



Context specific and structural changes in EU restrictive measures adopted in reaction to Russia's aggression on Ukraine

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1. Introduction

The conflict between Russia and Ukraine that broke out in February 2022 has changed the Union in many respects. First of all, the outbreak of the war led Georgia, Moldova and Ukraine

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to submit their application for EU membership, under Art. 49 TEU.¹ The European Council granted candidate status to Moldova and Ukraine and recognised a ‘European perspective’² for Georgia in June 2022.³ It should be noted that the accession procedure will not be concluded in the short term for the first two countries mentioned. Indeed, the Commission stated that it will ‘assess the impact of the new accession on the EU policy areas *at a later stage*’ (emphasis added).⁴ As is known, in addition to respecting the ‘Copenhagen criteria’, the candidate countries will have to wait for an EU decision recognising that the EU has the capacity to integrate new members.⁵

The Russian aggression of 23 February 2022 has had further consequences for the EU. The functioning of the internal market has been affected by the disruption of the supply chain for certain products, especially cereals, vegetable oils, and fertilisers imported by Ukraine, and by increased energy prices for virtually all sectors of the economy.⁶ Therefore, Member States were authorised by the Commission⁷ to grant state aid to make good the damage caused by the exceptional occurrences of the Russian aggression and to remedy the serious disturbances caused by the shortages of goods and by soaring energy prices.⁸ The Commission defined the conditions under which the aid will be considered compatible with the internal market.

More importantly, Member States’ energy policies had to be redesigned so as to phase out dependence on Russian fossil fuels faster than planned. ‘REPowerEU’ is the name of the action plan adopted to achieve this goal.⁹

Turning to the EU’s reaction to the conflict, the Council has adopted eleven “packages” of restrictive measures following Russia’s aggression in Ukraine, in line with its objectives of consolidating and supporting the principles of international law and strengthening international security.¹⁰ The nature of the breaches of international law committed by Russia has justified the

¹ F. CASOLARI, *L’Ucraina e la (difficile) prospettiva europea*, <https://www.aisdue.eu/federico-casolari-luكرانيا-e-la-difficile-prospettiva-europea/>, 5 March 2022.

² This country will receive candidate status when it has addressed a number of priorities. European Council conclusions of 23-24 June 2022, EUCO 24/22, para 11.

³ *Ibidem*, paras 10 and 13. It should be noted that the Russia-Ukraine conflict provided the political opportunity for further progress in the context of the enlargement to Western Balkans countries. The Council has convened an intergovernmental conference with Albania and the Republic of North Macedonia to open the accessions’ negotiations in July 2022; the Commission issued a positive opinion on granting the candidate status to Bosnia-Herzegovina in October 2022 and two months later Kosovo submitted its application for accession.

⁴ Commission Opinion on Ukraine’s application for membership of the European Union, COM(2022) 407 final, p. 2.

⁵ This is a condition which was laid down by the European Council in 2006. Presidency Conclusions of European Council, Bruxelles, 14-15/2006, document n. 16879/06, p. 2.

⁶ C. QUIGLEY, *European State Aid Law and Policy (and UK Subsidy Control)*, fourth edition, Oxford, 2022, p. 597-598.

⁷ Communication from the Commission Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia 2022/C 131 I/01.

⁸ QUIGLEY, *supra* n 6, p. 597.

⁹ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions REPowerEU Plan, COM(2022) 230, of 18/05/2022.

¹⁰ See Art. 21(2) b) and c) TEU. The first package of EU sanctions was adopted on 23 February 2022, to respond to Russia’s decision to recognise the non-government controlled areas of the Donetsk and Luhansk oblasts of Ukraine as independent entities. Since then, progressive “waves of sanctions” have followed. On the anniversary of Russia’s aggression, the 10th package was introduced. More recently, on 23 June 2023, the Council adopted the last (11th) package, which mainly focus on countering circumvention of existing measures. For comments on restrictive measures enacted in the context of the early stages of the war in Ukraine see A. ALÌ, *Dalle misure*

adoption of exceptional measures that target the country, individual state organs, and state entities, as well as non-State entities and natural persons not directly responsible for the illegal activities attributable to the Russian government. The EU has reacted to Russia's aggression with an unprecedented number of individual restrictive measures,¹¹ and broad financial and sectoral sanctions,¹² which have progressively been expanded. Moreover, a number of sanctions have also been imposed on Belarus for its direct support for the aggression¹³ and on Iranian targets, in response to the use of drones in Ukraine.¹⁴ Yet, it should be highlighted that none of the EU measures have targeted in any way trade in agricultural and food products between third countries and Russia.

The aim of this paper is to capture a few¹⁵ important changes in the practice of EU restrictive measures enacted after February 2022. Attention is drawn to the design, implementation, and enforcement of restrictive measures. More precisely, a few distinctive aspects of restrictive measures with respect to practice will be highlighted with a view to assessing whether they are *context specific*, and therefore unique (and unlikely to be used in other contexts), or capable of causing *structural* changes in the practice of sanctions.

The paper is structured as follows. Section 2 illustrates 'context specific changes' and identifies the distinguishing features in the design of restrictive measures against Russia, taking into consideration the designation criteria of individual sanctions (2.1) and sectoral restrictive measures (2.2 and 2.3). Section 2.4 will comment on the designations made under the EU (horizontal) human rights sanctions regime and in particular on the grounds for those designations. Next, changes intended to strengthen the implementation and enforcement of restrictive measures will be summarised in section 2.5 while the following two sections dwell on the EU's efforts to ensure accountability for crimes and serious breaches of human rights (2.6) and Ukraine's reconstruction (2.7). Section 3 examines 'structural changes' in the practice

restrittive dell'Unione europea alla "guerra economica" nei confronti della Russia e della Bielorussia a seguito dell'invasione dell'Ucraina, in *Questione Giustizia* 2022; L. LONARDO, *Russia's 2022 War Against Ukraine and the Foreign Policy Reaction of the EU Context, Diplomacy and Law*, Cham, 2022; C. PORTELA, J. KLUGE, *Slow-Acting Tools: Evaluating EU Sanctions against Russia*, in *EUISS Analysis*, European Union Institute for Security Studies, 2022. See, more generally, on EU restrictive measures, C. BEAUCILLON, *Entering the buffer zone between legality and illegality: EU autonomous sanctions under international law*, in S. MONTALDO, F. COSTAMAGNA, A. MIGLIO (eds.), *EU law enforcement: the evolution of sanctioning powers*, London, 2022; S. BLOCKMANS, P. KOUTRAKOS (eds.), *Research Handbook in EU Common Foreign and Security Policy*, Cheltenham/ Northampton, 2018.

¹¹ Individual restrictive measures related to Ukraine's territorial integrity are regulated by Council Decision 2014/145/CFSP and Regulation 269/2014 of 17 March 2014, as amended.

¹² Sectoral restrictive measures are enacted on the basis of Council Decision 2014/512/CFSP and Regulation 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine. They acts impose prohibitions on EU operators concerning the import or export to goods to and from Russia and the provision of services. In addition, after Russia recognised the independence and sovereignty of the self-proclaimed 'Donetsk People's Republic' and the 'Luhansk People's Republic' and ordered Russian armed forces to be deployed in those areas, the EU enacted Council Decision (CFSP) 2022/266 and Council Regulation (EU) 2022/263 of 23 February 2022 prohibiting the import into the European Union of goods originating and restricting trade in certain strategic goods and services.

¹³ See Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine (as amended since 2022).

¹⁴ See Council Decision (CFSP) 2022/1986 of 20 October 2022. See also designations in Council Implementing Regulation (EU) 2023/429 of 25 February 2023.

¹⁵ The aim of the authors is not to provide an exhaustive legal analysis of the very complex and fast evolving legal framework of restrictive measures enacted after February 2022 but rather to give an appraisal of selected important legal developments.

of EU restrictive measures caused by the decision to add the violation of sanctions to the list of a particularly serious form of crime with a transnational dimension, under Art. 83(1) TFEU. Section 4 will focus on changes in the decision-making procedure leading to the adoption of restrictive measures. Finally, section 5 will sum up the main findings of the article and will briefly refer to the case law of the ECJ.

2. Distinguishing features of EU restrictive measures enacted in the context of the war in Ukraine and their qualification as ‘context specific’

To some extent, all restrictive measures enacted with respect of a situation in a third country are ‘context specific’. The Council adopts different prohibitions or restrictions depending on the type of breach of international law committed by a third country against another member of the international community or within its territory. The lifting or expansion of restrictive measures depends in the first place on the evolution of the situation that led to the adoption of these measures. However, restrictive measures enacted in connection with the war in Ukraine have distinguishing features with respect to those adopted in other situations of conflict. Russia’s aggression on Ukraine is a unique security challenge for the EU. On the one hand, the aggression is a manifest breach of the prohibition of the use of force under Art. 2(4) of the UN Charter, as well as of the corresponding peremptory norm of customary international law. On the other hand, the conflict in Ukraine is caused by a member of the UN Security Council holding a right of veto and which is a neighbour of the EU’s neighbours. Its nationals have many economic ties and interests in different Member States. In addition, Ukraine is a European country that has concluded an ‘integration agreement’ with the EU,¹⁶ and has an interest in becoming a member of the Union. As a result, the typology of restrictive measures enacted by the Organization is likely to present different features with respect to those authorised by the EU Council in view of international security in more remote geographic contexts.

In the following sub-sections, some distinctive aspects of EU restrictive measures will be highlighted.

2.1 Designation criteria in individual restrictive measures

The nature of the international law breaches committed by Russia has justified the progressive (and exceptional) amendment of the designation criteria of restrictive measures that were originally adopted against those responsible for actions undermining or threatening the territorial integrity, sovereignty, and independence of Ukraine.¹⁷ The targeted persons include not only Russian officials and state organs (such as President Vladimir Putin, the Minister of Foreign Affairs, Sergey Lavrov, members of the Russian State Duma, of the National Security Council, ministers, governors and local politicians, high-ranking officials and military

¹⁶ G. VAN DER LOO, *The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area*, Leiden 2016, p. 4. The author refers to the work of other scholars on this topic, in particular to M. MARESCEAU, *Les accords d’intégration dans les relations de proximité de l’Union Européenne*, in C. BLUMANN (ed.) *Les frontières de l’Union Européenne*, Bruxelles, 2013, p. 152–191.

¹⁷ 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;

personnel, who are directly responsible for or involved in the atrocities committed in Ukraine), but also non-State entities, natural and legal persons who are not directly responsible for the illegal activities attributable to the Russian government (such as banks and financial institutions, prominent businessmen, as well as pro-Kremlin propagandists and media outlets).

At the moment, EU designations concern almost 1800 individuals and entities altogether,¹⁸ according to the grounds listed below (in Table 1):

¹⁸ See for an overview at <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/#individual>.

Designation grounds in 2014	Designation grounds in 2022 (as amended)
<p>(a) natural persons responsible for, supporting or implementing actions or policies which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine, or stability or security in Ukraine, or which obstruct the work of international organisations in Ukraine;</p> <p>(March 2014)¹⁹</p> <p>(b) legal persons, entities or bodies supporting, materially or financially, actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine;</p> <p>(c) legal persons, entities or bodies in Crimea or Sevastopol whose ownership has been transferred contrary to Ukrainian law, or legal persons, entities or bodies which have benefited from such a transfer;</p> <p>(d) natural or legal persons, entities or bodies supporting, materially or financially, or benefiting from Russian decision-makers responsible for the annexation of Crimea or the destabilisation of Ukraine;</p> <p>(e) natural or legal persons, entities or bodies conducting transactions with the separatist groups in the Donbas region of Ukraine.</p> <p>(September 2014)²⁰</p>	<p>(a) natural persons responsible for, supporting or implementing actions or policies which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine, or stability or security in Ukraine, or which obstruct the work of international organisations in Ukraine;</p> <p>(b) legal persons, entities or bodies supporting, materially or financially, actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine;</p> <p>(c) legal persons, entities or bodies in Crimea or Sevastopol whose ownership has been transferred contrary to Ukrainian law, or legal persons, entities or bodies which have benefited from such a transfer;</p> <p>(d) natural or legal persons, entities or bodies supporting, materially or financially, or benefiting from Russian decision-makers responsible for the annexation of Crimea or the destabilisation of Ukraine;</p> <p>(e) natural or legal persons, entities or bodies conducting transactions with the separatist groups in the Donbas region of Ukraine;</p> <hr/> <p>(f) natural or legal persons, entities or bodies supporting, materially or financially, or benefiting from the Government of the Russian Federation, which is responsible for the annexation of Crimea and the destabilisation of Ukraine;</p> <p>(g) leading businesspersons operating in Russia and their immediate family members, or other natural persons, benefiting from them, or businesspersons, legal persons, entities or bodies involved in economic sectors providing a substantial source of revenue to the Government of the Russian Federation, which is responsible for the annexation of Crimea and the destabilisation of Ukraine;</p> <p>and natural or legal persons, entities or bodies associated with these persons.</p> <p>(25 February 2022, later amended on 5 June 2023)²¹</p>

¹⁹ See Article 2 Council Decision 2014/145/CFSP of 17 March 2014.

