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CFSP RESTRICTIVE MEASURES IN THE CJEU'S JURISPRUDENCE: BETWEEN HUMAN RIGHTS AND EU AUTONOMY

Abstract: *This article analyses how the Court of Justice of the European Union (CJEU) reviews restrictive measures adopted under the Common Foreign and Security Policy (CFSP) and, in doing so, balances foreign-policy effectiveness with fundamental rights. Using doctrinal analysis of the Treaties and key judgments, it shows that the Court has developed a predominantly procedural model of review while progressively widening the jurisdictional gateways for judicial control. The CJEU applies demanding scrutiny to reasons-giving, the right to be heard and the evidentiary basis of listings, while remaining deferential as to the Council's complex political assessments. The article argues that this calibration enhances legality and transparency but may under-protect rights where listings are long-lasting and generate effects comparable to punitive measures. It proposes a more structured proportionality inquiry, clearer evidentiary thresholds and improved handling of confidential material through more rigorous periodic review.*

Keywords: *Human rights, restrictive measures, CFSP, CJEU, judicial review.*

1. INTRODUCTION

Restrictive measures – often described as "EU sanctions" – have become one of the European Union's most visible instruments of external action. The scale and diversification of their contemporary use is reflected in the legal response to the events of February 2022 surrounding the Russia-Ukraine conflict, leading to an unprecedented accumulation of listings and sectoral prohibitions. Designed to induce a change in behaviour without resorting to armed force, restrictive measures typically combine an intergovernmental decision adopted under the Common Foreign and Security Policy (CFSP) with an implementing regulation that produces immediate effects throughout the Union legal order. Their contemporary form is predominantly individualised: asset freezes, travel bans, and targeted economic restrictions are directed at named persons, entities, or specific economic activities, frequently on the basis of broad listing criteria. The resulting measures sit at the intersection of foreign policy, security and fundamental rights, because they interfere with property, reputation, occupation and procedural guarantees protected by the Charter of Fundamental Rights of the European Union (the Charter).[1]

Since February 2022, the EU's sanctions practice has also shifted in form. Alongside the classic toolkit of travel bans and asset freezes, the Council has increasingly resorted to prohibitions of general application – most visibly the temporary suspension of broadcasting activities of certain state-controlled media outlets, but also bans on the provision of specific professional and technological services and a growing set of anti-circumvention obligations. These developments have expanded the range of Charter rights implicated by sanctions (including freedom of expression and information) and have generated a dense line of litigation that tests the limits of post-Lisbon judicial review.[2]

For a long time, the judicial control of such measures appeared structurally constrained. CFSP acts are, as a rule, excluded from the jurisdiction of the Court of Justice of the European Union (CJEU) under Article 24(1) of the Treaty on European Union (TEU) and Article 275 of the Treaty on the Functioning of the European Union (TFEU), reflecting the Treaties' preference for political responsibility in matters of foreign and security policy. The Treaty of Lisbon nonetheless inserted a targeted exception: under Article 275(2) TFEU, the CJEU may review "restrictive measures against natural or legal persons" and thus assess whether listings and related measures comply with EU law and the Charter. This limited entry point has proven constitutionally significant. It has enabled the Court to shape the EU's sanctions practice by developing standards for reasons-giving, evidentiary substantiation and effective judicial protection, while simultaneously acknowledging the Council's wide discretion in the assessment of complex foreign-policy situations.[3]

[1] Council of the European Union, *Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU CFSP* (ST 5664/18, 4 May 2018), paras 2-4; Christina Eckes, "EU restrictive measures against natural and legal persons: from counterterrorist to third country sanctions", *Common Market Law Review* 3/2014, 872-875; Thomas J. Biersteker, Sue E. Eckert, Aaron Halegua (eds.), *Targeted Financial Sanctions: A Manual for Design and Implementation*, Providence, RI 2001, 11.

