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to the War on Ukraine - a brief overview**

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Ucrânia através de medidas restritivas**

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THE EU USE OF RESTRICTIVE MEASURES AS A RESPONSE TO THE WAR ON UKRAINE - A BRIEF OVERVIEW

A RESPOSTA DA UNIÃO EUROPEIA À INVASÃO DA UCRÂNIA
ATRAVÉS DE MEDIDAS RESTRITIVAS

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Abstract: As a response to Russia's 24th February 2022 invasion of Ukraine, the European Union (EU) imposed restrictive measures on Russian and Ukrainian individuals and has repeatedly increased their scope since. These restrictive measures build upon already existing measures adopted as a response to the annexation of Crimea and to the escalation of the tension in Ukraine that have occurred since. However, the reaction after the invasion in 2022 was unprecedented – not in terms of the legal framework, but in terms of the scope and the content of the restrictive measures applied. The present article presents the framework of the EU restrictive measures and develops the sanctions adopted against Russia. It then addresses two particular problems related with the imposition of restrictive measures against EU citizens, and the adoption of bans against Russian media outlets.

Keywords: Restrictive measures; sanctions; fundamental rights; freedom of speech; war in Ukraine.

Resumo: Em resposta à invasão russa da Ucrânia a 24 de fevereiro de 2022, a União Europeia (UE) impôs medidas restritivas a indivíduos russos e ucranianos e tem aumentado repetidamente o seu alcance desde então. Estas medidas restritivas assentam em medidas já existentes adotadas em resposta à anexação da Crimeia e à escalada da tensão na Ucrânia que se tem verificado desde então. Contudo, a reação após a invasão em 2022 foi sem precedentes - não em termos do quadro jurídico, mas em termos do âmbito e do conteúdo das medidas restritivas aplicadas. O presente artigo apresenta o quadro das medidas restritivas da UE e desenvolve as sanções adotadas contra a Rússia. Aborda depois dois problemas particulares relacionados com a imposição de medidas restritivas contra cidadãos da UE, e a adoção de proibições contra os meios de comunicação social russos.

Palavras-chave: Medidas restritivas; sanções; direitos fundamentais; liberdade de expressão; guerra na Ucrânia.

1. Introduction

As a response to Russia's 24th February 2022 invasion of Ukraine, the European Union (EU) imposed restrictive measures on Russian and Ukrainian individuals and entities and has repeatedly increased their scope since. These restrictive measures build upon already existing measures adopted as a response to the annexation of Crimea and to the escalation of

the tension in Ukraine that have occurred since. However, the reaction after the invasion in 2022 was unprecedented – not in terms of the legal framework, but in terms of the scope and the content of the restrictive measures applied (Chachko, Heath, 2022: 135-139). The EU expanded the restrictive measures applicable to an unprecedented level, adopting ten packages of sanctions (so far), covering a significant number of persons, corporations, and other entities, and including unprecedented measures with the aim of significantly weakening Russia's economic base, depriving it of critical technologies and markets, and curtailing its ability to wage war (Portela, 2022:103-113; Scott et al., 2022).

Even though the adoption of restrictive measures can only be achieved after a unanimous vote in Council, this did not prevent a swift and decisive action by the EU (Portela et al., 2021: 683-699).

The measures adopted by the EU are in line with sanctions and export controls imposed by the United States, the United Kingdom, and several other countries (e.g., Australia, Canada, Japan, and Switzerland).

The adoption of restrictive measures has multiple objectives. Firstly, as a general objective, the measures aim at encouraging the Russian Federation to cease activities which undermine Ukrainian territorial integrity and sovereignty and threaten the stability and security in the region. Secondly, there are also more specific purposes, reflecting actions taken by individuals and corporations that are considered human rights violations or otherwise violation of International Law, namely International Humanitarian Law. In this context, the EU approved restrictive measures on decision-makers, politicians, companies, and other entities deemed to be responsible for these acts.

The present article presents the framework of the EU restrictive measures and develops the sanctions adopted against Russia. It then addresses two particular problems related with the imposition of restrictive measures against EU citizens, and the adoption of bans against Russian media outlets.

2. EU restrictive measures

The adoption of restrictive measures is an essential tool in the EU's Common Foreign and Security Policy (CFSP), allowing the EU to intervene where necessary to prevent conflicts or respond to current or emerging crises. They are intended to lead to a change in policy or activity by targeting non-EU countries, as well as individuals or organisations, corporations, entities, or groups, involved in terrorist activities or responsible for the targeted policies or activities.

There are three types of restrictive measures regimes in place in the EU: 1) sanctions imposed by the United Nations Security Council (UNSC) which the EU implements through EU law; 2) the application of stricter and/or additional measures, reinforcing UNSC sanctions (e.g., *vis-à-vis* DPRK); or 3) fully autonomous EU restrictive measures regimes (e.g., *vis-à-vis* Syria, Venezuela, Ukraine, Russia). Besides these regimes, Member States may also need to consider third countries' sanctions with extra-territorial application

(such as US sanctions) (cfr., e.g., Zelyova, 2021: 159-181; Eckout, 2004: 256-259).

EU restrictive measures apply within the jurisdiction of the EU (*i.e.*, in the territory of the Member States), to EU citizens irrespective of their location, to companies and organisations incorporated under the law of a Member State – including branches of EU companies in third countries –, and on-board aircraft or vessels under Member States' jurisdiction.

The legal basis for EU competence in CFSP matters is Article 24(1) TEU which also establishes the specific rules and procedures to be followed. Under this provision, decisions in this area are to be defined and implemented by the European Council and the Council acting unanimously, except where the Treaties provide otherwise. These decisions do not have the nature of legislative acts.

A specific regime for restrictive measures may be found in Article 215 TFEU. It establishes that the Council, acting by a qualified majority on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy (the High Representative) and the Commission, has the power to adopt these measures when a decision, adopted in accordance with Chapter 2 of Title V of the TEU, provides for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries,¹ as well as other measures against natural or legal persons and groups or non-State entities. In the *Parliament v Council* case (C-130/10), the Court of Justice accepted Article 215(2) TFEU as the “correct legal basis” for adopting restrictive measures, including counter terrorism ones.²

This means that the procedure for the adoption, renewal, or lifting of restrictive measures under CFSP entails two stages. Pursuant to Chapter 2 of Title V of the TEU, these measures can be adopted with a decision by the Council pursuant to Article 29 TEU following examination in the relevant Council working groups. According to this provision, the Council has the power to adopt decisions which define the approach of the EU to a particular matter of a geographical or thematic nature. Subsequently, pursuant to Article 215(1) TFEU, the Council adopts regulations for imposing the restrictive measures by qualified majority. The adoption of a Council CFSP decision on the basis of Article 29 TEU may be simultaneous with the adoption of a regulation providing for restrictive measures. In order to guarantee judicial review of these decisions they should be based on clear and distinct criteria, tailored to the specifics of each restrictive measure.³

These decisions are to be put into effect by the High Representative of the Union for Foreign Affairs and Security Policy (the High Representative) and by Member States, in accordance with the Treaties. Member States are responsible for the implementation and enforcement of restrictive measures

1. The European Parliament must be informed.

2. Judgement of the Court of Justice (Grand Chamber), Case C-130/10, *European Parliament v Council of the European Union*, 19 July 2012, ECLI:EU:C:2012:472, paras. 100 - 112.