²⁰ Council Decision 2014/658/CFSP of 8 September 2014.

²¹ Council Decision (CFSP) 2022/329 of 25 February 2022; and Council Decision (CFSP) 2023/1094 of 5 June 2023.

	<p>(h) natural or legal persons, entities or bodies:</p> <ul style="list-style-type: none"> (i) facilitating infringements of the prohibition against circumvention [..]; or (ii) otherwise significantly frustrating those provisions. <p>(6 October 2022, later amended on 23 June 2023)²²</p>
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Table 1 – The evolution of designation grounds in EU restrictive measures from 2014 to 2022 (data of the authors)

Compared to the restrictive measures enacted in 2014, the Council significantly stretched the original designation criteria after the outbreak of the war in 2022. The broadening of the addresses of CFSP Decisions instituting sanction regimes over time, depending on the evolution of the situation that led to the enactment of these measures, is standard practice. Indeed, restrictive measures are designed to make (and to progressively increase) pressure on a third party so that it ceases its illegal conduct. Between March and July 2014, the Council (only) targeted natural persons or non-State entities who individually supported actions and policies which undermined the territorial integrity, sovereignty, and independence of Ukraine, amongst others Russian military personnel and public officers. Later, the restrictions were extended to persons and entities involved in the elections of November 2014 in the separatist Republics of Donetsk and Luhansk.²³ Then, companies that entered into contracts for projects concerning infrastructure in Sevastopol and in Simferopol or for the building of the Kerch bridge were blacklisted in 2017 and 2018. In 2020 they were followed by persons who were involved in the construction of a railway consolidating the links between Crimea and the Russian Federation.²⁴

Before the aggression, the EU list contained slightly more than 200 natural persons and 50 non-State entities.²⁵ With the outbreak of the war in 2022, the Council did not initially amend the designation criteria. In the first package of sanctions,²⁶ the Council targeted all the 351 members of the Russian State Duma (who voted on 15 February in favour of the appeal to President Putin to recognise the independence of the self-proclaimed Donetsk and Luhansk ‘republics’), as well as high profile individuals and entities who had played a role in undermining or threatening the territorial integrity, sovereignty, and independence of Ukraine, under the already existing designation criteria. For instance, Bank Rossiya, PROMSVYAZBANK and VEB.RF were immediately listed for their role in providing financial support to the Russian defence sector and the Russian military.²⁷ However, it took only two days following the start of the aggression²⁸ to expand the reasons justifying the designations in the black list. In view of the gravity of the situation, the Council considered that

²² Council Decision (CFSP) 2022/1907 of 6 October 2022, and Council Decision (CFSP) 2023/1218 of 23 June 2023.

²³ Council Decision 2014/855/CFSP of 28 November 2014.

²⁴ Council Decision (CFSP) 2020/1368 of 1 October 2020.

²⁵ See Annex I Council Regulation (EU) No 269/2014, as before February 2022.

²⁶ The “first package” of EU sanctions was adopted on 23 February 2022, see <https://www.consilium.europa.eu/en/press/press-releases/2022/02/23/russian-recognition-of-the-non-government-controlled-areas-of-the-donetsk-and-luhansk-oblasts-of-ukraine-as-independent-entities-eu-adopts-package-of-sanctions/>.

²⁷ Council Decision (CFSP) 2022/265 of 23 February 2022.

²⁸ Council Decision (CFSP) 2022/329 of 25 February 2022.

the criteria of designation should be amended.²⁹ Thus, the second package of EU sanctions added letters (f) and (g) to the previous grounds for designation. This amendment has allowed the Council to list numerous new targets, such as prominent businessmen *or* (emphasis added) persons and entities involved in economic sectors providing a substantial source of revenue to the Russian Government. Natural and legal persons associated with the listed persons, such as their family members, were also included.³⁰ It should be noted that the criteria enabling the designation of prominent businesspersons has been challenged in a pending annulment action.³¹

More recently, in October 2022, the eighth package of restrictive measures added a further designation ground (under letter (h)), enabling the Council to list ‘natural or legal persons, entities or bodies facilitating infringements of the prohibition against circumvention against the provisions of [the other sets of restrictive measures linked to the unfolding events in Ukraine]’.³² This designation criterion is intended to target ‘facilitators’ of sanctions evasion.

It is now time to assess the changes in the designation criteria. The reader will be able to find additional comments on this topic and, in particular, on the recent extension of the mentioned criteria to ‘immediate family members’ of designated persons in Section 5.

Turning to prominent businesses, it is not uncommon to include them in the scope *ratione personae* of restrictive measures which are adopted due to the illegal activities of the government of a third country. Indeed, these persons may directly or indirectly support the mentioned government or benefit from the ties with it. Therefore, they are a vehicle for the continuation of the illegal activities on the basis of restrictive measures. By putting pressure on supporters or beneficiaries of the governmental conduct, the Council is seeking to cease those illegal activities, in line with the purpose of restrictive measures which is to bring about a change in the policy of the country breaching art. 2(4) of the UN Charter. This institution enjoys an unfettered margin of discretion in identifying the designation criteria but, once they are set, they should be respected. This implies that the Council may freeze the assets of the targeted subjects if there is evidence that these persons fulfil the designation criteria.

Looking at the practice, two precedents can be signalled. In 2015, the Council noted that the Syrian regime continued to pursue its policy of repression and, in view of the gravity of the persisting situation, the restrictive measures in place were reinforced, and further designation criteria were added to the existing ones.³³ Since 2015, ‘leading businesspersons’ operating in

²⁹ Ibidem, Recital (11).

³⁰ Recital n. 7 of Council Decision (CFSP) 2022/582 of 8 April 2022. See, for instance, the designations of Ekaterina Vladimirovna Tikhonova and Maria Vladimirovna Vorontsova, daughters of President Vladimir Putin; Elena Timchenko, wife of the Russian billionaire Gennady Timchenko; Olga Ayziman, ex-wife of Mikhail Fridman; Ekaterina Ignatova, wife of Sergei Chemezov; Lyudmila Rukavishikova, mother-in-law of Sergei Chemezov; Said Kerimov, son of Suleiman Kerimov.

³¹ Case T-651/22, *Shamalov v Council*. See in particular the ‘fourth plea in law, alleging that the ‘leading businessperson’ criteria is unlawful on the basis of three arguments: first, the lack of a sufficient link between the criteria and the objective pursued; second, the breach of the fundamental principles of the European Union and in particular of the principle of equality and non-discrimination; third, the infringement of the principle of legal certainty.

³² Council Decision (CFSP) 2022/1907 of 6 October 2022, amended by Council Decision (CFSP) 2023/1218 of 23 June 2023.

³³ See Council Decision (CFSP) 2015/1836 of 12 October 2015 amending Decision 2013/255/CFSP concerning restrictive measures against Syria.

Syria have been listed because of their ‘presumed association’ with the Syrian regime,³⁴ with a view to increasing pressure on the regime itself to change its policies of repression.³⁵ Similar designation criteria were also used in the context of the Iranian ‘non-proliferation’ sanctions regime.³⁶

In addition to prominent businessmen, the Council is empowered to designate ‘legal persons, entities or bodies involved in economic sectors providing a substantial source of revenue to the Government’. This designation criterion is also not entirely new. Indeed, the Council had listed ‘Iranian State-owned entities engaged in the oil and gas sectors, since they provided a substantial source of revenue for the Iranian Government’,³⁷ in the context of its efforts to counter the proliferation of weapons of mass destruction in this country. The listed subjects were, for example, the ministries of energy and petroleum and other State-owned entities. However, in the practice related to the Ukrainian sanctions regime, in addition to ‘legal persons, entities or bodies’ active in economic sectors providing a substantial source of revenue to the Government of the Russian Federation, the Council listed natural persons, in particular ‘leading businesspersons’ ‘involved in those economic sectors, thus combining two different criteria. It seems to be the first time that the EU has set the objective to stop the funding of a war machine, which it decided to do by sanctioning numerous *businesspersons* (rather than companies) who operate in sectors providing a substantial source of revenue to the Russian Federation.³⁸ It is not clear why there was a preference for the designation of ‘natural persons’ over ‘legal persons’. Perhaps the choice is due to the fact that it is easier to identify and freeze their assets. The Council does not seem to have acted illegally.³⁹

Turning to the new criteria related to the circumvention of sanctions, once again this is not entirely new.⁴⁰ It is possible to find precedents in the context of the Iranian ‘non-proliferation’ regime⁴¹ and in the restrictive measures enacted in view of the situation in Syria.⁴² As for the former, the Council listed the Central Bank of Iran for the circumvention of

³⁴ Always a rebuttable presumption. See case law with regard to “leading businesspersons operating in Syria” and presumption of support rebutted before the Court; e.g. Case T-186/19, *Zubedi v. Council*, EU:T:2020:317, para 71; Case T-256/19, *Assi v. Council*, EU:T:2021:818, para 164; Case T-260/19, *Al-Tarazi v Council*, EU:T:2021:187, para 147; Case T-258/19, *Foz v. Council*, EU:T:2021:820, para 147.

³⁵ Recital n. 5 of Council Decision (CFSP) 2015/1836.

³⁶ See Art 23(1) (d) of Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran.

³⁷ Recital (16) of Council Decision 2012/635/CFSP of 15 October 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran.

³⁸ It should be noted that the Council has also listed state owned companies that were a major source of revenue and foreign currency for the Lukashenka regime. See Council Implementing Decision (CFSP) 2022/881 of 3 June 2022 implementing Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine.

³⁹ It is noteworthy that an annulment action is pending in which the applicant questions the legality of the designation criteria of ‘leading businesspersons involved in economic sectors providing a substantial source of revenue to the Government of the Russian Federation.’ See Case T-333/22, *Khan v Council*.

⁴⁰ See for deeper insights on the risk of circumvention of restrictive measures associated to family members of listed persons, F. FINELLI, *Countering circumvention of restrictive measures: the EU response*, in *Common Market Law Review*, 2023, p. 733-752.

⁴¹ See for example, Council Common Position 2007/140/CFSP of 27 February 2007 concerning restrictive measures against Iran, referring to the prohibition to participate, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to circumvent the prohibited activities; see also art. 23(1) (b) Council Regulation (EU) No 267/2012, targeting persons who have ‘evaded or violated, or assisted a listed person, entity or body to evade or violate, the provisions of’ the sanctions regime against Iran.

⁴² Council Decision (CFSP) 2015/1836 of 12 October 2015.

sanctions,⁴³ and banks⁴⁴ and other subjects such as companies or natural persons.⁴⁵ As for the latter, the Council was highly concerned by risks of circumvention of restrictive measures through family members;⁴⁶ the existence of a ‘real risk of circumvention’ was one of the reasons to keep listed members of the Assad families and leading businesspersons operating in Syria (and other categories of persons).⁴⁷ An anti-circumvention clause was included in the context of the sanction regime related to the Democratic People’s Republic of Korea.⁴⁸

The inclusion of ‘facilitation of circumvention’ amongst the designation criteria is geared at improving the effectiveness of restrictive measures, which is a key objective of the Council. The latter will be able to target natural and legal persons associated with (already) designated individuals, who facilitate, for example, obscuring the beneficial ownership of assets and/or economic resources which are supposed to be subject to freezing measures.