[2] Marie Terlinden, "Sanctions without scrutiny? The role of proportionality in EU sanctions litigation", *Leuven Global Governance Series Working Paper*, May 2025, 1-4; Luigi Lonardo, "Challenging EU sanctions against Russia: the role of the Court, judicial protection, and common foreign and security policy", *Cambridge Yearbook of European Legal Studies* 25/2023, 40-43; RT France v Council, T-125/22, ECLI:EU:T:2022:483, paras 170-191.

[3] Maja Brkan, "The role of the European Court of Justice in the field of Common Foreign and Security Policy after the Treaty of Lisbon: new challenges for the future", *EU External Relations Law and Policy in the Post-Lisbon Era* (ed. Paul James Cardwell), The Hague 2012, 97-100.

The article advances a central claim that the CJEU has consolidated a model of procedural constitutionalism in the field of restrictive measures. This model can be situated within a broader procedural turn in the Court's sanctions jurisprudence, crystallised in *Kadi* and later carried into CFSP review through *Rosneft* and its post-Lisbon successors. By prioritizing the scrutiny of procedural guarantees – such as adequate reasoning, the right to be heard, and the evidentiary basis of a listing – the Court maintains a degree of deference toward the underlying foreign-policy assessments of the Council. This calibration is supported by a persistent narrative that CFSP measures are preventive rather than punitive in nature. However, while Article 51 of the Charter establishes the jurisdictional field of application for fundamental rights to these acts, the practical reality of prolonged listings, public stigma, and severe socio-economic consequences de facto approximates the effects of penal sanctions. These developments shift the constitutional focus toward the substantive proportionality requirement under Article 52(1) of the Charter, requiring a deeper assessment of a measure's necessity and suitability rather than mere procedural compliance. This problem is compounded by the lack of external oversight following Opinion 2/13, which increases the constitutional weight of the CJEU's internal review as the sole guarantor of effective judicial protection.

2. EU RESTRICTIVE MEASURES AND THE POST-LISBON JUDICIAL ARCHITECTURE

2.1. From comprehensive embargoes to targeted listings

EU restrictive measures emerged in the 1980s as largely state-centred instruments, closely resembling classical trade embargoes. From the mid-1990s onwards, and particularly after the expansion of counter-terrorism sanctions in the early 2000s, both the United Nations Security Council and the EU increasingly relied on individualised measures. "Targeting" was promoted as a way to minimise humanitarian harm and increase political precision by focusing constraints on those deemed responsible for particular conduct. In EU practice, this shift produced an extensive listing architecture: criteria for designation are set out in CFSP decisions and regulations, while the Council compiles and periodically updates annexes containing the names of designated persons and entities.[4]

[4] Thomas J. Biersteker, Sue E. Eckert, Marcos Tourinho (eds.), *Targeted Sanctions: The Impacts and Effectiveness of United Nations Action*, Cambridge 2016, iii; Clara Portela, "Are European Union sanctions 'targeted'?", *Cambridge Review of International Affairs* 3/2016, 912-929; Francesco Giumelli, "Winning without killing: the case for targeted sanctions", *Winning Without Killing: The Strategic and Operational Utility of Non-Kinetic Capabilities in Crises* (eds Paul A.L. Ducheine, Frans P.B. Osinga), The Hague 2017, 91-93; Council Regulation (EU) 2020/1998 of

The promise of targeting, however, is contested. Even when formally individualised, restrictive measures often operate through financial and commercial networks that affect third parties, sectors and access to basic goods. This is particularly visible when measures restrict access to banking, insurance, transport or energy-related services. The resulting externalities intensify demands for meaningful judicial review, because the legitimacy of sanctions depends not only on their foreign-policy rationale but also on the availability of legal remedies capable of correcting error and arbitrariness.[5]

