus so guaranteed (judgment of 20 September 2016, *Alsharghawi* v *Council*, T-485/15, not published, EU:T:2016:520, paragraph 80; see also judgment of 28 April 2021, *Sharif* v *Council*, T-540/19, not published, EU:T:2021:220, paragraph 199 and the case-law cited).

133 Moreover, the principle of proportionality is one of the general principles of EU law and requires that measures implemented through provisions of EU law be appropriate for attaining the legitimate objectives pursued by the legislation at issue and must not go beyond what is necessary to achieve them (judgment of 15 November 2012, *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa*, C-539/10 P and C-550/10 P, EU:C:2012:711, paragraph 122; see also judgment of 28 April 2021, *Sharif* v *Council*, T-540/19, not published, EU:T:2021:220, paragraph 200 and the case-law cited).

134 In the present case, it is true that the applicant's property rights and freedom to pursue an economic activity, like his rights of movement in respect of the European Union, are restricted to a certain extent by the restrictive measures taken against him, since he cannot, inter alia, dispose of any of his funds which may be situated in the territory of the European Union, transfer them to the European Union, except by virtue of special authorisations, or be allowed to enter the European Union or pass through the territory of the European Union.

135 However, in the present case, the adoption of restrictive measures against the applicant is appropriate, since it has a clear and precise legal basis in EU law and it is a step taken in pursuit of an objective of public interest as fundamental to the international community as maintaining peace, stability and security in Libya and ensuring the successful completion of its political transition (see, to that effect, judgment of 20 September 2016, *Alsharghawi* v *Council*, T-485/15, not published, EU:T:2016:520, paragraph 83).

136 As regards the alleged disproportionate nature of the listing of the applicant on the lists in question, it should be noted that the alternative and less restrictive measures, such as a system of prior authorisation or an obligation to justify, a posteriori, how the funds transferred were used, are not as effective in achieving the goal pursued, having regard in particular to the possibility of circumventing the restrictions imposed (see, to that effect, judgment of 20 September 2016, *Alsharghawi* v *Council*, T-485/15, not published, EU:T:2016:520, paragraph 84).

137 In addition, it must be borne in mind that Article 17(2) of Decision 2015/1333 and Article 21(6) of Regulation 2016/44 provide that the retention of the applicant's name on the lists in question is to be reviewed at regular intervals in order to ensure that persons and entities who no longer meet the conditions for inclusion are removed from those lists.

138 Similarly, as regards the restrictions on admission to the European Union resulting from Article 8(2) of Decision 2015/1333, the competent authority of a Member State may, under Article 8(9) of that decision, authorise entry to its territory on grounds of urgent humanitarian need.

139 It follows that, given the overriding importance of the preservation of international peace and security, the restrictions on the applicant's rights caused by the contested measures are justified by an objective of general interest and are not disproportionate to the aims pursued.

140 The applicant's argument concerning the lack of sanctions against Wagner Group or against any person deemed to be directly involved in the activities of that entity is irrelevant in that regard and cannot therefore invalidate that finding.

141 Having regard to the foregoing, the sixth plea must be rejected.

The seventh plea, alleging breach of the principle of foreseeability of European Union acts

142 The applicant maintains that the statement of reasons for the contested acts deals only with activities allegedly carried out by Wagner Group, that there is no indication of what 'close links, including financially' between him and Wagner Group means, either generally or in the context of the allegations against that group and that the words 'engaged in and providing support' have no causal link with the words 'close links, including financially'. The listing criterion therefore breaches the principle of the foreseeability of European Union acts. He adds that the statement of reasons does not specify with sufficient precision the act from which a person must refrain in order to avoid the imposition of a sanction by the Council.

143 The Council disputes that line of argument.

144 The principle of legal certainty requires that legislation be clear and precise and that its application be foreseeable for all interested parties (see judgments of 5 March 2015, *Europäisch-Iranische Handelsbank* v *Council*, C-585/13 P, EU:C:2015:145, paragraph 93 and the case-law cited, and of 16 July 2014, *National Iranian Oil Company* v *Council*, T-578/12, not published, EU:T:2014:678, paragraph 112 and the case-law cited).

145 It should be borne in mind that the Council has broad discretion in relation to the general and abstract definition of the legal criteria surrounding the adoption of restrictive measures. The rules of general application establishing those criteria are thus subject to limited judicial review, especially with regard to the assessment of the factors as to appropriateness on which the restrictive measures are based (see judgment of 16 July 2014, *National Iranian Oil Company* v *Council*, T-578/12, not published, EU:T:2014:678, paragraph 107 and the case-law cited).

146 In the present case, the listing criterion is set out in Article 8(2)(c) and Article 9(2)(c) of Decision 2015/1333, and in Article 6(2) of Regulation 2016/44, which provide, first, for restrictions on admission to the territory of the European Union and, secondly, for the freezing of funds and economic resources for persons and entities 'engaged in or providing support for acts that threaten the peace, stability or security of Libya, or obstructing or undermining the successful completion of its political transition, including by … violating, or assisting in the evasion of, the provisions of the arms embargo in Libya established in [United Nations Security Council Resolution] 1970 (2011)'.

147 In so far as the applicant claims, in essence, that the listing criterion set out in Decision 2015/1333 and in Regulation 2016/44 is unlawful, on the ground that it is contrary to the principle of foreseeability, it must be noted that that criterion forms part of a legal framework defined by the objectives pursued, namely, inter alia, the protection of peace, stability or security in Libya and the successful completion of its political transition.

148 In that context, the criterion of 'engag[ing] in' or 'providing support for' acts that threaten peace, stability or security in Libya or obstructing or undermining the successful completion of its political transition is sufficiently clear and precise and is therefore not contrary to the principle of foreseeability of acts of the European Union. Although the words 'engaged in or providing support for' entails a certain degree of discretion, the fact remains that that discretion is not arbitrary. It is, moreover, counterbalanced by, first, an

obligation to state reasons in the application of that criterion by means of restrictive measures and, secondly, by the existence of procedural rights which, subject to review by the Courts of the European Union, accompany that application.

149 Accordingly, it must be held that the listing criterion at issue ensures the degree of foreseeability required by EU law.

150 In addition, in so far as the applicant refers, in essence, to the ground for listing set out in the contested acts and referred to in paragraph 12 above, he claims that there has been a breach of the principle of foreseeability of European Union acts, on the ground that there is no indication of what is meant by 'close links, including financially' between him and Wagner Group and that the expression 'is engaged in and providing support for' does not causally follow from 'close links, including financially'.

151 In so far as the applicant relies on the lack of foreseeability of the ground for listing in that it is not sufficiently clear and precise, it must be stated that those arguments are similar to those which were examined and rejected in the context of the first plea, in particular in paragraphs 32 to 34 above.

152 Likewise, in so far as he disputes the causal link between the words 'is engaged in and providing support for' and the words 'close links, including financially', such arguments correspond to those examined in paragraphs 74 to 109 above in the context of the third plea, alleging errors of assessment, which also cannot succeed in the context of the present plea.

153 The seventh plea must therefore be rejected.

154 It follows that the action must be dismissed in its entirety, without there being any need to grant the applicant's requests for the production of documents and without it being necessary to rule on the Council's alternative claim.

Costs

155 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, he must be ordered to pay the costs, in accordance with the form of order sought by the Council.

On those grounds,

THE GENERAL COURT (Fifth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders Mr Yevgeniy Viktorovich Prigozhin to pay the costs.**

Spielmann Öberg Mastroianni

Delivered in open court in Luxembourg on 1 June 2022.

E. Coulon G. De Baere

Registrar President

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* Language of the case: English.