As has happened in the restrictive measures enacted in view of the situation in Syria, family members and associates of designated individuals are the primary targets of this new designation ground. Yet, it is noteworthy that designation criteria are nationality-blind, meaning that they are not just directed at *Russian* ‘facilitators’ of circumvention activities; the European Commission has already clarified that sanctions can also target EU natural and legal persons (such as banks and credit institutions managing assets in the Union) that facilitate infringement of the restrictive measures imposed.⁴⁹

It may be asked to what extent the Council can stretch the designation grounds and to what extent it can broadly interpret them. Scholars have questioned the power of this institution to include natural and legal persons *not* directly involved in the war in Ukraine (and in its financing),⁵⁰ doubting that their listing contributes to the cessation of the illegal activities. The EU courts will soon address these questions. Indeed, due to the unprecedented number of designations, almost 1,800 natural and legal persons, and the considerable expansion of the targets of EU sanctions, it is likely that numerous annulment proceedings will be introduced before EU courts. At the moment, there are approximately 60 pending actions before the GC,⁵¹ mainly brought by businesspersons in the inner circle of President Putin,⁵² or their family members,⁵³ who challenge their inclusion in the list for lack of motivation, or for manifest error of assessment. It may also be asked whether the Council is subject to different standards of

⁴³ See Council Decision 2012/635/CFSP, *supra* n. 37, annex listing the Iranian Central Bank for ‘involvement in activities to circumvent sanctions’.

⁴⁴ *Ibidem*, see the listing of Bank Tejerat.

⁴⁵ See for examples the annex of Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation (EU) No 961/2010 on restrictive measures against Iran.

⁴⁶ Council Decision (CFSP) 2015/1836 of 12 October 2015, Recital n. 7.

⁴⁷ *Ibidem*, Recital n. 9.

⁴⁸ See Art 34(5) Council Regulation (EU) 2017/1509 of 30 August 2017 concerning restrictive measures against the Democratic People’s Republic of Korea and repealing Regulation (EC) No 329/2007, with reference to ‘persons assisting in the evasion of sanctions’.

⁴⁹ See Commission Consolidated FAQs on the implementation of Council Regulation No 833/2014 and Council Regulation No 269/2014, Question ‘Can EU nationals be sanctioned?’.

⁵⁰ Y. MIADZVETSKAYA AND C. CHALLET, *Are EU Restrictive Measures Really Targeted, Temporary and Preventive? The Case of Belarus*, in *Europe and the World: A law review*, 2022, p. 1.

⁵¹ The count is made by the authors on the basis of information updated to 12 June 2023.

⁵² See, for example, case T-742/22, *Mazepin v Council*, case T-644/22, *Timchenko v Council*, case T-635/22, *Fridman and Others v Council*, case T-313/22 *Abramovich v Council*, case T-271/22, *Melnichenko v Council*.

⁵³ See, for example, case T-743/22, *Mazepin v Council*, case T-234/22, *Ismailova v Council*, case T-272/22, *Pumpyanskaya v Council*, case T-498/22, *Melnichenko v Council*, case T-497/22, *Mordashova v Council*.

evidence when listing the addressees of sanctions under individual restrictive measures or sector-related restrictions. The Court of Justice has not yet had the opportunity to provide clarification on this issue. In the following section, we will look at a couple of examples of the latter category of sanctions.

2.2 Sectoral restrictive measures and nationality-based prohibitions

In addition to individual restrictive measures, sector-related measures were adopted.⁵⁴ They consist of a broad spectrum of restrictions which target not only Russia's economy (imposing a number of import and export restrictions),⁵⁵ but also road and maritime transport, the aviation sector, the energy sector, Russia's defence, financial and banking systems, and other services. These measures are extremely wide in scope, with the aim of imposing severe consequences on Russia for its actions in Ukraine and reducing its ability to continue the war. For instance, since February 2022, the EU has closed its seaports and airports, as well as airspace, to Russia.⁵⁶ The restrictions on air transport are similar to the 1998 flight ban against former Yugoslavia.⁵⁷ The difference is that the EU is not acting to fulfil the requirements of the United Nations Security Council resolution as it happened in the late 1990s. By closing its airspace and seaports through unilateral restrictive measures in reaction to Russia's aggression, the EU is adopting a third-party countermeasure. It should be stressed that the Union is said to consolidate the practice that may lead to the development of a norm of customary law whereby the adoption of third-party countermeasures, in reaction to a breach of obligations *erga omnes*, is justified.⁵⁸

Chief amongst all the sectoral restrictions for their effects on the Russian economy are *financial* sanctions. The Union is essentially cutting Russia's access to its capital and financial markets, amongst other things, prohibiting any transactions with Russian State-owned entities, including the Russian Central Bank and the Regional Development Bank, as well as State-owned enterprises across different sectors (such as Rosneft, Transneft, Gazprom Neft, Almaz-Antey, Rostec), prohibiting the provision of financial messaging services (notably SWIFT) for

⁵⁴ Council Decision 2014/512/CFSP and Regulation 833/2014, *supra* n 12.

⁵⁵ These restrictions entail that EU entities cannot sell certain products to Russia (such as dual-use goods and technology which might contribute to Russia's technological enhancement of its defence and security sector) and are not allowed to obtain certain products from Russia (such as crude oil and refined petroleum products, coal, steel, gold, precious metals, luxury goods, etc.).

⁵⁶ Concerning airspace, see Council Regulation (EU) 2022/334 of 28 February 2022, concerning seaports, see Council Regulation (EU) 2022/576 of 8 April 2022.

⁵⁷ Council Regulation (EC) No 1901/98 of 7 September 1998 concerning a ban on flights of Yugoslav carriers between the Federal Republic of Yugoslavia and the European Community. The European Community (at that time) enacted the flight ban to fulfil the requirements of United Nation Security Council Resolution 1160 (1998).

⁵⁸ See F. HOFFMEISTER, *Strategic Autonomy in the European Union's External Relations Law*, in *Common Market Law Review*, 2023, p. 667, p. 691-700. On third-party countermeasures, see T. RUYTS, *Sanctions, Retortions and Countermeasures: Concepts and International Legal Framework*, in L. VAN DEN HERIK, *Research Handbook on UN Sanctions and International Law*, Cheltenham/ Northampton, 2017; M. DAWIDOWICZ, *Third-Party Countermeasures in International Law*, Cambridge, 2017.

ten Russian banks,⁵⁹ prohibiting public financing or investment in Russia, and prohibiting contributions to projects co-financed by the Russian Direct Investment Fund. In addition, EU sanctions impose asset freezes on an exceptional number of Russian banks (such as Bank Rossiya, PROMSVYAZBANK, VEB.RF, Otkritie FC Bank, Novikombank, Sovcombank, VTB Bank, Sberbank, Credit Bank of Moscow).⁶⁰ Although extensive financial sanctions have already been imposed in other sanctions regimes in the past, such as in Iran and Syria,⁶¹ the restrictions imposed on Russia are wider since the ultimate goal of these sanctions is to cripple Russia's ability to finance the war. According to the European Commission, 70% of the assets of the Russian banking system are under sanctions.⁶²

Financial sanctions imposed on Russia have an important novelty element: they often contain *nationality-based* prohibitions. More precisely, several financial restrictions are designed to impact Russian nationals or natural persons residing in Russia, or legal persons, entities or bodies established in this third country. Differently from individual designations which lead to a *targeted* asset freeze against natural and legal persons (named and listed in the Annexes to Council Decision 2014/145/CFSP and Regulation 269/2014), nationality-based financial sanctions (contained in Council Decision 2014/512/CFSP and Regulation 833/2014) are designed to affect Russian individuals on the grounds of their nationality, as well as Russian residents, and legal entities established in Russia. The term 'Russian national' is repeated several times in the sanctions regime, amongst other things restricting the provision of deposits (exceeding EUR 100,000), crypto assets, securities, banknotes denominated in euro, credit rating services, the execution of any public or concession contract, and trusts.⁶³ In view of the gravity of the situation in Ukraine, the Council has considered it appropriate to introduce these nationality-based restrictions and progressively expand their scope of application. The ultimate goal of these measures is not sufficiently detailed; the Council simply states that it is necessary to introduce new measures that 'significantly limit the financial inflows from Russia to the Union'.⁶⁴ The Commission has declared that extensive financial sanctions are designed to 'contribute to ramping up economic pressure on the Kremlin and cripple its ability to finance its invasion of Ukraine'.⁶⁵ The nationality-based provisions in restrictive measures may seem

⁵⁹ I.e., Bank Otkritie, Novikombank, Promsvyazbank, Bank Rossiya, Sovcombank, VNESHECONOMBANK (VEB), VTB BANK, Sberbank, Credit Bank of Moscow, and Joint Stock Company Russian Agricultural Bank, JSC Rosselkhozbank.

⁶⁰ See designations in Council Implementing Regulation (EU) 2022/260 of 23 February 2022, in Council Implementing Regulation (EU) 2022/581 of 8 April 2022, as well as in Council Implementing Regulation (EU) 2022/1270 of 21 July 2022.

⁶¹ For instance, decoupling of certain banks from the SWIFT messaging system pursuant to Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran. See also Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures in view of the situation in Syria.

⁶² See overview here https://eu-solidarity-ukraine.ec.europa.eu/eu-sanctions-against-russia-following-invasion-ukraine/financial-and-business-service-measures_en.

⁶³ See Articles 5b, 5e, 5f, 5j, 5k, 5m, 5n in Council Regulation (EU) No 833/2014, as amended by Council Regulation (EU) 2022/328 of 25 February 2022, Council Regulation (EU) 2022/576 of 8 April 2022, Council Regulation (EU) 2022/1269 of 21 July 2022, etc.

⁶⁴ Recital n. 11 Council Decision (CFSP) 2022/327 of 25 February 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine.

⁶⁵ See Commission press release of 15 March 2022 at https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1761, Commission press release of 8 April 2022 at

problematic since they are not targeted to specific individuals; yet, it could be counterargued that the decision to institute such a prohibition may still be considered ‘targeted’ since the prohibition affects ‘wealthy Russians’ (those having deposits in excess of EUR 100,000) rather than *any* Russian. It remains to be seen whether these measures are strictly necessary to achieve the purpose of restrictive measures, which is to stop the aggression.

It is noteworthy that financial sanctions against Russian clients do *not* apply in cases where these individuals also hold the nationality of a Member State.⁶⁶ In other words, dual EU-Russian nationals benefit from an explicit (nationality-based) exception, which limits the application of the above restrictions. In this framework, with a view to limiting risks associated with security, money laundering, tax evasion, and corruption, the Commission adopted a recommendation concerning ‘immediate steps’ to counter investor citizenship and investor residence schemes (also known as ‘golden visa’ and ‘golden passports’ schemes) in relation to Russian (and Belarusian) nationals.⁶⁷ More precisely, after the outbreak of the war in Ukraine, the Commission called upon Member States to stop operating these schemes for all Russian applicants with immediate effect. In addition, it urged Member States to immediately reassess the (previously granted) naturalisation of Russian individuals as well as their (previously granted) residence permit. If the person concerned is, or becomes, subject to EU restrictive measures, or if it is otherwise determined that the person concerned significantly supports by any means the war in Ukraine or other related activities of the Russian government, the naturalisation – as well as the residence permit – should be withdrawn.⁶⁸ Accordingly, the Commission now requires Member States to ensure that no Russian nationals with financial, business, or other links to the Putin regime retains his or her citizenship and residency rights in the Union.⁶⁹ This development is clearly context specific and is unlikely to be replicated with respect to citizens of other third countries committing breaches of international law in the world.⁷⁰ It should be mentioned that neither the UK nor the US has adopted sanctions of this kind.

Finally, in addition to financial sanctions, sectoral restrictions on Russia impact the provision of certain services that have never before been targeted. With the adoption of the “sixth and eighth packages” of EU sanctions, it is now prohibited to provide certain business-

https://ec.europa.eu/commission/presscorner/detail/en/ip_22_2332, (for instance introducing a general ‘prohibition on providing advice on trusts to wealthy Russians, making it more difficult for them to store their wealth in the EU’), Commission press release of 3 June 2022 at https://ec.europa.eu/commission/presscorner/detail/en/IP_22_2802.

⁶⁶ See, for instance, Art 5b(2) introduced by Council Regulation (EU) 2022/328 of 25 February 2022.

⁶⁷ Under these schemes, the nationality of a Member States, and thereby Union citizenship, is granted in exchange for a payment or investment and without a genuine link with a Member States. Accordingly, these schemes are considered not compatible with the principle of sincere cooperation (Art 4(3) TUE) and with the concept of EU citizenship (as provided for in Art 20 TFEU). Recommendation C (2022) 2028 final, Recital n. 4.

⁶⁸ *Ibidem*, p. 7.