3. Cfr. Declaration (25) on Articles 75 and 215 of the Treaty on the Functioning of the European Union annexed to the final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007.

in their respective jurisdictions, as well as identifying breaches and imposing penalties. The Commission monitors the correct and uniform implementation of restrictive measures by the Member States and provides guidance. The European External Action Service (EEAS) assists the High Representative in fulfilling his/her mandate and has a key role in the preparation, maintenance, and review of sanctions, as well as in the communication and outreach activities concerning them in close cooperation with Member States, relevant EU delegations and the Commission.

The Treaties exclude Chapter 2 of Title V of the TEU from the jurisdiction of the Court of Justice of the European Union (CJEU), except for its power to monitor compliance with Article 40 TEU and to review the legality of decisions providing for restrictive measures against natural or legal persons “in accordance with the conditions laid down in the fourth paragraph of Article 263” TFEU (Article 24(1), second paragraph, TEU and Article 275, second paragraph, TFEU).⁴ This provision opens the door to the judicial review of restrictive measures using as a parameter not only the Treaties⁵, but also the Charter of Fundamental Rights of the EU (Zelyova, 2021: 168-169) - after the precedent of the *Kadi* case⁶ [cfr., e.g., De Burca (2009); Vara (2011: 252-274); Kokkot, Sobotta (2012: 1015-1024); Vatsov (2012: 77-104); Lester, Kennely (2013: 206-210); Larik (2014: 23-42)]. The Court has interpreted its jurisdiction broadly in the name of the rule of law and the requirement that the EU Treaties provide for a “complete system of legal remedies and procedures”.⁷ (Gutman, 2019: 884-903). In the *Rosneft* case (C-72/15)⁸ the CJEU determined it had jurisdiction to assess the legality of decisions providing for restrictive measures not only in the context of an annulment action (Article 263 TFEU), as mentioned in Article 275 TFEU, but also in the framework of a preliminary ruling procedure (Article 267 TFEU) [cfr., e.g., Butler (2018: 637); Van Elsuwege (2017)]. In the *Bank Refah Kargaran* case, the Court concluded that it had jurisdiction to award damages on the basis of Article 268 TFEU for non-contractual liability incurred by the EU in the context of Article 29 TEU decisions imposing restrictive measures because they can cause reputational harm.⁹ (Thanau, 2020: 599-614).

However, the Court's review of restrictive measures under Article 275 TFEU has been limited. The CJEU (including both the General Court and the Court of Justice) has struck down individual sanctions, but only on due process

4. This was an innovation of the Treaty of Lisbon. Cfr. (Poli, 2018: 296).

5. For instance, in relation to the principle of sincere cooperation, *Nanopoulos* (2013: 669-697).

6. Judgement of the Court of Justice (Grand Chamber), Joined Cases C-402/05 P and C-415/05 P, *Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union*, 3 September 2008, ECLI:EU:C:2008:461.

7. Judgement of the Court of Justice, Case 294/83, *Parti écologiste “Les Verts” v European Parliament*, 23 April 1986, ECLI:EU:C:1986:166, para. 23.

8. Judgement of the Court of Justice (Grand Chamber), Case C-72/15, *The Queen, on the application of: PJSC Rosneft Oil Company, formerly OJSC Rosneft Oil Company, v Her Majesty's Treasury, Secretary of State for Business, Innovation and Skills, The Financial Conduct Authority*, 28 March 2017, ECLI:EU:C:2017:236.

9. Judgement of the Court of Justice (Grand Chamber), Case C-134/19 P, *Bank Refah Kargaran v Council of the European Union and European Commission*, 6 October 2020, ECLI:EU:C:2020:793.

grounds, without having considered, so far, substantive questions such as the necessity of the designation of an individual in terms of the ends pursued or the appropriateness of the criteria for its designation (Moran 2020).

3. The EU restrictive measures adopted in the context of the invasion of Ukraine.

Since March 2014, after diplomatic attempts at persuading Russia to engage in de-escalation had clearly proven ineffective, the EU decided to progressively impose restrictive measures against Russia, initially in response to the illegal annexation of Crimea and Sevastopol and the deliberate destabilisation of Ukraine. The first set of economic sanctions affected Russian and Ukrainian individuals, through travel bans and asset freezes. On 23 February 2022, the EU expanded the restrictive measures in response to Russia's recognition of the non-government-controlled areas of the Donetsk and Luhansk oblasts of Ukraine and the ordering of Russian armed forces into those areas. After 24 February 2022, in response to Russia's military aggression against Ukraine, the EU extensively expanded the restrictive measures.

In parallel, the EU restrictive measures regime concerning Belarus has been expanded in response to that country's involvement in Russia's aggression against Ukraine and in addition to the restrictive measures already in place in view of the situation in Belarus¹⁰. The EU has also adopted sanctions against Iran, in relation to the manufacture and supply of drones to Russia's armed forces¹¹.

The initial regime was established in Council Decision 2014/145/CFSP¹² and Council Regulation (EU) No 269/2014¹³, which were progressively amended,

10. Since 2020, an array of restrictive measures has been imposed in regard to Belarus, including economic sanctions, individual restrictive measures and restrictions on trade. All these measures form part of a single sanctions regime consisting of Council Decision 2012/642/CFSP of 15 October 2012 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine, and Council Regulation (EC) No 765/2006 of 18 May 2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine. Cfr. Miadzvetskaya (21/12/2022); Miadzvetskaya, Challet (2022: 1-20).

11. On 20 October 2022, sanctions were extended to three Iranians and one Iranian entity linked to the provision of Unmanned Aerial Vehicles (UAVs) to Russia (Council Decision (CFSP) 2022/1986 of 20 October 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, and Council Implementing Regulation (EU) 2022/1985 of 20 October 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine).

12. Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty, and independence of Ukraine.

13. Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty, and independence of Ukraine.

as the conflict between escalated, to extend the scope and subjects of the restrictions.

Some of the restrictive measures adopted targeted individuals and entities, while others had an economic scope. The EU also adopted diplomatic measures against Russia.

a) Restrictive measures targeting individuals or entities.

Individual restrictive measures adopted by the EU include asset freezes and/or a travel bans. There are currently 1.473 individuals and 205 entities subject to these measures because the EU considers that their actions have undermined Ukraine's territorial integrity, sovereignty, and independence.¹⁴ This sanctions regime consists of Council Decision 2014/145/CFSP and Council Regulation (EU) No 269/2014. The list of sanctioned persons and entities is kept under constant review and is subject to periodic renewals by the Council.

Under Article 2(1) of Council Regulation (EU) No 269/2014, asset freezes cover all funds and economic resources (e.g., cash, cheques, bank deposits, stocks, shares) belonging to, owned, held, or controlled by natural or legal persons who are listed in that Regulation. It is further prohibited to make funds and economic resources available to listed individuals. Practically the asset freeze means that the economic resources may not be accessed, moved, sold, or rented. There are several exceptions to these rules, established in Articles 4-7 of Council Regulation (EU) No 269/2014.

Some questions may arise on the meaning of ownership or control, which are not defined. According to the EU Best Practices for the effective implementation of restrictive measures¹⁵, the criterion to establish ownership is the possession of more than 50 percent of the proprietary rights, whereas several criteria are given to assess whether a legal person or entity is controlled by another. These criteria include, for example: 1) having the right to appoint or remove a majority of the members of the supervisory body, or 2) having the right to exercise a dominant influence over an entity. If any of these criteria are satisfied, a presumption of control is established, unless the contrary can be established on a case-by-case basis.