An additional post-2022 development is an "enforcement turn" that further complicates the preventive/punitive distinction. Following a Commission initiative, the Council identified the violation of Union restrictive measures as an area of crime under Article 83(1) TFEU, and the Union subsequently adopted Directive (EU) 2024/1226 harmonising criminal offences and penalties for sanctions violations. Even if this framework targets circumvention and implementation rather than the listing decision as such, it embeds restrictive measures within a penal enforcement architecture and strengthens the case for robust procedural safeguards across the life-cycle of listings.[6]

2.2. Dual legal basis and the "Smart Sanctions" settlement

The EU's sanctions architecture is characterised by a dual legal basis. A political decision is adopted under Article 29 TEU within the CFSP framework. Where measures require implementation through economic or financial restrictions within the Union, the Council adopts a regulation under Article 215 TFEU. The significance of this regulatory layer lies in its capacity to produce general applicability and direct effect. By overcoming the limitations of CFSP decisions in this regard, it effectively triggers the comprehensive range of EU enforcement mechanisms and judicial safeguards. The CJEU confirmed the constitutional logic of this structure in the *Smart Sanctions* case, holding that Article 215 TFEU may serve as the appropriate basis for measures implementing CFSP decisions, including where such measures affect individuals and entities.[7]

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7 December 2020 concerning restrictive measures against serious human rights violations and abuses, *OJ* L 410I, 7 December 2020.

[5] Erica S. Moret, "Humanitarian impacts of economic sanctions on Iran and Syria", *European Security* 1/2015, 120-140.

[6] Council Decision (EU) 2022/2332 of 28 November 2022 on identifying the violation of Union restrictive measures as an area of crime that meets the criteria specified in art. 83(1) TFEU, *OJ* L 308, 29 November 2022, 18; Directive (EU) 2024/1226 of the European Parliament and of the Council of 24 April 2024 on the definition of criminal offences and penalties for the violation of Union restrictive measures and amending Directive (EU) 2018/1673, *OJ* L, 2024/1226, 29 April 2024, 1; Peter Csonka, Lucia Zoli, "The new directive on the violation of Union restrictive measures in the context of the EPPO", *eucrim* 1/2024, 76-80.

[7] C-130/10 European Parliament v Council, ECLI:EU:C:2012:472, paras 59-66.

The same judgment also clarifies the boundary between external-relations sanctions and internal security measures. While Article 75 TFEU permits the adoption of “administrative measures” in the Area of Freedom, Security and Justice to prevent and combat terrorism, it cannot be used to circumvent CFSP procedures where the measures are in substance instruments of external policy. This matters for judicial review because the choice of legal basis determines both institutional participation and the applicable routes of challenge. In practice, litigants frequently contest both the CFSP decision (under Article 275(2) TFEU) and the implementing regulation (under Article 263 TFEU), making sanctions litigation a site where constitutional boundaries and rights protection intersect.[8]

2.3. Jurisdictional gateways after Lisbon

The constitutional significance of sanctions litigation lies in how it connects CFSP decision-making to judicial control. Article 275(2) TFEU allows the CJEU to review restrictive measures against natural or legal persons, thereby enabling annulment actions against CFSP decisions listing individuals. The Court’s jurisdiction has also expanded through the preliminary-ruling procedure. In *Rosneft*, the Grand Chamber accepted that it may rule on the validity of CFSP decisions in so far as they provide the basis for restrictive measures, notwithstanding the general exclusion of CFSP from Article 267 TFEU. The Court justified this approach by reference to the need to ensure effective judicial protection and the unity of EU law, while preserving the Treaties’ special regime for CFSP.[9] Recent commentaries rightfully suggest that, in this jurisdictional line, “effective judicial protection” is frequently mobilized to protect the structural coherence of EU law, sometimes at the expense of legal certainty as to the boundaries of CFSP justiciability.[10]

Three developments underscore the courts’ post-Lisbon role. First, in *Bank Refah Kargaran*, the Court held that it has jurisdiction to hear an action for damages arising from CFSP restrictive measures, thereby confirming that Article 274 TFEU does not exclude non-contractual liability in this field.[11] Second, in *Venezuela v Council*, the Court confirmed that a third State may bring annulment proceedings against sectoral measures of general application where it is directly concerned; on

[8] *Ibid.*, paras 53-58; C. Eckes, 873-878.