⁶⁹ In accordance with the principles resulting from the case law of the Court of Justice of the European Union (see for example case C-135/08, *Rothmann*), including the principle of proportionality and the protection of fundamental rights

⁷⁰ On 9 September 2022, the Council also agreed to fully suspend the EU's Visa Facilitation Agreement with Russia. This means that Russian citizens no longer enjoy privileged access to the Union. See https://www.consilium.europa.eu/en/press/press-releases/2022/09/09/council-adopts-full-suspension-of-visa-facilitation-with-russia/?utm_source=yxnews&utm_medium=mobile.

relevant services to the Russian government and to legal entities established in Russia, including the provision of accounting, auditing, tax consulting services, business and management consulting, and public relations services, as well as IT consultancy, legal advisory, architecture, and engineering services.⁷¹ Against this background, several Bar associations have already filed actions for the annulment before the GC concerning the prohibition of legal advisory services, challenging its legality under EU law.⁷²

2.3 A new type of sectoral restrictive measure: the ban on broadcasting activities to protect Union public order and security

On 1 March 2022, the Council enacted a new type of restrictive measure concerning media outlets.⁷³ While in practice asset freezes and travel bans *vis-a-vis* journalists, complicit with authoritarian regimes, have been adopted,⁷⁴ it was the first time that EU operators were banned from broadcasting any information provided by specific media outlets (i.e., Russia and Sputnik), funded by the Russian Federation. These media outlets are under the direct and indirect control of the government. The scope of the ban is very wide;⁷⁵ it is also prohibited ‘to facilitate or to make otherwise available’ the information content of Sputnik and a number of Russia Today’s subsidiaries in various Member States. The mentioned restriction was extended to other media outlets⁷⁶ and later renewed.⁷⁷ In addition, individual propagandists are placed on the EU blacklist.⁷⁸

This new type of restriction against State-owned and pro-Kremlin media outlets is meant to address hybrid threats, countering the spread of disinformation and the dissemination of propaganda in support of Russia’s aggression. It is the first time that the Council has countered disinformation activities through restrictive measures. These measures are surely unusual in the

⁷¹ See Article 5n introduced by Council Regulation (EU) 2022/879 of 3 June 2022.

⁷² Action brought on 23 December 2022, *ACE v Council*, case T-828/22. See also *ACE Avocats Ensemble* reaction to the 8th package of EU sanctions here: <https://avocats-ace.fr/wp-content/uploads/2022/10/CP-LACE-dénonce-les-interdictions-dexercice-imposées-aux-avocats-.pdf>. Action brought on 26 December 2022, *Ordre néerlandais des avocats du barreau de Bruxelles and Others v Council*, case T-797/22. Action brought on 28 December 2022, *Ordre des avocats à la cour de Paris and Couturier v Council*, case T-798/22.

⁷³ 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.

⁷⁴ See S. POLI, *Prime riflessioni sulla sentenza del Tribunale “RT France” sulle misure restrittive contro le attività di disinformazione russe*, in *Quaderni AISDUE*, 2022, p. 118 ss.

⁷⁵ For example, the targets may carry out limited activities such as interviews.

⁷⁶ See Council Decision (CFSP) 2022/884 of 3 June 2022, and Council Decision (CFSP) 2022/2478 of 16 December 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine. See also, S. POLI, *Judicial challenges to EU restrictive measures by individual state organs, ‘emanations of non-EU member states’ and third countries: the limits to the Council’s discretion*, in G. ADINOLFI, A. LANG, C. RAGNI (eds), *Sanctions by and against international organizations*, Cheltenham/ Northampton, due to publication.

⁷⁷ Council Decision (CFSP) 2022/2478, *supra* n. 76.

⁷⁸ See, for example, designation in Decision 2022/582 of 8 April 2022.

practice of sanctions. The UK also sanctioned RT,⁷⁹ while Norway⁸⁰ and Switzerland⁸¹ did not. Norway has also indirectly criticised the EU adopting these measures.⁸²

The Council does not qualify disinformation activities as propaganda for war prohibited under Art. 20(1) ICCPR; however, their destabilising effect on the Member States and the neighbours is enough to qualify them as ‘a significant and direct threat to the Union’s public order and security’.⁸³ It is the first time that the EU has defended such an interest. The Council takes for granted the existence of ‘Union public order and security’. While reference to the EU’s security can be found in the Treaty in Art. 21(2) a) TEU, the notion of ‘Union public order’ as a collective expression of (27) national public orders is something new in practice. The Baltic States, Poland and Germany had taken similar measures to those of the Council⁸⁴ before the latter acted in early March 2022. The generalisation of the broadcasting prohibition at the EU level has guaranteed a uniform approach to disinformation across the Union and has contributed to promoting the protection of the Union public order to the rank of a general interest of the organisation.

It is argued that the broadcasting ban appears to be context specific; it is adopted in reaction to the propaganda for war carried out by Russia through media which are not independent. These measures seem unlikely to be enacted in other contexts.

The new restrictions of broadcasting activities undoubtedly affect the right to freedom of expression and information, protected by Art. 11 of the EU Charter of Fundamental Rights and Art. 10 ECHR. This is one of the grounds invoked by Russia Today France to challenge the new type of restrictive measures before the GC in *RT France v Council*.⁸⁵ The applicant claimed that the impugned CFSP decision, instituting the mentioned restrictive measures, was to be annulled on the following grounds: the lack of competence of the Union to enact such measures since only national authorities may impose sanctions on media outlets;⁸⁶ breaches of the rights to be heard, of defence, and to effective judicial protection (Arts. 41, 47 and 48 of the EU Charter of Fundamental Rights (‘CFR’)), freedom of expression (Art. 11 CFR and Art. 10 ECHR), freedom to conduct business (Art. 16) and, finally, the principle of non-discrimination on grounds of nationality. In July 2022, the GC confirmed the legality of these (new and exceptional) sanctions, and an appeal is currently pending.⁸⁷ The GC confirmed that the Council was empowered to enact the impugned restrictive measures: Art. 40 TEU was not breached

⁷⁹ C. MILLS, *Sanctions against Russia*, Research Briefings, House of Commons, 23 March 2023, p. 25.

⁸⁰ See <https://merlin.obs.coe.int/article/9488>.

⁸¹ See <https://www.infobae.com/en/2022/03/25/switzerland-expands-sanctions-against-russia-but-decides-not-to-censor-russian-media/>.

⁸² The President of the Norwegian media authority stated: ‘War is not the right time for evaluations, but when time is ripe we will need to have a close look at the implementation of sanctions in the light of freedom of expression and jurisdiction between the EU and member state level’. The statement is reported on the website: <https://merlin.obs.coe.int/article/9488>.

⁸³ Council Decision (CFSP) 2022/351 *supra* n 73, Recital 8.

⁸⁴ S. POLI, *supra* n 74, p. 117.

⁸⁵ Case T-125/22, *RT France v Council*, EU:T:2022:483. See also pending case T-307/22, *A2B Connect and Others v Council* (Dutch company). R. WESSEL, V. SZEPEL, *Balancing Restrictive Measures and Media Freedom: RT France v Council*, due to publication on *Common Market Law Review* (on file with the authors), S. POLI, *Le misure Ue di contrasto alle attività di disinformazione russe alla prova della Carta europea dei diritti fondamentali*, in *Quaderni Costituzionali*, 2022, p. 626-630, R. MASTROIANNI, F. FERRARO, *Libertà di informazione e diritto dell’Unione europea*, Napoli, 2022.

⁸⁶ The French national authorities had not restricted the broadcasting activities, with their national jurisdiction.

⁸⁷ Case C-620/22 P, *RT France v Council*, pending.

since the exercise of competences under the CFSP does not call into question the possibility for the EU to intervene in the field of audio-visual services (the internal market). The Union's competences under the CFSP and those related to the Union's internal policies and actions (TFEU) 'are not mutually exclusive, but are complementary'.⁸⁸ According to the GC, the Council cannot be criticised for having enacted 'suitable measures to respond to the serious threat to peace on the borders of the European Union and the violation of international law'.⁸⁹ As to the right to be heard, this was not breached since the GC confirmed that the Council could enact the mentioned measures without notifying the applicant; the lack of notification was justified by the exceptional circumstances in which the contested measures were adopted. Turning to the right to freedom of expression, the GC extensively relied on the case law of the European Court of Fundamental Rights to confirm that restrictions to that right were enacted for legitimate purposes and in full respect of the principle of proportionality. The GC held that there was sufficient evidence showing that the applicant was under the permanent direct and indirect control of the Russian Federation. As the GC stressed, the exercise of freedom of expression entails 'duties and responsibilities'.⁹⁰ The broadcasting ban was temporary and reversible and did not constitute interference with the essence of freedom of expression.

The GC's ruling in *RT France* should be welcomed and is better substantiated than other rulings, such as that in *Kiselev*⁹¹ in which the GC had been more superficial in rejecting the ground that the concerned restrictive measures breached Art. 11 of the Charter of Fundamental Rights. There is little doubt that RT and Sputnik are propaganda machines and that it is more effective to enact restrictive measures to tackle hybrid threats such as the spreading of false information on the aggression of Russia against Ukraine at the EU level. Manipulating information on who bears the responsibility for an armed aggression is unacceptable in a Union in which respect of international law is one of the principles underlying EU external action. While it is true that Russian media outlets have abused their right to freedom of expression, the new typology of EU restrictive measures is far from uncontroversial.⁹² The Council has the possibility to abolish these measures when the war ends, under the terms of the instituting Decision.⁹³ It remains to be seen whether the perception of the threat to the Union's public order and security posed by the disinformation campaign of Russian media outlets will change after the end of the war.

⁸⁸ T-125/22, *supra* n 85, para 61.

⁸⁹ *Ibidem*, para 52.

⁹⁰ *Ibidem*, para 206.

⁹¹ T-262/15 *Kiselev*, ECLI:EU:T:2017:392.

⁹² See criticism from the trade unions of French journalists here: <https://www.snj.fr/article/ne-d%C3%A9fend-jamais-la-libert%C3%A9-en-attaquant-les-journalistes-1580995529>. See R. Ó FATHAIGH, D. VOORHOOF, *Freedom of Expression and the EU's Ban on Russia Today: A Dangerous Rubicon Crossed*, in *Communications Law*, 2022, pp. 186-193, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4322452. The authors criticise the way the GC applied the case-law of the European Court of Human Rights on art. 10 of the ECHR. They also contested the competence of the Council to enact the broadcasting ban.

⁹³ Council Decision (CFSP) 2022/2478 *supra* n 75 (Recital n. 13) states: 'These measures should be maintained until the aggression against Ukraine is put to an end, and until the Russian Federation, and its associated media outlets, cease to conduct propaganda actions against the Union and its Member States.'

2.4 The listing of natural persons under the EU horizontal human rights sanctions regime on the ground of pro Wagner Group propaganda and disinformation and the delayed reliance on the EU Global Human Rights Sanction Regime

It is worth noting that the new ground for the designation of media outlets at the basis of the prohibition to broadcast (i.e. spreading disinformation) made its way into the Global Human Rights Sanction Regime ('EUGHRSR'), also known as the EU Magnitsky sanctions.⁹⁴

In February 2023,⁹⁵ eight persons and seven entities⁹⁶ associated with the Wagner Group⁹⁷ and its leader Prigozhin were added to the existing list of designated persons. The amendment of this sanctions regime is justified by 'the international dimension and the gravity of the Wagner Group's activities, as well as its destabilizing impact'⁹⁸ in a number of African countries.⁹⁹ It is noteworthy that even if the war in Ukraine started in February 2022, in a few cases the persons associated with the Wagner Group were listed for having committed human rights abuses in countries such as Sudan or the Central African Republic but they were not listed for human rights abuses carried out in Ukraine.¹⁰⁰ The grounds for listing some of the mentioned targets are interesting: they are blacklisted for the commission of human rights abuses *outside Ukraine* and for supporting and encouraging pro-Wagner Group propaganda and for engagement in political interference and disinformation in the various countries they are active in. This is the first time the EUGHRSR has been used for targeting propaganda and disinformation campaigns, which may be considered an abuse of the rights of freedom of opinion and expression (art. 1.d (iv) EUGHRSR). Is this prohibition fully in line with Art. 20(1) ICCPR,¹⁰¹ which prohibits '[a]ny propaganda for war'? It is submitted that although the new ground for listing is only one of the justifications for the listing, it is not fully convincing to list natural persons who make propaganda for the Wagner Group and spread disinformation under

⁹⁴ Council Decision (CFSP) 2020/1999 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses and Council Regulation (EU) 2020/1998 of 7 December 2020. F. FINELLI, 'The New EU Human Rights Sanctions Regime: a SWOT Analysis,' in *European Law Blog* (2021). It is one of the strengths of this horizontal sanctions regime to make it possible to list non-State entities for human rights abuses, regardless of whether they commit those abuses in their own State, in other States, or across borders.