Travel restrictions usually come in the form of an outright ban on listed individuals entering or transiting through the territory of the Member States of the EU. Persons targeted by a travel ban will be denied entry to the EU at the external borders. If visas are required for entering the EU, they will not be granted to persons subject to such restrictions on admissions. As with asset freezes, these may be subject to certain limited exemptions including

14. The scale of these sanctions is comparable to the regimes of EU's allies. For example, the UK has listed 1,549 financial sanctions targets as well as 180 entities in its regime relating to Russia (the list of all asset freeze targets can be found in <https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets/consolidated-list-of-targets>).

15. General Secretariat of the Council, Restrictive measures (Sanctions) - Update of the EU Best Practices for the effective implementation of restrictive measures, 10572/22, Brussels, 27 June 2022.

where an international intergovernmental organisation is hosted within the EU (Articles 1(3) and (4) of Council Decision 2014/145/CFSP).

EU restrictive measures have generally been taken against high-profile individuals many of whom are members of or closely connected to the government of the state in question. In the case of the Russian Federation, restrictive measures targeted individuals and entities related to its government including the President, Vladimir Putin, the Minister for Foreign Affairs, Sergey Lavrov, members of the State Duma (the lower house of the Russian parliament), members of the National Security Council and members of the Federation Council of the Russian Federation, other members of the Russian government, regional governors, and local politicians, such as the mayor of Moscow. Also included are members of Russia's armed forces, such as high-ranking officials and military personnel, as well as Yevgeny Prigozhin and commanders of the Wagner group. The list likewise contains the names of individuals deemed responsible for or involved in the violations of International Law committed in Bucha and Mariupol, the missile strikes against civilians and critical infrastructure, the deportations and forced adoptions of Ukrainian children, the recruitment of Syrian mercenaries to fight in Ukraine, and the manufacture and supply of drones.

The list furthermore encompasses prominent businesspeople and oligarchs, and people considered to be pro-Kremlin and anti-Ukrainian propagandists. The latter include media personalities such as Russia 1 anchor Vladimir Solovyov and others deemed to be 'spreading disinformation'.¹⁶ Also included are Aleksandr Dugin, who is a political philosopher and strategist, and pro-war musicians such as Yulia Chicherina or Nikolay Rastorguev.

The adoption of restrictive measures against prominent businesspeople is not an innovation, having been previously used, for instance, against the Syrian regime.¹⁷ The list includes oligarchs such as Roman Abramovich. The reasons given for the inclusion on the list state that he "has long and close ties to" and "privileged access to the president", having "maintained very good relations with him". It also mentioned that he is "a major shareholder of the steel group Evraz, which is one of Russia's largest taxpayers".¹⁸ The justification for the inclusion of businesspeople in the list of those targeted by restrictive measures, in some cases, may be less clear specially in cases where the connection to the actions motivating the measures or the decision-makers involved is more difficult to prove than in relation to state officials, for example (cfr. Moran, 2020). The power of the EU, under Article 215(2) TFEU, to include "any person" in the lists of those targeted by restrictive measures has been criticised as eroding the difference between the private and the public spheres as well as individual and collective forms of responsibility (cfr. Nanopoulos, 2019: 157-192). In some cases, the objective of the listing some individuals with no clear connection with the

16. This includes some Russian media personalities, such as Tigran Keosayan, presenter on NTV, Olga Skabeyeva, journalist on Rossiya-1, Roman Babayan, journalist, and presenter on NTV, Yevgeniy Prilepin, journalist and co-chairman of a Russian party, and Anton Krasovsky, presenter on RT.

17. Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures in view of the situation in Syria.

18. No 879 of Annex I of Regulation (EU) No 269/2014.

situation giving rise to the restrictive measures appears to be to apply pressure on them to erode trust and support in the targeted governments.

In order for the listings to be effective, they must be public and known to the individuals listed, who should be aware that the lists are subject to periodic review, normally every six months. This will allow the individuals to take the required actions to be delisted.

Besides individuals, the list of entities also includes banks and financial institutions, companies in the military and defence sectors, companies in the aviation, shipbuilding and machine building sectors, armed forces and paramilitary groups, political parties, the movement “All-Russia People’s Front”, and media organisations considered to be responsible for propaganda and disinformation.

To avoid circumvention, some Russian-controlled entities based in illegally annexed Crimea or Sevastopol are also included in the list. The measures were first introduced in March 2014. They were last extended until 15 September 2023.

In March 2014, the Council decided to freeze the assets of individuals responsible for the misappropriation of Ukrainian state funds. These measures were last extended in March 2020 until 6 March 2024.

The Council notifies persons and entities targeted by these sanctions, who may recourse to legal remedies, having right to provide observation on the listing and to challenge the measure before the CJEU.

There have been already cases brought to the CJEU regarding EU restrictive measures against individuals regarding the invasion of Ukraine [cfr. Challet (2021: 125-140); Beaucillon (2018: 387-415)]. The Court has consistently accepted to control the restrictive measures, stating, in one of the first decisions of the General Court (GC), in case *Portnov v Council* (T-290/14), that “although the Council has a broad discretion as regards the general criteria to be taken into consideration for the purpose of adopting restrictive measures, the effectiveness of the judicial review guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union requires that, as part of the review of the lawfulness of the grounds which are the basis of the decision to include or to maintain a person’s name on the list of persons subject to restrictive measures, the Courts of the European Union are to ensure that that decision, which affects that person individually, is taken on a sufficiently solid factual basis”. That means that “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, are substantiated by sufficiently specific and concrete evidence”.¹⁹ In that case, the GC concluded that “the inclusion of the applicant’s name on the list does not comply with the criteria set by the contested decision for the designation of persons

19. Judgment of the General Court (Ninth Chamber), Case T-290/14, *Andriy Portnov v Council of the European Union*, 26 October 2015, ECLI:EU:T:2015:806, para. 38.

covered by the restrictive measures at issue”, and annulled the restrictive measures in what concerns Mr. Portnov.

The Court had to contend with the fact that the EU targeted individuals under criminal investigation in Ukraine for the misappropriation of State funds, usually upon the request of its judiciary, which bore a risk of restrictive measures being used to target political opponents [cfr. *Czaplinski et al.* (2017: 272); *Alí*, (2019: 53)]. The CJ, in the *Yanukovych v Council* cases (Case C-598/16 P and Case C-599/16 P), decided that “in the event of the adoption of a decision to freeze funds such as that adopted in respect of the appellant, it is not for the General Court to verify whether or not the investigations to which the person concerned by that decision was subject were well founded, but only to verify whether that was the case as regards the decision to freeze funds in the light of the document or documents on which that decision was based”.²⁰ The Court, thusly, sustained the restrictive measures. However, in the cases *Azarov v Council* (C-530/17 P, C-416/18 P and C-58/19 P), the CJ reversed the GC first instance judgments, considering that “the Council is obliged, when adopting restrictive measures, to respect the fundamental rights that form an integral part of the EU legal order, which include (...) respect for the rights of the defence and the right to effective judicial protection”, annulling the restrictive measures directed against Mr. Azarov.²¹

b) Economic restrictive measures

In July and September 2014, the EU imposed economic restrictive measures targeting exchanges with Russia in specific economic sectors. In March of the following year, EU leaders decided to align the existing sanctions regime with the full implementation of the Minsk agreements, which was scheduled for the end of December 2015. Since this did not happen, the economic sanctions have been extended successively for six months at a time, following an assessment of the implementation of the Minsk agreements. The sanctions regime laying down these economic restrictive measures consists of [Council Decision 2014/512/CFSP](#)²² and [Council Regulation \(EU\) No 833/2014](#).²³ The economic restrictive measures are currently extended until 31 July 2023.