[9] C-72/15 Rosneft, ECLI:EU:C:2017:236, paras 146-149.

[10] Thomas Verellen, “Effective judicial protection in the CFSP after KS and KD: The Court of Justice (finally) closes the ‘Kadi-gap’?”, EU Law Analysis (blog), 26 March 2024, *https://eulawanalysis.blogspot.com/2024/03/effective-judicial-protection-in-cfsp.html*, 20 February 2026.; Ellen Cantraine, “Effective Remedies or Empty Promises? The General Court’s Order in KS and KD and the Limits of Judicial Protection in the Common Foreign and Security Policy”, European Law Blog, 17 December 2025, *https://www.europeanlawblog.eu/pub/x6bjk05z/release/2,* 20 February 2026.

[11] C-134/19 P Bank Refah Kargaran v Council, ECLI:EU:C:2020:793, paras 50-64.

remand, the General Court addressed the international-law arguments on the merits, offering a more articulated account of the relationship between EU restrictive measures and customary principles such as non-intervention.[12] Third, in *Neves 77 Solutions*, the Grand Chamber confirmed that, through the preliminary-ruling procedure, the Court may interpret provisions of a CFSP decision on restrictive measures where those provisions should have been given effect by a regulation under Article 215(1) TFEU and where interpretation is necessary to secure uniform application.[13] This step amounts to a further "normalisation" of CFSP litigation, as CFSP acts are treated, for interpretative purposes, as part of EU law requiring uniform interpretation. Taken together, these rulings indicate that the EU judicature is willing to operationalise judicial protection in CFSP through a mix of jurisdictional gateways – annulment, damages and preliminary rulings – while still confining review to legally framed questions rather than political or strategic choices.

3. PREVENTIVE IN FORM, PUNITIVE IN EFFECT

3.1. The preventive narrative in EU sanctions case law

The Court's approach to the intensity of review is closely linked to how restrictive measures are classified. Both the Council and the CJEU routinely characterise targeted sanctions as preventive instruments intended to induce behavioural change, rather than as punitive measures responding to past wrongdoing. The preventive framing has doctrinal consequences: it positions sanctions outside the core of criminal-law guarantees and supports a deferential attitude towards the political discretion inherent in CFSP. The General Court's case law illustrates this dynamic. In a series of Iran-related listing cases, the Court emphasised that asset freezes are "precautionary" and not "penal" in nature, even where they involve severe restrictions on economic activity.[14]

The same logic is visible in sanctions adopted in response to situations of internal repression or armed conflict. In *Ezz*, concerning restrictive measures adopted in relation to Syria, the General Court reiterated that the measures pursue CFSP objectives and are not criminal sanctions.[15] Likewise, in *Sport-pari* the Court treated the freezing of funds as a preventive step designed to influence conduct.[16] The preventive narrative thereby operates as a structural presumption: it insulates

[12] C-872/19 P Venezuela v Council, T-65/18 RENV, ECLI:EU:T:2023:529, paras 88-92 and 113.

[13] C-351/22 Neves 77 Solutions, ECLI:EU:C:2024:723, paras 35-43.

[14] HTTS v Council, T-128/12, ECLI:EU:T:2013:520, para. 57; Chtoura, T-290/14, ECLI:EU:T:2016:712, para. 182.

[15] Ezz and Others v Council, T-256/11, ECLI:EU:T:2014:93, para. 81.

[16] Sport-pari v Council, T-795/14, ECLI:EU:T:2018:123, paras 23-27.

CFSP restrictive measures from being assimilated to punishment, even when their impact resembles long-term exclusion from economic and social life.