⁹⁵ S. POLI, *The EU and US Global Human Rights Sanction Regimes: Useful Complementary Instruments to Advance Protection of Universal Values? A Legal Appraisal*, in E. FAHEY (ed.), *Routledge Research Handbook on Transatlantic Relations*, London, 2023, in press.

⁹⁶ Council Implementing Regulation (EU) 2023/430 of 25 February 2023 implementing Regulation (EU) 2020/1998 concerning restrictive measures against serious human rights violations and abuses.

⁹⁷ At the end of 2021, the Wagner Group was included for the first time amongst the targets of the EUGHRSR for being responsible for human rights abuses in various African countries in which the group was active and in Ukraine. On the same occasion, members associated with the mentioned group were also listed for serious human rights abuses in several African countries but not in Ukraine. See Council Decision (CFSP) 2021/2197 of 13 December 2021 amending Decision (CFSP) 2020/1999 concerning restrictive measures against serious human rights violations and abuses.

⁹⁸ *Ibidem*, Recital n. 4.

⁹⁹ Libya, Mali and the Central African Republic, Syria and Sudan.

¹⁰⁰ However, there is one indirect link to Russia in the listing of one of the targets who is closely affiliated with the Sudanese military through which the Wagner Group secured the exploiting and exporting of Sudanese gold to Russia.

¹⁰¹ The Covenant of 1966 is one of the 'widely accepted instruments' to which the Council has to give 'regard' when listing the perpetrators of human rights breaches and abuses. Art. 2(a) of Council Decision (CFSP) 2020/1999 *supra* n 94.

the GHRSR since under the mentioned international instrument only propaganda for war would be covered.

In addition, it should be mentioned that in Ukraine far more serious human rights abuses than propaganda activities have been committed. Yet, it took one year for the Council to use the EUGHSR for serious crimes committed in this country. Persons who were alleged to have committed serious human rights abuses were listed only in March 2023. At that time, a commander of units and a member of the armed forces of the Russian Federation were blacklisted for having ordered the commission of violations against the civilian population or for having committed systematic sexual and gender-based violence in Ukraine in March 2022.¹⁰² It may be asked why the Council only relied on the GHRSR about one year after the start of the war.¹⁰³ The reason can only be guessed. It could be that the Council waited to list after the Ukrainian authorities charged members of the Russian military units with allegations of sexual and gender-based violence. Indeed, the institution of proceedings at national level against the alleged violators of human rights justifies the asset freeze of the EU as a measure of political support to the work of Ukrainian courts.¹⁰⁴

2.5 Implementation and enforcement of restrictive measures

A further distinguishing feature of EU restrictive measures enacted in the context of the war between Russia and Ukraine is the unprecedented emphasis on effective implementation and enforcement.

These two aspects of the life cycle of restrictive measures are a daunting task for all the subjects involved: this is why the Commission has extensively relied on “FAQs” to provide clarifications on the personal and material scope of Regulations 833/2014 and 269/2014, their temporal application as well as their derogations. It is not the first time that guidelines of this kind have been provided by the mentioned institution. However, the complexity of the Regulations enacted in the context of the war in Ukraine is quite exceptional: there are more than 300 pages of guidelines which are necessary for economic operators, banks, and national judges to apply or interpret these measures. The legal value of the guidelines is uncertain and there is currently a preliminary ruling procedure pending before the Court of Justice that will offer the opportunity to clarify the issue.¹⁰⁵

With the view to enhancing coordination among national authorities, the Commission launched an *ad hoc* task force in March 2022, the ‘Freeze and Seize’ Task Force.¹⁰⁶ Its mission is to support Member States’ obligations to ensure that targeted sanctions are effectively

¹⁰² Council Decision (CFSP) 2023/501 of 7 March 2023 amending Decision (CFSP) 2020/1999 concerning restrictive measures against serious human rights violations and abuses.

¹⁰³ On further initiatives taken to avoid impunity for the commission of crimes as well as human rights abuses see section 2.6.

¹⁰⁴ However, this explanation has limits: indeed, if we look at the annex of the listing decision, a proceeding at national level was started for only one of the listed persons but not for the other.

¹⁰⁵ Case C-109/23, *Jemerak*, pending. The ECJ is called on to clarify whether the Commission’s interpretation of the provision of services to the Russian Federation also covers ‘notarial services’.

¹⁰⁶ See Commission Press Release 17 March 2022, https://ec.europa.eu/commission/presscorner/detail/en/IP_22_1828.

observed and enforced, within their national jurisdictions.¹⁰⁷ The Task Force essentially coordinates national actions taken by Member States under the strategic direction of the Commission,¹⁰⁸ and the operational support of EU agencies operating in the field of the Area of Freedom, Security and Justice (AFSJ), mainly Europol, Eurojust, and Frontex.¹⁰⁹

Internally, the Task Force's mandate is supported by high-level meetings on sanctions implementation which enable Member States to share best practices, in particular on how to organise the monitoring and implementation of sanctions at the national level as effectively as possible,¹¹⁰ and a new 'whistle-blower tool', introduced by the Commission in March 2022, which intends to facilitate the (direct) reporting of alleged breaches of EU restrictive measures.¹¹¹ The launch of the whistle-blower tool seems context specific. It is driven by the need to maximise compliance with restrictive measures against Russian targets. The question arises whether the new organism will be used to permanently redesign the enforcement of EU sanctions when they are enacted in relation to a situation of war in more remote contexts than Russia. This is not clear yet.

In addition to the whistle-blower tool, as a voluntary disclosure mechanism, the Council has introduced new (and unprecedented) reporting obligations. For the first time, the Council has decided not only to strengthen the cooperation duties for natural and legal persons subject to EU jurisdiction, but also to impose new obligations on designated persons and entities who appear in Annex I of Regulation 269/2014. On the one hand, EU natural and legal persons are now required to supply national competent authorities with detailed information on assets *which have been frozen or should have been treated as frozen*, as well as information on assets which were subject to any move, transfer, alteration, use, access, or dealing *shortly before the listing*.¹¹² Central securities depositories, due to their systemic importance for the functioning of securities markets, are subject to the same reporting duties.¹¹³ The reinforced reporting duties also concern immobilised reserves and assets of the Central Bank of Russia as well.¹¹⁴ On the other hand, Russian targets are requested to submit self-declaration of their assets. More precisely, they must (i) report their funds or economic resources to the competent authority of the Member State where they are located; and (ii) cooperate with that authority in any verification of such information. The Council considers that 'failure to comply with this

¹⁰⁷ Its main focus is on listed Russian and Belarussian oligarchs.

¹⁰⁸ See list of Commission FAQs in relation to restrictive measures is 300 pages at the time of writing.

¹⁰⁹ See more details on Operation OSCAR, supporting criminal and financial investigations by Member States, here <https://www.europol.europa.eu/media-press/newsroom/news/eu-wide-operation-targeting-criminal-assets-in-relation-to-russian-invasion-of-ukraine>.

¹¹⁰ Coordinated by the Commissioner McGuinness, see https://finance.ec.europa.eu/news/statement-commissioner-mcguinness-outcomes-first-meeting-high-level-meeting-sanctions-implementation-2022-10-24_en. See also https://finance.ec.europa.eu/news/eu-sanctions-commission-discuss-sanctions-application-member-states-representatives-businesses-2023-02-23_en.

¹¹¹ For more information see the official website, available at <https://eusanctions.integrityline.com/frontpage>.

¹¹² See reinforced Art. 8 Regulation No 269/2014 (as amended in Council Regulation (EU) 2022/1273 of 21 July 2022 and in Council Regulation (EU) 2023/426 of 25 February 2023).

¹¹³ See reinforced Art. 8(1b) Regulation No 269/2014 (as amended in Council Regulation (EU) 2023/426 of 25 February 2023).

¹¹⁴ See the Art 5a as amended in Council Regulation (EU) 2023/427 of 25 February 2023 amending Regulation (EU) No 833/2014. According to the Commission, 'we will set up an overview of all frozen assets of the Russian central bank held in the EU. We need to know where these are located and how much they are worth. This is crucial in view of the possible use of public Russian assets to fund reconstruction in Ukraine', press release https://ec.europa.eu/commission/presscorner/detail/en/statement_23_907.

obligation would constitute a circumvention of the freezing of assets and would be subject to penalties *if the conditions for such penalties are met under applicable national rules and procedures*' (emphasis added).¹¹⁵ Given the intrusive nature of the new reporting duties and the consequent penalties for non-compliance, a Russian applicant has already challenged the legality of these provisions before the GC.¹¹⁶

Externally, the Freeze and Seize Task Force works alongside the 'Russian Elites, Proxies, and Oligarchs (REPO)' Task Force, under which the Union operates together with the G7 countries (Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States), as well as Australia.¹¹⁷ Additionally, coordination with external actors is supplemented by the newly appointed Sanctions Envoy, David O'Sullivan,¹¹⁸ who is responsible for ensuring continuous, high-level discussions with third countries to avoid the evasion of EU (and more generally Western) sanctions, as he stated at the first meeting of the Sanction Coordination Forum.¹¹⁹ In fact, restrictive measures against Russia are certainly multilateral but not global; accordingly, they still leave space for circumvention, particularly from Turkey, Armenia, central Asian countries, and China. In addition, Serbia, a candidate country, has refused to align with EU restrictive measures. It is true that there is no obligation for third States to cooperate, under international law, with States (or regional international organisations) that have enacted unilateral (collective) countermeasures in response to violations *erga omnes*, such as those adopted by the EU as a reaction to Russia's aggression.¹²⁰ However, under Art. 10(2) b of the Stabilisation and Association Agreement, the positions of the Parties on international affairs must progressively converge, including in the field of the CFSP. It may be argued that Serbia is breaching EU law.

To contrast this scenario, the Union has engaged in a new and unprecedented kind of diplomacy, which has already been labelled 'sanctions diplomacy',¹²¹ with a view to consolidating alignment with third countries.¹²²

Besides coordinating national and supranational efforts to ensure the effective implementation of sanctions against Russia, the Union is placing unprecedented emphasis on the effective *enforcement* of sanctions breaches. Enforcement (whether under criminal or administrative law) is traditionally a Member State's responsibility. National authorities are,

¹¹⁵ See Art 9(3) Regulation No 269/2014 (as amended in Council Regulation (EU) 2022/1273 of 21 July 2022). See also Recital n. 5 of Council Regulation 2022/1273.

¹¹⁶ See Action brought on 12 October 2022, case T-635/22, *Fridman and Others v Council*.

¹¹⁷ '[...] To take all available legal steps to find, restrain, freeze, seize, and, where appropriate, confiscate or forfeit the assets of those individuals and entities that have been sanctioned in connection with Russia's premeditated, unjust, and unprovoked invasion of Ukraine and the continuing aggression of the Russian regime'. See Ministerial Joint Statement here: https://ec.europa.eu/commission/presscorner/detail/en/statement_22_1850.

¹¹⁸ See https://ireland.representation.ec.europa.eu/news-and-events/news/eu-appoints-david-osullivan-international-special-envoy-implementation-eu-sanctions-2022-12-13_en.

¹¹⁹ This is composed of third countries of the G7 group plus Norway and Switzerland. See https://finance.ec.europa.eu/news/statement-eu-sanctions-envoy-david-osullivan-first-sanctions-coordinators-forum-2023-02-23_en.

¹²⁰ See on these issues, C. LIM, R. MARTÍNEZ MITCHELL, *Neutral rights and collective countermeasures for erga omnes violations*, in *ICLQ*, 2023, p. 361-391; R. MOUSTAFA ESSAWY, *Is There a Legal Duty to Cooperate in Implementing Western Sanctions on Russia?*, in *EJIL:Talk* of 25/04/2022.

¹²¹ A. CAPRILE AND A. DELIVORIAS, Briefing, *EU sanctions on Russia: Overview, impact, challenges*, (2023).