20. Judgement of the Court of Justice (Eighth Chamber), Case C-598/16 P, *Viktor Fedorovych Yanukovych v Council of the European Union*, 19 October 2017, ECLI:EU:C:2017:786, para. 72, and Judgement of the Court of Justice (Eighth Chamber), Case C-599/16 P, *Oleksandr Viktorovych Yanukovych v Council of the European Union*, 19 October 2017, ECLI:EU:C:2017:785, para. 69.

21. Judgement of the Court of Justice (Fourth Chamber), Case C-530/17 P, *Mykola Yanovych Azarov v Council of the European Union*, 19 December 2018, ECLI:EU:C:2018:1031, paras. 27, 40-41 and Judgment of the Court (Seventh Chamber), Case C-416/18 P, *Mykola Yanovych Azarov v Council of the European Union*, 11 July 2019, ECLI:EU:C:2019:602, paras. 28, 41-42, and Order of the Court (Seventh Chamber), Case C-58/19 P, *Mykola Yanovych Azarov v Council of the European Union*, of 22 October 2019, ECLI:EU:C:2019:890, para. 43.

22. Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine.

23. Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine.

These sanctions target the defence, financial, transport, energy, trade, and media sectors.

In the defence sector, the EU introduced prohibitions on exports to Russia of dual-use goods and technology items, drone engines, arms and civilian firearms, ammunition, military vehicles, and paramilitary equipment. The EU prohibits the direct or indirect sale, supply, transfer or export of technology and goods which might contribute to Russia's military and technological enhancement, or the development of the defence and security sector, as listed in Annex VII of Council Regulation (EU) No 833/2014, including arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts, to Russia by nationals of Member States or from the territories of Member States or using their flag vessels or aircraft (Article 2 of Council Decision 2014/512/CFSP and Article 2a of Council Regulation (EU) No 833/2014).

In the financial sector, the restrictive measures include a SWIFT ban for certain Russian and Belarusian banks and restricted access to EU primary and secondary capital markets for certain Russian banks and companies. They also include prohibitions on transactions with the Russian and Belarusian Central Banks, and with the Russian regional development bank, the provision of euro-denominated banknotes to Russia and Belarus, public financing or investment in Russia and investment in and contribution to projects co-financed by the Russian Direct Investment Fund.

The restrictive measures in the transport sector include the closure of EU airspace to all Russian-owned and Russian-registered aircraft and the closure of EU ports to Russian vessels. They also include prohibitions on maritime transport of Russian oil to third countries (if bought above the price cap), on Russian and Belarusian road transport operators from entering the EU, and exports to Russia of goods and technology in the aviation, maritime and space industry.

In the energy sector, the restrictive measures include the establishment of a price cap related to the maritime transport of crude oil and petroleum products and prohibitions on imports from Russia of coal and of oil (in this case, with limited exceptions), and on exports to Russia of goods and technologies in the oil refining sector, as well as new investments in the Russian energy and mining sector and providing gas storage capacity (with the exclusion of the part of LNG facilities) to Russian nationals.

Broadly, in the trade sector, the restrictive measures include prohibitions on exports to Russia of luxury goods and technology products (broadly covering advanced technology, including for micro-processors and other advanced systems). They also include and prohibitions on imports from Russia of iron, steel, wood, cement and asphalt, paper, synthetic rubber and plastics, gold, including jewellery, seafood, spirits, cigarettes, and cosmetics. The EU similarly adopted prohibitions to provide crypto asset wallet, account or custody services, architectural and engineering services, IT consultancy services and legal advisory services, advertising, market research and public opinion polling services, technical assistance, brokering services or financing or financial assistance (in relation to the maritime transport of Russian oil).

Finally, the restrictive measures include media restrictions, with the EU prohibiting the broadcasting activities and licenses of or contribution to the broadcast of a number of key Russian outlets. These include Sputnik and subsidiaries and Russia Today and subsidiaries, amongst others.²⁴ The EU considered that these outlets were used by the Russian government as instruments to manipulate information and promote disinformation about the invasion of Ukraine, including propaganda, aimed at destabilising the countries neighbouring Russia, the EU, and its Member States.

c) Restrictions on trade and investment with certain territories

In 2014, the Council emphasised that it would not recognise the annexation of the Autonomous Republic of Crimea and the city of Sevastopol to the Russian Federation. As a consequence, restrictions on trade and investment have been imposed regarding to Crimea and Sevastopol. The Council considered that the import into the EU of goods originating in Crimea or Sevastopol should be prohibited, with the exception of those having been granted a certificate of origin by the Government of Ukraine. This sanctions regime consists of [Council Decision 2014/386/CFSP](#)²⁵ and [Council Regulation \(EU\) No 692/2014](#).²⁶

In 2022, similar restrictions on trade and investment were also imposed regarding to the non-government-controlled areas of Donetsk, Kherson, Luhansk, and Zaporizhzhia Oblasts of Ukraine. This sanctions regime consists of [Council Decisions \(CFSP\) 2022/266](#)²⁷ and [Council Regulation \(EU\) 2022/263](#).²⁸

The trade in goods and technology for use in certain sectors in Crimea and Sevastopol as well as the non-government-controlled areas of the Donetsk and Luhansk Oblasts of Ukraine was also restricted. Services in the sectors of transport, telecommunications, energy or the prospecting, exploration and production of oil, gas, and mineral resources, as well as services related to tourism activities in those areas was prohibited.

24. Also included are Rossiya RTR / RTR Planeta, Rossiya 24 / Russia 24, Rossiya 1, TV Centre International, NTV/NTV Mir, REN TV, and Pervyi Kanal.

25. Council Decision 2014/386/CFSP of 23 June 2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol.

26. Council Regulation (EU) No 692/2014 of 23 June 2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol.

27. Council Decision (CFSP) 2022/266 of 23 February 2022 concerning restrictive measures in response to the recognition of the non-government-controlled areas of the Donetsk and Luhansk oblasts of Ukraine and the ordering of Russian armed forces into those areas.

28. Council Regulation (EU) 2022/263 of 23 February 2022 concerning restrictive measures in response to the illegal recognition, occupation, or annexation by the Russian Federation of certain non-government-controlled areas of Ukraine.

d) Diplomatic measures

With the objective of strengthening the political implications of the restrictive measures, the EU is trying to effectuate a “punitive diplomacy” against Russia since after the annexation of Crimea in 2014.