The post-2022 docket demonstrates that the preventive narrative is no longer confined to the freezing of funds. In *RT France*, the General Court reviewed a broadcasting ban adopted as a CFSP restrictive measure and engaged directly with freedom of expression and information under Article 11 of the Charter.[17] While the Court upheld the Council's broad discretion to respond to disinformation linked to military aggression, it nevertheless treated proportionality as a justiciable question and required the interference with media freedom to be justified by reference to concrete reasons and an assessable factual basis.

3.2. Punitive effects and the proportionality baseline

The preventive narrative does not eliminate the punitive effects of sanctions. Asset freezes may last for years, carry reputational stigma and restrict access to ordinary economic and social life. While the EU's objective is not retribution, sanctions can function as a form of "international punishment" by imposing burdens that are experienced as penalties and by signalling public condemnation. Comparative human-rights jurisprudence suggests that a measure's classification cannot depend solely on declared purpose; its nature, severity and duration are also relevant. These considerations are particularly salient where restrictive measures are repeatedly renewed on broadly framed criteria, without clear benchmarks for delisting.[18]

Recent legislative developments make this continuum explicit. By identifying sanctions violations as an EU crime and by adopting Directive (EU) 2024/1226, the Union has acknowledged that restrictive measures are embedded in a penal enforcement architecture that can lead to criminal liability, confiscation and cross-border investigations. This does not transform asset freezes into criminal penalties as a matter of EU classification, but it reinforces the argument that proportionality review and procedural guarantees should be calibrated to the real-world severity and duration of restrictive measures, including renewals based on broad criteria.[19]

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[17] RT France v Council, T-125/22, ECLI:EU:T:2022:483, paras 170-191; Viktória Szép, Ramses A. Wessel, "Balancing restrictive measures and media freedom: RT France v Council", *Common Market Law Review* 5/2023, 1383-1396.

[18] Kim Richard Nossal, "International sanctions as international punishment", *International Organization* 2/1989, 301-322; M. v Germany, no. 19359/04, judgment of 17 December 2009, para. 126.

[19] Council Decision (EU) 2022/2332 of 28 November 2022 on identifying the violation of Union restrictive measures as an area of crime that meets the criteria specified in art. 83(1) TFEU, *OJ* L 308, 29 November 2022, 18-21; Directive (EU) 2024/1226 of the European Parliament and of the Council of 24 April 2024 on the definition of criminal offences and penalties for the violation of Union restrictive measures and amending Directive (EU) 2018/1673, *OJ* L, 2024/1226, 29 April

In EU law, the main doctrinal instrument for mediating this tension is proportionality. Under Article 52(1) of the Charter, limitations on Charter rights must be "necessary and genuinely meet objectives of general interest recognised by the Union". Proportionality requires (at a minimum) that measures are suitable for achieving their objectives, do not go beyond what is necessary, and maintain a reasonable balance between public aims and private burdens. While the CJEU has long articulated proportionality as a general principle of EU law, it has also accepted that in fields involving complex policy choices, review is typically confined to manifest error or manifest disproportionality. The question is how this deferential approach should operate in CFSP, where the very point of sanctions is to impose serious constraints on targeted persons.[20]

A coherent approach would therefore treat the preventive label as a starting point rather than a conclusion. When measures become long-standing or encompass broad economic restrictions, the Council should be required to articulate more concretely how the chosen restrictions are calibrated to the specific objective pursued and whether less intrusive alternatives were considered. A more structured proportionality analysis would not transform the Court into a foreign-policy decision-maker; it would instead make explicit the reasoning that links coercive economic tools to legitimate public aims and reduce the risk that sanctions drift towards punishment without the safeguards ordinarily associated with punitive measures.[21]

4. THE STANDARD OF REVIEW IN PRACTICE

4.1. Reasons-giving and the right to be heard

The landmark *Kadi* litigation illustrates how procedural requirements became the Court's primary tool for constitutionalising sanctions. In its 2008 judgment, the Grand Chamber held that EU measures implementing United Nations (UN) listings remain subject to review for compliance with fundamental rights and general principles of EU law. The Court required that listed persons receive sufficient information to understand the reasons for their designation and to challenge it effectively. The 2013 *Kadi* judgment further developed this position by insisting

2024, art. 8; Proposal for a Directive of the European Parliament and of the Council on the definition of criminal offences and penalties for the violation of Union restrictive measures, COM(2022) 684 final, 2 December 2022; P. Csonka, L. Zoli, 77-79.