¹²² The European Commission has also set up a central contact point on EU sanctions for foreign authorities and operators, see https://finance.ec.europa.eu/news/european-commission-sets-central-contact-point-eu-sanctions-foreign-authorities-and-operators-2023-04-27_en.

indeed, responsible for monitoring, investigating, and ultimately imposing penalties for sanctions breaches.¹²³ The Union merely requests Member States to lay down ‘effective, proportionate and dissuasive penalties’.¹²⁴ Yet, for the first time, the Union is considering harmonising and sharpening the enforcement process *at the EU level*.

The 6th package of sanctions contains a specific provision which has paved the way for subsequent reforms in the field of harmonised enforcement. This provision requires national authorities to lay down ‘appropriate *criminal* penalties’ applicable to infringements of the provisions contained in the two Regulations of 2014, as amended. The same provision urges Member States to provide for ‘appropriate measures of confiscation of the proceeds of such infringements’.¹²⁵ Accordingly, for the first time, in the context of the specific sanctions regime against Russia, Member States are explicitly asked to criminalise the violations of EU provisions. We shall come back to this issue in Section 3.

2.6 Ensuring accountability for international crimes and serious human rights breaches

A further distinguishing feature of the EU’s reaction to the war in Ukraine is the EU’s commitment to avoid impunity of crimes carried out during the war. Accordingly, the imposition of restrictive measures is complemented by unprecedented efforts to ensure accountability of crimes committed in Ukraine. The Council has sought to achieve this objective through various means.

Initially, the Union instituted restrictive measures against individuals responsible or involved in atrocities committed in Bucha and Mariupol (including Colonel Azatbek Asanbekovich Omurbekov, a.k.a. ‘the Butcher of Bucha’).¹²⁶ These atrocities are qualified as war crimes or crimes against humanity by the Council.¹²⁷ Yet, the assertion of criminal responsibility for the listed officers, in the absence of a trial or independent verification systems, is problematic.¹²⁸ In principle, restrictive measures are of a *preventative* (rather than repressive) nature and are supposed to be temporary: they are subject to review, after six or 12 months. Accordingly, restrictive measures are not suitable instruments to hold perpetrators of crimes accountable. In other cases, the Council has been more cautious and has listed individuals for the commission of serious human right breaches rather than for international crimes,¹²⁹ or has

¹²³ In this field, the Union cannot directly monitor, investigate, and punish non-compliance with EU restrictive measures *vis-à-vis* EU companies and citizens.

¹²⁴ See Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy, doc 5664/18, para 89.

¹²⁵ See Council Regulation (EU) 2022/880 of 3 June 2022 amending Regulation (EU) No 269/2014, and Council Regulation (EU) 2022/879 of 3 June 2022 amending Regulation (EU) No 833/2014.

¹²⁶ See Council Decision (CFSP) 2022/883 of 3 June 2022.

¹²⁷ *Ibidem*, Recital n. 4.

¹²⁸ J. P. SEXTON, *The European Union’s Sanctioning of Russian Military Officers: An Urge for Caution*, 5 August 5, 2022, <https://www.ejiltalk.org/the-european-unions-sanctioning-of-russian-military-officers-an-urge-for-caution/>.

¹²⁹ For instance, in March 2023, the lists of the GHRSR were updated to include police officials and commanders of unit active in occupied territories in Ukraine; they were held responsible for serious human rights violations, including systematic sexual and gender-based violence. See Council Decision (CFSP) 2023/501 of 7 March 2023. See section 2.3 for details on the listing of these persons.

linked illegal activities, such as the deportation of children, to the violation of the territorial integrity and independence of Ukraine.¹³⁰

It is clear that restrictive measures present clear limits in ensuring accountability for crimes. This is why the Union has also engaged in close cooperation with the International Criminal Court (ICC) to avoid impunity of crimes and human rights abuses committed in Ukraine. Since the beginning of Russia's aggression, the European Commission has repeatedly stated that justice will be served for Ukraine and its people. Accordingly, it has reiterated its support for the investigations of the ICC Prosecutor, and has already provided over EUR 10 million to finance his work on Ukraine.¹³¹ In addition, the Commission, the Council, and the Member States have been engaged in unprecedented coordination to investigate the international crimes committed in Ukraine.

In March 2022, Lithuania, Poland, and Ukraine signed a Joint Investigation Team (JIT) agreement to enable the exchange of information and to facilitate investigations of war crimes, crimes against humanity, and other core crimes.¹³² The main aim of the JIT is to support the gathering of evidence and its swift and secure exchange between partners. In this context, Eurojust has supported the set-up of the JIT in order to coordinate national investigations.¹³³ In April 2022, Eurojust and the ICC signed an agreement enabling the Office of the Prosecutor of the ICC to become a participant in JIT.¹³⁴ This is the first time the Office of the Prosecutor has ever participated in a JIT. Estonia, Latvia, and Slovakia also joined the JIT,¹³⁵ followed by Romania.¹³⁶ More recently, in March 2023, seven national authorities participating in the JIT signed a Memorandum of Understanding (MoU) with the United States Department of Justice to facilitate closer coordination in their respective investigations in connection with the war in Ukraine.¹³⁷

Given the urgent need to coordinate investigative efforts, EU institutions have also worked together to amend and reinforce Eurojust's mandate to collect and preserve evidence of war crimes.¹³⁸ The new mandate allows Eurojust to (i) store and preserve evidence related to war crimes, including digital evidence, such as satellite images, photographs, videos, audio

¹³⁰ See Council Implementing Regulation (EU) 2023/429 of 25 February 2023.

¹³¹ See Opening remarks by Commissioner Reynders at the Justice Ministers Conference on Support to the International Criminal Court and its Investigations into the Situation in Ukraine, press release https://ec.europa.eu/commission/presscorner/detail/en/speech_23_1786. See also https://ec.europa.eu/commission/presscorner/detail/en/IP_22_3543.

¹³² The JIT is the result of a coordination meeting, which was held on 2 March at the initiative of the Prosecutor General of Lithuania, the Polish Minister of Justice and Prosecutor General and the Ukrainian Prosecutor General.

¹³³ Press released 18 March 2022, <https://www.eurojust.europa.eu/news/eurojust-supports-joint-investigation-team-alleged-core-international-crimes-ukraine>.

¹³⁴ See Statement by ICC Prosecutor, Karim A.A. Khan QC, <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-office-prosecutor-joins-national-authorities-joint>.

¹³⁵ See <https://www.eurojust.europa.eu/news/estonia-latvia-and-slovakia-become-members-joint-investigation-team-alleged-core-international>.

¹³⁶ <https://www.eurojust.europa.eu/news/romania-becomes-seventh-member-joint-investigation-team-alleged-core-international-crimes>.

¹³⁷ <https://www.justice.gov/opa/pr/us-attorney-general-and-ukrainian-prosecutor-general-met-strengthen-joint-efforts-hold>.

¹³⁸ Regulation (EU) 2022/838 of the European Parliament and of the Council of 30 May 2022. See also press releases https://ec.europa.eu/commission/presscorner/detail/en/IP_22_2549, <https://www.consilium.europa.eu/en/press/press-releases/2022/05/06/eurojust-council-adopts-its-mandate-on-new-rules-allowing-the-agency-to-preserve-evidence-of-war-crimes/> and https://ec.europa.eu/commission/presscorner/detail/en/ip_22_3180.

recordings, DNA profiles and fingerprints, and to process and analyse this evidence, in close cooperation with Europol, and (ii) share it with the relevant national and international authorities, including the International Criminal Court and other countries. The new mandate has also enabled Eurojust to set up a unique database to centrally preserve, store, and analyse evidence of core international crimes, i.e., the Core International Crimes Database (CICED).¹³⁹

Furthermore, the Genocide Network and the European Judicial Network play a key role in supporting judicial authorities to ensure that national and international investigations into crimes committed in the course of Russia's aggression are coordinated from an early stage. At the same time, the European Union Advisory Mission for Civilian Security Sector Reform in Ukraine (EUAM Ukraine) will provide further support to Ukrainian authorities. According to the recently amended mandate, the EU Mission will provide strategic advice and training on related matters,¹⁴⁰ donating funds and equipment to ensure close cooperation with the ICC, Eurojust, and Member States acting in direct support of the investigation and prosecution of international crimes in Ukraine.¹⁴¹

Almost one year after the start of the war in Ukraine, the European Commission announced the creation of a new International Centre for the Prosecution of the Crime of Aggression against Ukraine (ICPA), based in The Hague, which will support the Eurojust agency as well as the JIT.¹⁴² The ICPA represents an important step to preserve evidence and prepare the prosecution for future trials, whether national or international, such as before the ICC.

It is the first time that the Union has so closely supported the ICC to ensure that international crimes are punished.¹⁴³ The proximity of the military conflict is one of the main reasons for this unprecedented cooperation. It is perhaps difficult to imagine that the EU could cooperate with the ICC in a similar fashion should a war break out in faraway contexts.

Lastly, while continuing to support the work of the ICC, the Commission is also proposing alternative options to ensure justice. Indeed, it is ready to work with the international community on setting up an *ad hoc* international tribunal (i.e., a special and independent tribunal based on a multilateral treaty) or a specialised 'hybrid' tribunal (i.e., a tribunal integrated in a national justice system with international judges) to investigate and prosecute international crimes in Ukraine.¹⁴⁴ Finally, it should be stressed that the Commission, with the help of the EEAS and 26 Member States intervening,¹⁴⁵ offers its support to the ICJ for the pending case of *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*.¹⁴⁶

¹³⁹ <https://www.eurojust.europa.eu/publication/core-international-crimes-evidence-database-ciced>.

¹⁴⁰ See first training on International Crimes conducted by the European Union in Odesa, <https://www.euam-ukraine.eu/news/field-office-odesa-hosted-the-first-training-on-international-crimes-conducted-by-the-european-union-in-ukraine/>.

¹⁴¹ <https://www.euam-ukraine.eu/news/press-releases/the-european-council-further-amends-euam-mandate-to-also-provide-support-in-the-investigation-and-prosecution-of-international-crimes/>

¹⁴² https://neighbourhood-enlargement.ec.europa.eu/news/statement-president-von-der-leyen-establishment-international-centre-prosecution-crimes-aggression-2023-03-06_en.

¹⁴³ In light of the 2006 Cooperation and Assistance Agreement, Document 22006A0428(01).

¹⁴⁴ See https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7311.

¹⁴⁵ See full list of interventions at <https://www.icj-cij.org/case/182/intervention>.

¹⁴⁶ See https://www.eeas.europa.eu/eeas/joint-statement-supporting-ukraine-its-proceeding-international-court-justice_en.

2.7 Ensuring Ukraine's reconstruction

The European Union is firmly committed not only to ensuring full accountability for international crimes, but also to supporting Ukraine's repair, recovery, and reconstruction. From oligarchs' yachts to the Russian Central Bank's foreign reserves, there is an unprecedented amount of frozen assets in Europe, and, for the first time, the EU has been looking into new legal options to use the frozen and immobilised assets, to invest them, and use the proceeds for Ukraine's reconstruction. In other words, the Union is planning to go *beyond* mere freezing measures, in view of the principle 'the aggressor should pay'.¹⁴⁷

Such an unprecedented attempt to use 'targeted assets' raises several legal concerns, as well as political, economic, and operational considerations.¹⁴⁸ On the one hand, given the scale of the damage caused by Russia's aggression, the Union is confronted with the unprecedented need to *financially* support Ukraine's reconstruction. On the other hand, the Commission is addressing new legal challenges to make this happen. The main questions are *which* assets can be used to support Ukraine, and *to what extent*. Traditionally, when EU sanctions are lifted, the owner of the frozen assets should be able to recover the capital as well as any returns that were contractually agreed prior to the assets being frozen. Yet, the Commission believes that any returns in excess could be appropriated and used for Ukraine's reconstruction. It follows that 'if active management allows to generate gains beyond those contractually agreed, then the owners of the managed assets should not benefit from those gains after the measure is lifted'.¹⁴⁹

Against this background, the Commission's goal is to map Russia's frozen assets, defining, amongst other things, their location, quantity, and nature, making a distinction between *private* assets and *State* assets. For now, the Commission is looking into the available options (with the support of the Freeze and Seize Task Force); the most viable one seems the temporary use of the immobilised assets of the Central Bank and entities under its control.¹⁵⁰ In fact, State assets appear larger and easier to seize than private assets. However, the seizing of assets is subject to limits of international law.¹⁵¹

¹⁴⁷ See Press release of 30 November 2022, *Commission presents options to make sure that Russia pays for its crimes*. https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7311. See also <https://www.ft.com/content/68af1b50-2088-4128-a2fd-f35cde914eaf>.