As of that year, the planned EU-Russia summit was cancelled, and Member States decided not to hold regular bilateral summits with Russia. Bilateral talks with Russia on visa matters were suspended. Consequently, the negotiations with Russia on visa matters as well as on a new agreement were also suspended. Instead of the G8 summit, which was due to be held in Russia at the Black Sea resort of Sochi, a G7 meeting was held (without Russia) in Brussels on 4 and 5 June 2014. Meetings have continued in the G7 format up until today. On 16 July 2014, the European Council invited the Commission to re-assess EU-Russia cooperation programmes with a view to taking a decision, on a case-by-case basis, on the suspension of the implementation of such programmes, not including those dealing exclusively with cross-border cooperation and civil society. In addition to that, the European Council requested the European Investment Bank to suspend the signature of new financing operations in the Russian Federation, and EU Member States signalled that they would coordinate their positions within the EBRD Board of Directors with a view to also suspending financing of new operations.

EU countries also supported the suspension of negotiations over Russia's joining the Organisation for Economic Co-operation and Development (OECD) and the International Energy Agency (IEA).

In February 2022, the EU decided that Russian diplomats, other Russian officials, and businesspeople may no longer benefit from visa facilitation provisions, which allow privileged access to the EU.²⁹ On 9 September 2022, the Council agreed to fully suspend the EU's Visa Facilitation Agreement with Russia.³⁰ Consequently, the general rules of the Visa Code will apply to Russian citizens. This means that Russian citizens no longer enjoy privileged access to the EU and face a lengthier, more expensive, and more difficult visa application process.

The Commission has also presented a legislative proposal on the non-recognition of Russian passports issued in occupied regions of Ukraine.³¹

29. Council Decision (EU) 2022/333 of 25 February 2022 on the partial suspension of the application of the Agreement between the European Community and the Russian Federation on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation.

30. Council Decision (EU) 2022/1500 of 9 September 2022 on the suspension in whole of the application of the Agreement between the European Community and the Russian Federation on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation.

31. Proposal for a Decision of the European Parliament and of the Council on the non-recognition of Russian travel documents issued in occupied foreign regions, COM/2022/662 final.

4. Can the restrictive measures target EU citizens?

The restrictive measures introduced by the EU might have impacts not only on non-EU nationals and entities, but they can directly affect EU citizens and EU economic actors as well.

The restrictions on trade and services are directly applicable to EU citizens and entities, binding them and limiting their freedom as economic operators. For instance, since the Council imposed an embargo on major state-owned Russian banks, EU citizens and companies may no longer buy or sell financial instruments from these Russian institutions or assess their accounts in those banks.

However, the main question arising from this matter is different. Can the EU adopt restrictive measures against EU citizens?³² The Council Decision 2014/145/CFSP accepted this as a possibility, because it establishes in Article 1(2) that the travel ban did not oblige a Member State to refuse its own nationals' entry into its territory.

In the context of restrictive measures against Russia, the European Union was the first to impose sanctions against its own citizens. A few persons with double or triple citizenship, where one of the nationalities is that of a Member State of the EU. Consequently, as every person holding the nationality of a Member State is considered a citizen of the EU (Article 20(1) of the TFEU), these are European citizens. Those EU citizens listed include Mr. Petr Aven (citizenships: Russian, Latvian),³³ Mr. Gennady Timchenko.³⁴ (citizenships: Russian, Armenian, Finnish), and Roman Abramovich (citizenship: Russian, Portuguese).³⁵ All three have sought judicial review before the GC over their listing.³⁶

The problem here is that individual restrictive measures adopted pursuant to Article 215 TFEU, such as travel bans and asset freezing, interfere with fundamental rights and freedoms of the EU citizens, such as the right to property or the freedom of movement of persons. These arguments were addressed by the GC in the *Mayaleh v Council* case (T-307/12 and

32. This question was discussed in M. Mota Delgado (2022) and D. Kochenov (2022).

33. No 674 of Annex I to Regulation (EU) No 269/2014, added by Council Implementing Regulation (EU) 2022/336 of 28 February 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty, and independence of Ukraine.

34. No 694 of Annex I to Regulation (EU) No 269/2014, added by Council Implementing Regulation (EU) 2022/336 of 28 February 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty, and independence of Ukraine.

35. No 879 of Annex I to Regulation (EU) No 269/2014, added by Council Implementing Regulation (EU) 2022/427 of 15 March 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty, and independence of Ukraine.

36. Cfr. Action brought on 9 May 2022 - *Timchenko v Council* (Case T-252/22), Action brought on 23 May 2022 - *Aven v Council* (Case T-301/22) and Action brought on 25 May 2022 - *Abramovich v Council* (Case T-313/22).

T-408/13).³⁷ Mr. Mayaleh had Syrian and French nationalities and questioned the legality of the restrictive measures imposed to him by the Council. In its judgement, the GC concluded that the restriction to Mr. Mayaleh's right to property respected the principle of proportionality and was therefore compatible with the Charter, after assessing the necessity and appropriateness of the measure in question.³⁸ It also concluded that the restrictions to the freedom of movement were consistent with Article 21(1) TFEU, which provides that restrictions to this right are "laid down in the Treaties and by the measures adopted to give them effect." The GC concluded that decisions adopted on the basis of Article 29 TEU, "are clearly provisions adopted in application of the EU Treaty."³⁹

The GC also analysed a provision relating to nationals, such as the already mentioned Article 1(2) of the Council Decision 2014/145/CFSP, that establishes that the travel ban did not oblige a Member State to refuse its own nationals' entry into its territory. The Court merely mentions that such a provision "recognises that the Member States have exclusive competence as regards the application of the restrictions at issue to their own nationals. It follows that, in the case of a person who, like the applicant, in addition to having Syrian nationality, has French nationality, EU law does not require the French authorities to deny him access to the territory of the French Republic".⁴⁰

This judgment is criticized for failing to take into account the central status of EU citizenship for the European citizens, not addressing the central question of whether there should be something different in restrictive measures adopted against EU citizens (Mota Delgado, 2022; Kochenov, 2022).

5. Restrictive measures against the media and freedom of expression

The Council decided to also use restrictive measures as a way to combat disinformation about the war in Ukraine, blocking the media that disseminate it. It is in this context that the EU applied sanctions against RT (including RT-Russia Today English, RT- Russia Today UK, RT - Russia Today Germany, RT - Russia Today France, RT- Russia Today Spanish) and Sputnik, Russian state-run media, in March 2022.⁴¹ As already mentioned, the EU has also directly sanctioned Russian individuals working in media outlets in response to Russia's invasion of Ukraine.

These measures prohibit operators to "to broadcast, or to enable, facilitate or otherwise contribute to broadcast, any content by" RT and Sputnik,

37. Judgment of the General Court (Ninth Chamber, Extended Composition), *Adib Mayaleh v Council of the European Union*, Joined Cases T-307/12 and T-408/13, 5 November 2014, ECLI:EU:T:2014:926.

38. *Idem*, paras. 175-181.

39. *Idem*, paras. 190-200.

40. *Idem*, para. 186.

41. Council Decision (CFSP) 2022/351 of 1 March 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, and Council Regulation (EU) 2022/350 of 1 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine.

“including through transmission or distribution by any means such as cable, satellite, IP-TV, internet service providers, internet video-sharing platforms or applications, whether new or pre-installed”. It also suspends “any broadcasting licence or authorisation, transmission and distribution arrangement” with these media outlets.⁴² Thus, sanctions apply to all viable means of content distribution. Other journalistic activities such as “research and interviews” are permitted.⁴³ While the websites of the outlets in question are not banned, online broadcasting of content (“streaming”) is prevented. The scope is even wider, as the Commission interprets the adopted measures as imposing an obligation on search engines to remove any content from RT or Sputnik, and the same applies to social networks, even if it concerns other users’ posts (cfr. Tewari, 2022).