¹⁴⁸ For instance, Switzerland declared its refusal to confiscate private Russian assets. See <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-93089.html>.

¹⁴⁹ See <https://www.politico.eu/article/eu-looks-at-investing-vladimir-putin-russia-state-assets-to-raise-cash-for-ukraine/>.

¹⁵⁰ According to the Council, €21.5 billion of assets are frozen in the EU and € 300 billion of assets from the Central Bank of Russia blocked in the EU and G7 countries, see <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/sanctions-against-russia-explained/>. It should be noted that

¹⁵¹ On confiscation of Russian state assets, see M. T. KAMMINGA, *Confiscating Russia's Frozen Central Bank Assets: A Permissible Third-Party Countermeasure?*, in *Netherlands International Law Review*, 2023, p. 1-17; see also A. ROSAS, *From Freezing to Confiscating Russian Assets?*, in *European Law Review*, 2023, p. 337-347; A. MOISEIENKO, 'Politics, Not Law, Is Key to Confiscating Russian Central Bank Assets,' of 17/08/2022 <https://www.justsecurity.org/82712/politics-not-law-is-key-to-confiscating-russian-central-bank-assets/>. It should be noted that the Commission has also put forward a proposal for a Directive on asset recovery and confiscation, which aims 'at ensuring a common minimum standard for freezing and confiscation measures across Member States while at the same time strengthening common capabilities in terms of tracing, identification and management of property and facilitating cross-border cooperation against criminal proceeds. See COM(2022) 245 final, cit, p. 4. This proposal is neither intended to confiscate the assets of the natural or legal persons listed in restrictive measures, nor to support EU's efforts to reconstruct Ukraine. As the Commission states, 'Measures

3. Structural changes: the criminalisation of violations of EU restrictive measures

As a result of the war in Ukraine, the EU has doubled its efforts to ensure the uniform application of restrictive measures and to strengthen the enforcement of these measures. However, the Commission pointed out a persistent problem: in particular, ‘insufficient priority is given to investigating and prosecuting the violation of Union restrictive measures in many Member States’.¹⁵² Section 2.5 has already illustrated that the enforcement of restrictive measures traditionally falls within Member States’ competence. In the absence of EU harmonisation, Member States have adopted very different definitions of sanctions breaches and heterogeneous penalties under their administrative and/or criminal laws.¹⁵³ This fragmentation indicates that the same infringement may be punished differently within the Union which creates a real risk of forum shopping by individuals and companies who can choose to conduct their activities in the Member States that provide for less severe penalties for sanctions breaches. This national heterogeneity ultimately jeopardises the effectiveness of EU restrictive measures and undermines the credibility of the Union to pursue its (CFSP) objectives. Against this background, on 25 May 2022, the Commission put forward a proposal to add the violation of restrictive measures to the list of to the areas of crime laid down in Article 83(1) TFEU.¹⁵⁴ This is a preliminary step to expand the EU’s competence to set out harmonised rules to counter sanctions breaches under criminal law – and ultimately to set out harmonised rules for confiscation.

The Commission proposal of May 2022 was approved by the European Parliament in July,¹⁵⁵ and by the Council in November.¹⁵⁶ In little more than 6 months, the institutions proceeded expeditiously towards the criminalisation of sanctions breaches under Art. 83(1) TFEU, which now allows the Union to harmonise national enforcement systems, setting common criminal offences and penalties across the 27 Member States.¹⁵⁷ It is the first time the EU has sought to harmonise national criminal laws for purposes related to the CFSP. It is also

related to freezing and confiscation under this Directive, notably those under Chapters III and IV [of the proposed Directive], remain [...] limited to situations where property stems from criminal activities, such as the violation of Union restrictive measures.’ COM(2022) 245 final, cit., p. 17. For more information on the criminalisation of sanctions see section 3. For recent developments of the ongoing negotiation process of the proposed Directive at <https://data.consilium.europa.eu/doc/document/ST-9314-2023-INIT/en/pdf> and https://www.europarl.europa.eu/doceo/document/A-9-2023-0199_EN.html. See also F. FINELLI, *Principio di effettività e misure restrittive UE: la lotta all’elusione nel contesto della guerra in Ucraina*, in *Quaderni AISDUE*, 2023, p. 726 ss.

¹⁵² COM(2022) 247 final, proposal for a Council Decision on adding the violation of Union restrictive measures to the areas of crime laid down in Article 83(1) of the Treaty on the Functioning of the European Union, p. 3. See Press release https://ec.europa.eu/commission/presscorner/detail/en/ip_22_3264,

¹⁵³ Report issued by the Genocide Network in 2021, <https://www.eurojust.europa.eu/publication/expert-report-prosecution-sanctions-restrictive-measures-violations-national-jurisdictions>.

¹⁵⁴ COM(2022) 247 final, cit., p. 2.

¹⁵⁵ On 7 July 2022, the European Parliament gave its consent to the draft Council Decision on identifying the violation of EU sanctions as a new area of EU crime. See Doc. P9_TA(2022)0295.

¹⁵⁶ On 28th November 2022, the Council adopted Council Decision 2022/2332. See press release <https://www.consilium.europa.eu/en/press/press-releases/2022/11/28/sanctions-council-adds-the-violation-of-restrictive-measures-to-the-list-of-eu-crimes/>.

¹⁵⁷ See COM(2022) 684 final, new proposal for a Directive on the definition of criminal offences and penalties for the violation of Union restrictive measures.

the first time the EU has successfully used Art. 83(1) TFEU to amend its competences under the Treaties to address a new area of particularly serious crime. The proposed criminalisation is intended to re-design on a permanent basis the national enforcement of EU restrictive measures. This reform is the most important structural change in the EU legal order that has resulted from the war in Ukraine.

The justifications identified in the Commission's proposal to lay down new harmonised rules stress the need 'to ensure the effective implementation of the Union's policy on restrictive measures'¹⁵⁸ in a situation in which not all Member States categorise the violation of restrictive measures as a criminal offence (and sufficiently prioritise its investigation and prosecution). It is also argued that the violation of restrictive measures is a particularly serious area of crime, which presents, in gravity, a similar seriousness to the areas of crime already listed in Art. 83(1) TFEU.¹⁵⁹ Violations have an inherent cross-border dimension which requires a cross-border (EU) response.

The criminalisation of sanctions breaches is undoubtedly driven by a specific political *momentum*. In fact, the war in Ukraine is still ongoing, and it represents an unprecedented challenge for the Union which needs to be addressed with unprecedented legal tools. In the authors' view, resorting to EU harmonised rules appears necessary to ensure the uniform implementation and enforcement of restrictive measures and, ultimately, to strengthen the effectiveness of these CFSP decisions throughout the Union. The harmonisation of national criminal rules is a welcome step to guarantee that sanctions breaches are actually penalised enforced at the national level on the basis of uniform conditions. Yet, it can be criticised that no impact assessment was conducted in relation to the Commission's proposal on the ground that there was an 'exceptional urgency' to respond to sanctions violations (and sanctions evasion) in the context of the war in Ukraine.¹⁶⁰ While it is certainly true that in order to avoid sanctions evasion, it is crucial to act swiftly, the Commission's proposal would have been strengthened if it was supported by clear evidence that the harmonisation of criminal rules was the best option to achieve the proposed objective. The impact assessment is a crucial vehicle to ensure respect of the principle of subsidiarity and proportionality, which applies in areas of shared competence such as the Area of Freedom, Security and Justice (AFSJ).¹⁶¹ Carrying out an impact assessment was more important than ever given that the Commission is proposing to extend Union competence to harmonise national law through the special mechanism provided for in Art. 83(1) TFEU. Similarly, the Economic and Social Committee remains concerned that the proposal for a Directive tabled by the Commission was not preceded by an impact assessment and regrets that it was not subject to full democratic deliberation in the European Parliament.¹⁶²

¹⁵⁸ COM(2022) 247 final, cit. p. 7.

¹⁵⁹ I.e., terrorism, trafficking in human beings, sexual exploitation of children, drug trafficking, arms trafficking, corruption, money laundering, counterfeiting of means of payment, computer crime and organised crime.

¹⁶⁰ COM(2022) 247 final, cit. p. 12 and COM(2022) 684 final, cit., p. 10.

¹⁶¹ J. OUWERKERK, *Evidence-Based Criminalisation in EU Law: Evidence of What Exactly?*, in J. OUWERKERK and others (eds), *The Future of EU Criminal Justice Policy and Practice*, Leiden, 2019, p. 37 ss. See also J. ÖBERG, *Do We Really Need Criminal Sanctions for the Enforcement of EU Law?*, in *New Journal of European Criminal Law*, 2014, p. 370.

¹⁶² Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the European Parliament and the Council, towards a Directive on criminal penalties for the violation of the Union restrictive measures' of 22 March 2023, para 1.2. See also the Minority Position of the European Parliament on

Although the ongoing war did not leave much time for evidence-based decision-making (and criminalisation), it should be noted that the Expert Group on EU Criminal Policy was consulted on 13 May and 16 September 2022 on the proposed measure and it ‘generally welcomed the idea of harmonising definitions and penalties at EU level and provided specific input as regards offences, penalties, jurisdiction rules and cross-border cooperation’.¹⁶³ Thus, the Commission formally complied with its duty to consult.

Today, the proposed Directive is currently under discussion in the European Parliament and the Council, according to the ordinary co-legislative procedure. Once adopted, it will approximate the definition of criminal offences and penalties for violations of EU restrictive measures. Examples of these violations are, amongst other things, making funds or economic resources available to a designated person, failing to freeze these funds or economic resources; circumventing EU restrictions (such as concealing assets owned, held, or controlled by a designated person; as well as concealing the beneficial ownership of these assets). The Directive will also define ‘minimum-maximum’ levels of penalties, in accordance with Art. 83 (1) TFEU, and the principles of legality and proportionality as enshrined in Art. 49 of the EU Charter.

An analysis of the proposed Directive is beyond the scope of this essay. Yet, it may be highlighted that the Directive will result in structural reforms for both the CFSP and AFSJ, which will affect EU restrictive measures *tout court* – not only those related to Russia’s aggression. The harmonisation will not affect Denmark due to its ‘opt-out’ in the context of the AFSJ, but it will apply to Ireland as it has already expressed its ‘opt-in’.¹⁶⁴

4. The use of derogations as a technique to bypass unanimity in the adoption of restrictive measures

The war in Ukraine has shown that compromises with all Member States are necessary to ensure that EU restrictive measures are approved. The requirement to vote by unanimity within the Council has sometimes made it necessary to prolong the discussion, but this has not prevented the EU from enacting an unprecedented set of restrictive measures as a reaction to the Ukraine-Russia conflict. Difficulties have arisen in connection with the approval of the energy-related sanctions of June 2022, such as those prohibiting the import, purchase, or transfer into Member States of crude oil and certain petroleum products from Russia.¹⁶⁵ Given that several Member States, due to their geographical position, are significantly dependent on the import of Russian gas by pipeline, with no viable alternative supplies in the short term, such a prohibition did not apply in those Member States until a decision was taken by the Council.¹⁶⁶ Derogation clauses were devised to overcome the ‘veto’ of the Russian-oil dependent countries on the Council. The latter enshrined ‘calibrated derogations’ to the benefit of Bulgaria, Croatia, and Czechia: the first country was allowed to import crude oil and petroleum products for a limited period; Croatia was granted a derogation to be able to buy vacuum gas oil from Russia

the proposed Directive, 1st reading, 7 July 2023, https://www.europarl.europa.eu/doceo/document/A-9-2023-0235_EN.html#_section2.

¹⁶³ COM(2022) 684 final.

¹⁶⁴ Document ST_7097_2023_INIT.

¹⁶⁵ Council Decision (CFSP) 2022/884 of 3 June 2022.