As justification for the ban, it was mentioned that “the Russian Federation has engaged in continuous and concerted propaganda actions targeted at civil society in the Union and neighbouring countries, gravely distorting and manipulating facts” to “justify and support its aggression in Ukraine”. These propaganda actions were “channelled through a number of media outlets under the permanent direct or indirect control of the leadership of the Russian Federation” and are qualified as a “significant and direct threat to the Union’s public order and security”.⁴⁴ In June 2022, the Council extended the ban against other Russian media outlets (Rossiya RTR / RTR Planeta, Rossiya 24 / Russia 24, and TV Centre International).⁴⁵

In response to the sanctions adopted by the Council, RT France (one of RT’s subsidiaries), on 8 March 2022, brought an action for annulment before the GC. It claimed that the Council was not competent to impose such a ban and that it violated the Charter of Fundamental Rights, in particular the right of defence and the right to be heard (Articles 41 and 48), the freedom to conduct a business (Article 16) and the right to freedom of expression (Article 11). On 30 March 2022, the President of the GC rejected RT France’s request for an urgent assessment in interim relief proceedings.⁴⁶ On 27 July 2022, the GC, sitting as Grand Chamber, rejected RT France’s action in its entirety.⁴⁷ RT France has appealed to the CJ.⁴⁸

In its judgment, the GC first held that the Council could validly adopt the restrictive measures at issue on the basis of Article 29 TEU. Thus, the adoption of the contested regulation on the basis of Article 215(2) TFEU was necessary, as is clear from recital 12 thereof, in order to ensure its uniform application, since the Court considers it clear that the imposition on

42. Article 4g of Decision 2014/512/CFSP and Article 2f of Regulation (EU) No 833/2014.

43. Recital (11) of Decision 2014/512/CFSP and Regulation (EU) No 833/2014.

44. Recital (7) and (8) of Decision 2014/512/CFSP and Regulation (EU) No 833/2014.

45. Council Decision (CFSP) 2022/884 of 3 June 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine, and Council Regulation (EU) 2022/879 of 3 June 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine.

46. Order of the President of the General Court of 30 March 2022, *RT France v Council of the European Union*, Case T-125/22 R.

47. Judgment of the General Court (Grand Chamber), Case T-125/22, *RT France v Council of the European Union*, 27 July 2022, ECLI:EU:T:2022:483.

48. *RT France v Council*, Case C-620/22 P.

economic operators of the temporary prohibition on broadcasting audio-visual content throughout the EU is better achieved at EU level than at national level..⁴⁹

As regards the questions raised on fundamental rights, the Court accepts that there was a restriction on RT France's right to freedom of expression protected under Article 11 of the Charter, concluding that RT France had been "temporarily prohibited from broadcasting content as a media outlet"..⁵⁰ In order to comply with EU law, any interference on freedom of expression must fulfil four conditions: (a) it must be "provided for by law", in the sense that the institution adopting measures likely to restrict a person's freedom of expression must have a legal basis for doing so; (b) it must respect the essential content of freedom of expression; (c) it must effectively meet an "objective of general interest" recognised as such by the Union; and (d) it must be proportionate..⁵¹

First, the Court held that the interference was "provided for by law" under Article 29 TEU and Article 215 TFEU. Crucially, as regards the requirement of foreseeability, the GC considered, bearing in mind "the broad discretion which the Council enjoys when adopting restrictive measures" that "it was foreseeable that, in view of the important role played by the media, in particular the audio-visual media, in modern society, the large-scale media support for the military aggression against Ukraine by the Russian Federation, provided during television and internet broadcasts by a media outlet entirely funded by the Russian State budget, could be targeted by restrictive measures consisting in the prohibition of the broadcasting of propaganda activities in support of such aggression"..⁵²

Second, while assessing the respect for the essential content of freedom of expression, the Court noted that the restrictive measures "are temporary and reversible" and "is to be kept under constant review"..⁵³ Moreover, the ban did not prevent RT France from carrying out "other activities in the European Union than broadcasting, such as research and interviews" and did not prevent RT France "neither from producing programmes and editorial content nor from selling them to entities not affected by the measures at issue, including TV Novosti and the other RT Group media outlets established in third countries, which would then be able to broadcast that content outside the European Union"..⁵⁴

Third, in fulfilling an "objective of general interest, recognised as such by the Union", the GC considered that the measures served to protect the public order and security of the EU, and preserve peace, prevent conflicts, and strengthen international security, in accordance with the UN Charter, as provided for in Article 21(2) TEU..⁵⁵

49. Judgment of the General Court (Grand Chamber), Case T-125/22, *RT France v Council of the European Union*, para. 86.

50. *Idem*, para. 142.

51. *Idem*, para. 145.

52. *Idem*, paras. 150-151.

53. *Idem*, para. 154.

54. *Idem*, paras. 156-157.

55. *Idem*, paras. 163-167

The Court then examined the proportionality of the measures. First, it examined whether the evidence produced by the Council could justify its conclusions on the control of RT France. The GC found that the Council had provided a “body of sufficiently concrete, precise and consistent evidence” demonstrating that RT France was under “permanent direct or indirect control of the leadership of the Russian Federation”..⁵⁶

The Court then examined a “number of items of evidence” submitted by the Council in support of its Decision and Regulation. Following this assessment, the Court decided that the Council was correct in considering that the various publications constituted a “sufficiently concrete, precise and consistent body of evidence capable of demonstrating, first, that, before the adoption of the restrictive measures at issue, [RT France] actively supported the destabilising and aggressive policy conducted by the Russian Federation towards Ukraine, which eventually led to a massive military offensive, and, second, that the applicant had, inter alia, broadcast information justifying the military aggression against Ukraine”, using a “vocabulary similar to, or indeed identical with, that used by the Russian Government bodies”..⁵⁷ It concluded that RT France could not demonstrate a generally balanced treatment of information concerning the ongoing war in compliance with the principles on the duties and responsibilities of the audio-visual media as set out in the case law of the European Court of Human Rights (ECtHR)..⁵⁸

Then, on the necessity of the measures, and whether there were “other less onerous restrictive measure”, the Court agreed with the Council that these would not be “as effective in achieving the objectives pursued by the contested acts” because some of them “would not have achieved the same outcome, since some of them – such as the prohibition on the broadcasting of certain content, in the case of a rolling news channel – would have been practically impossible to implement, while others – such as the obligation to display a banner or indeed a warning – would have been of limited effectiveness”..⁵⁹

Finally, the Court noted that international human rights law could also supply guidelines which should be followed within the framework of EU law, especially for the purpose of interpretation and application of Article 11 of the Charter..⁶⁰ In this regard, the Court specifically pointed out that Article 20 of the International Covenant on Civil and Political Rights, which provides that “Any propaganda for war shall be prohibited by law” must be taken into account, as argued by the Council..⁶¹ As such, the Court held that the Council was right to consider it necessary to prevent, in accordance with Article 11 of the Charter, forms of expression “designed to justify and support an act of military aggression, perpetrated in violation of international law and the United Nations Charter”..⁶² In conclusion, the Court found that the restriction on RT France’s freedom of expression was proportionate, finding no

56. *Idem*, 174.

57. *Idem*, paras. 176-188.

58. *Idem*, para. 189. Cfr. also, the judgement of the ECtHR on Case *NIT S.R.L. v. the Republic of Moldova* (Application no. 28470/12), 5 April 2022.

59. *Idem*, para. 197.

60. *Idem*, para. 207.

61. *Idem*, para. 208.

62. *Idem*, para. 212.

violation of Article 11 of the Charter. The Court also found, without ruling on RT France's interest in invoking it, that there was also no violation of the public's right to receive information, as the EU measures were found to be justified and proportionate to prohibit programmes in support of an act of violence.

It is no overstatement to say that the RT France judgment (T-125/22) is significant and could have wide-ranging implications for freedom of expression in Europe (Baade, 2022; Popović, 2022). The GC allowed an executive body, composed of ministers of EU governments, to issue an order that a media outlet, licensed by the French regulator, be subject to a six-month ban on broadcasting content. To do so, it accepted as grounds that this media outlet is, directly or indirectly, controlled by a non-EU government, and is engaged in "propaganda actions" to justify and support an illegal war. The GC's ruling was issued four days before the ban was due to expire, meaning the media outlet was silenced for almost six months.

However, despite its importance, the reasoning of the RT France judgment (T-125/22) is unsound and contradicts previous ECtHR case law. The GC, in line with the Court of Justice case-law, accepted that Article 11 of the Charter must be interpreted as having the same meaning and scope as Article 10 of the ECHR, as interpreted by ECtHR case-law. Despite this, the RT France judgment (T-125/22) does not appear to apply this case-law correctly in several respects.

First, it relies mainly on the ECtHR judgment *NIT S.R.L. v. Moldova*, applying it repeatedly, mainly to substantiate that freedom of expression is not unrestricted and that the media have enhanced duties and responsibilities. However, the GC does not address the substantially different characteristics of the case underlying the *NIT S.R.L.* ruling. In particular, that case concerned a media outlet whose broadcasting licence had been revoked by the regulator for repeated breaches of applicable law, including for failing to ensure balance, fairness and objectivity. A significant difference can be found here: this was not a preventive sanction. Furthermore, the RT France judgment (T-125/22) also does not seem to correctly reflect the case law of the *NIT S.R.L.* judgment. There, the ECtHR analysed the compatibility of the revocation of the broadcasting licence with Article 10 ECHR and considered that procedural guarantees play a particularly important role in relation to a measure as restrictive as this, which has immediate effects. In finding the revocation of the licence compatible with Article 10 of the ECHR, the ECtHR noted that the measure was implemented by a specialised body established by law, stressing the need to ensure its independence and the protection of its decision-making process against political pressure and interference. This position of the ECtHR is entirely consistent with previous case law, such as *OOO Flavus and Others v. Russia*, in which the ECtHR found a violation of Article 10 of the ECHR because the sanction on a media outlet had not been adopted by a court or other independent decision-making body.⁶³

It is very difficult to see how the Council's decision would meet the requirements of the procedural safeguards of Article 10 ECHR as established by the ECtHR. Furthermore, the GC states that RT France has failed to

63. Judgement of the ECtHR on Case *Ooo Flavus and others v. Russia* (Applications nos. 12468/15 and 2 others), 23 June 2020.

demonstrate that there would have been a different outcome if it had been given a prior hearing or had been told the reasons in advance. This conclusion runs counter to the principle of procedural guarantees in cases involving freedom of expression and contrasts with the ECtHR's finding in the *OOO Flavius and Others* case that the prior hearing makes it possible to remedy the alleged breach of law.

On the other hand, although the General Court correctly observed that international human rights law must be used for the interpretation and application of Article 11 of the Charter, its reasoning was based only on Article 20(1) of the Covenant. However, it in no way follows from this precept that an executive authority may prohibit a media outlet from broadcasting war propaganda without an order from a court or an independent administrative body.

Moreover, the General Court, in its analysis of the legal provision of the measure, overlooked the fact that the legal basis of the Council's measures, the TEU and the TFEU, contains no provision on 'propaganda', the concept not being defined in EU law. Indeed, it can be argued that the concept of 'propaganda' comprises statements which are undoubtedly protected by freedom of expression, and which could not possibly be restricted. The GC does not address this issue.

Finally, the GC echoes the argument of the Council and the European Commission that the core content of the right to freedom of expression is not curtailed by the ban, since other possibilities remain open, such as research and interviews by RT France journalists, the production of programmes, and the distribution of its programmes outside the EU. Without having the possibility to make information public and available to others, the right to freedom of expression is restricted in its very essence. The ECtHR gives journalists the right to express opinions and ideas that are contrary to those held by official authorities. Indeed, on such grounds, any restriction on freedom of expression can be justified, as there are always some alternatives. It does not seem to make sense to suggest that the essential content of press freedom is not substantially restricted or threatened if journalists can conduct interviews and do research, without having the possibility to make these interviews and the results of their research available to the public.

Moreover, the General Court's conclusion that there is no infringement of the public's right to receive information is scarcely reasoned. People should be able to hear (if they so wish) the "other side", no matter how ridiculous or grotesque their arguments may seem. Not only citizens who wish to follow Russian media outlets, but all internet users and platforms that serve as intermediaries are affected by the measure. Furthermore, the ban covers all content, even not directly related to the conflict such as sports, weather or art. In short, the EU restrictive measures are exceptionally broad in their scope, covering all content of the media outlets concerned and extending not only to them, but to anyone who "broadcasts" their content.

To be clear, the EU sanctions are manifestly less severe than the criminal punishments to freedom of expression imposed in Russia, so one should not compare them. But the risk of censorship in the Union remains. Better and more thorough reasoning was required to defend the Council's position on

disinformation and war propaganda, since verification of the existence of legitimate aims is not self-evident. The broader the sanctions, the more convincing the arguments should be to justify the restrictions on freedom of expression they impose. In terms of proportionality, less repressive measures could undoubtedly have been considered.

6. Conclusion

The restrictive measures adopted by the EU against Russia represent some of the most comprehensive sanctions that the EU has enacted against another state and those connected to its government. However, while there are differences in scale and the profiles of those sanctioned, this does not necessarily represent a completely innovative approach for the EU. European restrictive measures against Iran and Syria consist of sector-wide measures and individual designations that can be comparable.

The measures adopted reveal challenges related with the judicial review and the control of legality of the decisions. The role reserved by the Treaty of Lisbon to the CJEU is more important than ever, but it is important that the Court uses this new jurisdiction correctly, upholding the rule of law in the EU.

The analysis of EU restrictive measures against Russia has shown that the legal framework provides a toolbox that allows a quick reaction on the escalation of the conflict and establishes smooth procedures to adopt measures of both diplomatic and economic natures. Contrary to what was expected, the EU was not paralyzed by the need of a consensus. Even though the effectiveness of some of the restrictive measures has been disputed, the fast and coordinated reactions coming from Member States in the Council shows a EU's greater-than-ever capacity for cohesive external action. Despite this apparent success, Member States remain divided, pursuing national agendas, and negotiations are difficult.

Bibliography

Alf A. The Challenges of a Sanctions Machine: Some Reflections on the Legal Issues of EU Restrictive Measures in the Field of Common Foreign Security Policy. In Antonioli L, et al., editors. *Highs and Lows of European integration – Sixty Years after the Treaty of Rome*. Switzerland: Springer; 2019: p. 53.