¹⁶⁶ Those Member States should take all necessary measures to obtain alternative supplies as soon as possible.” Recital n. 8 of Council Decision (CFSP) 2022/884.

under certain conditions; Czechia obtained a suspension of 10 months to enact the prohibition and find alternative sources of supplies. Landlocked States also obtained authorisation to import the prohibited oil in exceptional circumstances.¹⁶⁷

In December 2022,¹⁶⁸ the derogations were expanded in certain cases;¹⁶⁹ they were adjusted so as to avoid circumvention¹⁷⁰ or they were tempered ‘in a spirit of solidarity with Ukraine’.¹⁷¹ Thus, we can say that a certain degree of variable geometry applies in relation to oil import restrictions.

Reliance on derogations could be a practical way for the EU to reach an agreement on ‘sensitive’ restrictive measures within the Council, while accommodating the specific needs of a few Member States. In this case, the uniform application of restrictive measures is sacrificed for the greater good which is represented by the adoption of a common position on where to stand in the conflict between Ukraine and Russia and on how to financially contribute to the cessation of the conflict. At the moment, it is uncertain whether the derogations could be used in the adoption of restrictive measures to respond to other situations of crisis. The decision is taken on a case-by-case basis. Yet, the successful use of ‘calibrated derogations’ may pave the way for a more radical and permanent reform.

To make the adoption of restrictive measures swifter, the European Council may decide indeed to trigger the *passerelle clause* under Art. 31(3) TEU enabling this institution to decide unanimously for the Council to adopt decisions by qualified majority vote. Should this move be made, the outvoted Member States would be bound to respect the CFSP Decision; this is in contrast to the use of constructive abstention which for this reason is not a viable option for the adoption of a CFSP Decision instituting a restrictive measure.¹⁷² However, if they refused to comply with their obligation, the Commission would lack the enforcement powers to act against these Member States. This lack of judicial scrutiny on the effective implementation of EU sanctions may be problematic.

Although there is a constant push towards moving to a faster decision-making procedure in the CFSP,¹⁷³ the question arises about whether the time is right for such a change. If unanimity is dropped in this area, the EU Treaties should be changed to extend the Commission’s enforcement powers here. Waiting for the European Council to rely on the *passerelle clause*, the use of derogations could be a useful interim solution to bypass the unanimity requirement,

¹⁶⁷ Ibidem, recital 12.

¹⁶⁸ Council Decision (CFSP) 2022/2478 of 16 December 2022.

¹⁶⁹ Bulgaria was allowed to export to third countries refined oil ‘in order to mitigate environmental and safety risks since such products cannot be stored safely in Bulgaria.’ Ibidem, Recital n. 15.

¹⁷⁰ Bulgaria was prohibited to sell petroleum products obtained from Russian crude oil imported on the basis of that derogation to buyers located in other Member States or in third countries. Ibidem, Recital n. 15.

¹⁷¹ ‘In a spirit of solidarity with Ukraine, it is appropriate to nevertheless allow Hungary, Slovakia and Bulgaria to export to Ukraine certain refined petroleum products obtained from Russian crude oil imported on the basis of the derogations in question, including, when necessary, by transiting through other Member States.’ Ibidem, Recital n. 15.

¹⁷² Indeed, the abstaining country is not obliged to respect the adopted decision. Constructive abstention is suitable to be applied for defence matters; it was actually relied upon by several Member States in recent decisions taken in the context of the war in Ukraine. For more details see, M.E. BARTOLONI, *Simple Abstention and Constructive Abstention in the Context of International Economic Sanctions: Two Too Similar Sides of the Same Coin?*, in *European Papers*, 2022, pp. 1121-1130.

¹⁷³ Communication from the Commission ‘A stronger global actor: a more efficient decision-making for EU Common Foreign and Security Policy,’ COM (2018) 647 final.

enabling the EU to safeguard its credibility in the CFSP, while accommodating Member States' specific needs.

5. Conclusions

The outbreak of the war in Ukraine led the EU to rely on numerous restrictive measures, which were enacted at unprecedented pace and in coordination with G7 countries to maximise pressure on Russia to cease its aggression. In this article, we have highlighted a selection of distinguishing features of these sanctions.

With regard to individual restrictive measures, we have shown that while there are some similarities between the Ukrainian sanctions and those identified in the sanctions regimes related to Iran, Syria, and North Korea, there are also distinguishing features. First, the designations criteria were never before devised in such a way as to maximise the effects of preventing *natural persons* (i.e., Russian oligarchs) from providing revenues to the aggressor. This has led to a high number of designations. Second, the efforts to avoid circumvention of sanctions is also exceptional. It is submitted that this distinguishing aspect of restrictive measures is 'context specific'; given that Russia has very intense economic and financial ties with EU Member States, these measures are likely to remain unique in the practice of restrictive measures.

With regard to sectoral restrictive measures, this essay has identified two major elements of novelty: first, nationality-based restrictions¹⁷⁴ and, second, broadcasting bans targeting media outlets. In the opinion of the authors, the first distinguishing aspect is 'context specific' and is, once again, due to the close economic and financial ties between Russia and the EU Member States. Turning to the prohibition of broadcasting activities, this is a *unicum* in EU sanctioning practice and may remain an isolated case which is due to Russia's proximity to the EU. It was further noted that new illegal conduct, the spreading of propaganda and disinformation, became a criterion for designation of the members of the Wagner Group, although not a self-standing ground for designation under the GHRSSR. There has been a spillover effect of the grounds for designation from the sectoral sanctions regime over the mentioned GHRSSR. It would be desirable that the number of listings under the latter, which currently includes two members of the Russian military who committed serious human rights abuses, will be expanded to include persons who have committed serious breaches of human rights in Ukraine, provided that national proceedings are opened in Ukraine against the alleged perpetrators of these abuses.

The EU's efforts to clarify for private and public authorities how restrictive measures should be applied is a further significant change in practice. Other unique features of the EU's response to the conflict in Ukraine concern the new sanctions governance, as well as the EU's support for gathering evidence of the crimes committed in Ukraine and its active engagement in making those who commit crimes accountable for their actions. These changes in practice can be explained by the nature of the breaches committed by Russia in Ukraine and by the particular threats posed by this country to security in the EU due the aggressor's proximity. It seems

¹⁷⁴ Financial restrictions against Russian nationals are duplicated in the Belarusian regime (see, for instance, Art 1u Council Regulation (EC) No 765/2006) and together represent a novelty in the EU sanctioning practice in response to the war in Ukraine.

unlikely that if the EU enacts restrictive measures in reaction to illegal activities, including the commission of crimes, carried out in areas outside the territories of the EU's neighbours, the EU institutions will be able to rely on a similar 'sanctions governance' and will thus actively engage in making those who have committed crimes accountable for their actions. Unlike the initiatives taken to ensure that the perpetrators of crimes are punished, efforts to support reconstruction are at an early stage given that the war is still ongoing and that confiscation of the assets of the Russian Central Bank is problematic.

Turning to structural reforms, which will impact on the enforcement of EU sanctions, it is argued that the war in Ukraine will permanently change how restrictive measures are implemented and enforced at the national level. Given that sanctions breaches have been added to the list of Euro-crimes, under Art. 83(1) TFEU, the proposed harmonisation of criminal definitions and penalties will lead to greater uniformity in the way all future restrictive measures will be applied and enforced. The proposed criminalisation process has shown the exceptional willingness of the EU institutions to harmonise criminal law. Should the proposed Directive be adopted, this will mark an important development; in fact, the conflict in Ukraine will lead to an advancement of the EU integration process, and the Union will be perceived as a more unitary bloc in the CFSP (as well as in the AFSJ).¹⁷⁵

A further change may be signalled in the decision-making process for the adoption of restrictive measures: the Council has agreed on a number of derogations from the implementation of sectoral restrictive measures against Russia in order to reach unanimity. This is the case for the restrictions on oil imports which is inspired by a flexible approach, leading some Member States to be exempted from such restrictions. The use of this technique of 'consensus building' could be relied upon again in the adoption of future sanctions. However, it is submitted that Member States should be able to rely on derogations only for essential security interests. In contrast, derogations should not be available in other cases since this would undermine the effectiveness of restrictive measures and the credibility of the Union.

Finally, it should be emphasised that the Court of Justice remains the final arbiter in deciding on the legality of EU restrictive measures. Numerous annulment actions, brought by private applicants, as well as an increasing number of requests for preliminary rulings, are pending. National judges are encountering (new) challenges in interpreting and applying EU sanctions, in particular in relation to those restrictions which have never been adopted so far in different sanctions regimes.¹⁷⁶

Turning to the case law, after the first ruling in *Russia Today France*,¹⁷⁷ the next interesting case is the *Mazepin* ruling.¹⁷⁸ The President of the GC decided to grant interim measures to the listed individual, Nikita Mazepin, son of the Russian oligarch Dmitry Arkadievich Mazepin,

¹⁷⁵ See N. FRANSSEN and A. WEYEMBERGH, *From Facts and Political Objectives to Legal Bases and Legal Provisions: Incremental European Integration in the Criminal Law Field*, in *European Law Journal*, 2021, p. 368 ss.

¹⁷⁶ See the request for a preliminary ruling of TAR Lazio, order n. 6256/2023, with regard to asset freeze measures against a designated Russian individual and the management of his assets via a trust, <https://www.saccuccipartners.com/wp-content/uploads/2023/04/ordinanza-n.-62562023.pdf>. See also the requests for a preliminary rulings of German and Romanian national judges in case C-109/23, *Jemerak*, concerning the provision of legal advisory services and case C-351/22, *Neves 77 Solutions SRL*, on confiscation.

¹⁷⁷ *Supra* n 85.

¹⁷⁸ Case T-743/22 R, *Mazepin v Council*, Order of the President, 1 March 2023.

allowing him to negotiate his recruitment as a professional Formula 1 driver. It is the first time that interim measures have been granted in the context of restrictive measures to suspend the application of a travel ban and asset freeze measures in favour of the applicant. The President of the Court found that the Council, *prima facie*, made an error of assessment in considering that there was a sufficiently solid factual basis to justify the designation of the applicant. In fact, the Council failed to prove the ‘association’ between the applicant and the father, beyond purely family ties.¹⁷⁹ Furthermore, the President held that the suspension of restrictive measures was *urgent* to avoid serious and irreparable harm to the applicant’s interests. ‘[T]he applicant is a young sportsman who [...] merely asks that he be given the opportunity to pursue his career as a Formula 1 driver without the financial support of his father’.¹⁸⁰ A few days after the Order, in early March 2023, the first annulment brought by a natural person listed in connection with Russia’s war was released. In *Prigozhina v Council*,¹⁸¹ the court had the opportunity to interpret the notion of ‘association’ between designated persons and their family members. Despite the fact that the Council had put significant emphasis on potential circumvention schemes through the use of family members, the GC annulled the restrictive measures applicable to Ms Violetta Prigozhina, mother of Mr Yevgeniy Prigozhin, affirming that solely a family relationship cannot justify her designation.¹⁸² The successful annulment action comes as a warning for the Council, as well as for the credibility and effectiveness of the EU’s current system of sanctions against Russia. Recently, the Council has plugged the existing gap in Council Decision 2014/145 and has introduced an additional (and autonomous) listing criterion which explicitly targets family members and other persons to avoid the circumvention of sanctions.¹⁸³ On 5 June 2023, the Council expanded the designation criterion to include the ‘immediate family members’ of leading businesspersons. It should be noted that there is no definition of ‘immediate’ in the Council Decision. However, a parental relation (i.e. mother/father-son) certainly fulfils the condition of ‘immediacy’. Lastly, the Council has also made it possible to list other persons with no family link to the listed subjects, but who benefit from them.

¹⁷⁹ See also case C-376/10 P, *Tay Za v Council*, EU:C:2012:138, para 66.

¹⁸⁰ Case T-743/22 R, *supra* n 178, para 98.

¹⁸¹ Case T-212/22, *Prigozhina v Council*, EU:T:2023:104.

¹⁸² See comments on the case here: <https://eulawlive.com/op-ed-is-family-off-limit-in-eu-sanctions-law-cases-t-743-22-r-mazepin-and-t-212-22-prigozhina-by-edouard-gergondet/> and <https://eulawlive.com/op-ed-judgment-in-prigozhina-v-council-t-212-22-some-serious-sanctions-homework-is-needed-from-the-council-by-celia-challet/>.

¹⁸³ Council Decision (CFSP) 2023/1094 of 5 June 2023. The Council targets persons ‘who have engaged in the systematic practice of distributing their funds and assets amongst their immediate family members and other persons, often in order to hide their assets, to circumvent the restrictive measures and to maintain control over the resources available to them’. *Ibidem*, Recital n. 5.