Baade B. The EU's 'Ban' of RT and Sputnik: A Lawful Measure Against Propaganda for War. In: *Verfassungsblog on matters constitutional*. 2022/03/08. Retrieved 2023/04/02. Available at: <https://verfassungsblog.de/the-eus-ban-of-rt-and-sputnik/>. DOI:10.17176/20220308-121232-0.

Beaucillon C. Opening up the horizon: the CJEU's new take on country sanctions. In: *Common Market Law Review*. n° 55(2). 2018. 387-415.

Butler G. Implementing a Complete System of Legal Remedies in EU Foreign Affairs Law. In: *Columbia Journal of European Law*. n° 24. November 2018. 637.

Chachko E, Heath J. A Watershed Moment for Sanctions? Russia, Ukraine, and the Economic Battlefield. In: *AJIL Unbound*. 116. 2022. 135-139. Available at: <https://doi.org/10.1017/aju.2022.21>.

Challet C. Chapter 6: The Impact of the Adjudication of Sanctions against Russia before the Court of Justice of the EU. In *Principled Pragmatism in Practice*. Leiden: Brill / Nijhoff; 2021. pp. 125-140.

Czaplinski W, et. al.. *The Case of Crimea's Annexation Under International Law*. Warsaw: SCHOLAR Publishing House; 2017. p. 272.

De Burca G. The European Court of Justice and the International Legal Order after Kadi, 2019. Retrieved 2023/04/02. Available at: <https://jeanmonnetprogram.org/paper/the-european-court-of-justice-and-the-international-legal-order-after-kadi/>.

Eckout P. *External Relations of the European Union. Legal and Constitutional Foundations*. London: Oxford University Press; 2004. pp. 256-259.

Gutman K. The essence of the fundamental right to and effective remedy and to a fair trial in the case-law of the court of justice of the European Union: the best is yet to come?. In: *German Law Journal*. 20(6). 2019. 884-903. Available at: <https://doi.org/10.1017/glj.2019.67>.

Kochenov D. Sanctions for Abramovich, but Schröder Goes Scot-Free: Linking Sanctions, Citizenship, the Rule of Law and the Values of the European Union. In: *Verfassungsblog on matters constitutional*. 2022/3/11. Retrieved in 2023/04/02. Available at: <https://verfassungsblog.de/sanctions-for-abramovich-but-schroder-goes-scot-free/>.

Kokott K, Sobotta C. The Kadi Case – constitutional core values and international law – finding the balance?. In: *European Journal of International Law*. 23(4). 2012. 1015-1024. Available at: <https://doi.org/10.1093/ejil/chs063>.

Larik J. The Kadi Saga as a tale of 'Strict Observance' of International Law: obligations under the UN Charter, targeted sanctions and judicial review in the European Union. In: *Netherlands International Law Review*. 61(1). 2014. 23-42. Available at: <https://doi.org/10.1017/S0165070X14001028>.

Lester M, Kennely B. Judicial review of sanctions decision: the wrong point in the wrong court with the wrong defendant. In: *Judicial Review*. Vol. 18. 2013. 206-210. Available at: <https://doi.org/10.5235/10854681.18.2.206>.

Miadzvetskaya Y, Challet C. Are EU restrictive measures really targeted, temporary and preventive? The case of Belarus. In: *Europe and the Word: a Law Review*. Vol. 6. No 1. 2022. 1-20.

Miadzvetskaya Y. The EU sanctions dilemma of how to deal with the Russian ally Belarus. In: *Verfassungsblog on matters constitutional*. 21 December

2020. Retrieved 2023/04/02. Available at: <https://verfassungsblog.de/the-eu-sanctions-dilemma-of-how-to-deal-with-the-russian-ally-belarus/>.

Moran N. Judicial scrutiny and EU Sanctions against individuals: Expanded listing criteria, limited safeguards and scrutiny. In: Verfassungsblog on matters constitutional. 20 December 2020. Retrieved 2023/04/02. Available at: <https://verfassungsblog.de/judicial-scrutiny-and-eu-sanctions-against-individuals/>.

Mota Delgado M. Can EU citizens like Roman Abramovich be sanctioned?. 9 March 2022. Retrieved in 2023/04/02. Available at: <https://euideas.eu/2022/03/09/can-eu-citizens-like-roman-abramovich-be-sanctioned/>.

Nanopoulos E. Judicial Review of Measures Implementing Security Council Resolutions: The Relevance of the EU Principle of Loyal Cooperation. In: Cambridge Yearbook of European Legal Studies. 15. 2013. pp. 669-697. Available at: <https://doi.org/10.5235/152888713809813585>.

Nanopoulos E. The Juridification of Individual Sanctions and the Politics of EU Law. Modern Studies in European Laws. Oxford: Hart Publishing; 2019. 157-192.

Poli S. Effective Judicial Protection and Its limits in the case law concerning individual restrictive measures in the European Union. In Neframi E, Gatti M, editors. Constitutional Issues of EU External Relations Law. Luxembourg Legal Studies, Volume 16. Baden-Baden: Nomos; 2018. p. 296.

Popović I. The EU Ban of RT and Sputnik: Concerns Regarding Freedom of Expression. In: EJIL:Talk! Blog of the European Journal of International Law. 2022/3/30. Retrieved 2023/04/02. Available at: <https://www.ejiltalk.org/the-eu-ban-of-rt-and-sputnik-concerns-regarding-freedom-of-expression/>.

Portela C, et al.. Consensus against all odds: Explaining the persistence of EU sanctions on Russia. In: Journal of European Integration. Vol. 43. No 6. 2021. 683-699.

Portela C. EU-Sanktionen gegen Russland: Ein Überblick. In: Osteuropa. Vol. 71. No 10-12. 2022. 103-113

Scott R, et al.. What Sanctions Has the World Put on Russia?. In: Lawfare. 4 March 2022. Retrieved 2023/04/02, available at: <https://www.lawfareblog.com/what-sanctions-has-world-put-russia>.

Tewari S. Notice in Lumen reveals that EU mandated removal of Russian state-sponsored news from Google's search engine. 2022. Retrieved 2023/04/02. Available at: https://lumendatabase.org/blog_entries/notice-in-lumen-reveals-that-eu-mandated-removal-of-russian-state-sponsored-news-from-googles-search-engine.

Thanau S Individual restrictive measures and actions for damages before the General Court of the European Union. In: ERA Forum. 20. 2020. 599-614. Available at: <https://doi.org/10.1007/s12027-019-00592-8>.

Van Elsuwege P. Judicial Review of the EU's Common Foreign and Security Policy: lessons from the Rosneft case. In: Verfassungsblog on matters constitutional. 6 April 2017. Retrieved 2023/04/02. Available at: <https://verfassungsblog.de/judicial-review-of-the-eus-common-foreign-and-security-policy-lessons-from-the-rosneft-case/>.

Vara JS. The consequences of Kadi: where the divergence of opinion between EU and international lawyers lies?. In: European Law Journal. 17(2). 2011. 252-274.

Vatsov M. Security Council Referrals to the ICC and EU Fundamental Rights: a Test for ECJ's Stance in Kadi I. In: Hague Yearbook of International Law. Vol. 25. 2012. 77-104.

Zelyova N. Restrictive measures - sanctions compliance, implementation and judicial review challenges in the common foreign and security policy of the European Union. In: ERA Forum n° 22. 2021. 159-181. Available at: <https://doi.org/10.1007/s12027-021-00658-6>.