[20] Robert Alexy, *A Theory of Constitutional Rights*, Oxford 2002, 66-69; C-331/88 Fedesa, ECLI:EU:C:1990:391, para. 14.

[21] Alexandra Hofer, "The proportionality of unilateral 'targeted' sanctions: whose interests should count?", *Revisiting Proportionality in International and European Law: Interests and Interest-Holders* (eds Ulf Linderfalk, Eduardo Gill-Pedro), Leiden 2021, 145-167.

that effective judicial protection requires not only formal reasons but judicial verification of whether the reasons are substantiated. The Court thereby transformed sanctions litigation into a demanding legality control over individual listings, even while recognising the political sensitivity of CFSP decision-making.[22]

This emphasis on procedure should not be dismissed as merely formal. Reasons-giving and the right to be heard perform several functions in the sanctions context. They discipline the Council's reliance on broad political narratives by requiring a concrete link between the listing criteria and the individual concerned. They also enable courts to evaluate whether the decision is based on sufficiently specific information rather than untested allegations. Finally, they compel the administration to anticipate judicial scrutiny, thereby affecting the quality of the decision-making record *ex ante*. In this sense, sanctions case law resembles the Court's broader pattern of "process-oriented review", where enhanced procedural duties compensate for judicial restraint on substantive policy choices. Read against the trajectory from *Kadi* to *Rosneft*, this reflects a broader procedural turn: the Court constitutionalises sanctions primarily through enforceable duties of justification, contestability and evidentiary substantiation, while avoiding substitution of its own assessment for the Council's foreign-policy choices.[23]

4.2. Evidence, standard of proof and confidentiality

The Court's procedural constitutionalism is most visible in its approach to evidence. While the Council enjoys discretion in foreign-policy assessments, a listing must nonetheless rest on a sufficiently solid factual basis capable of judicial verification. This requirement became explicit after 2013. In a series of Iran-related cases, the Court of Justice annulled listings where the Council failed to produce evidence capable of substantiating the stated reasons. In *Fulmen*, the Court held that mere assertions in the statement of reasons cannot replace evidence; in *Kala Naft*, it similarly required concrete material capable of supporting the allegation that the listed entity provided key support to nuclear-related activities. The insistence on evidence also applies where the Council relies on confidential intelligence: secrecy does not eliminate the duty to provide a reviewable factual basis.[24]

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[22] Joined Cases C-402/05 P and C-415/05 P Kadi and Al Barakaat, ECLI:EU:C:2008:461, paras 281-285; Joined Cases C-584/10 P, C-593/10 P and C-595/10 P Commission and Others v Kadi, ECLI:EU:C:2013:518, paras 98-104.

[23] Koen Lenaerts, "The European Court of Justice and process-oriented review", Conference 'Judicial Activism at the European Court of Justice', November 2012, Saint-Louis University and the University of Antwerp, Brussels, 1-3; C. Eckes, 879-886; Cf. C-72/15 Rosneft, ECLI:EU:C:2017:236, paras 146-149.

[24] C-280/12 P Council v Fulmen and Mahmoudian, ECLI:EU:C:2013:775, paras 66-69; C-348/12 P Council v Kala Naft, ECLI:EU:C:2013:776, paras 74-79; C-266/15 P Central Bank of Iran v Council, ECLI:EU:C:2016:208, paras 47-52.

Recent "Russia sanctions" judgments confirm that evidentiary scrutiny remains the decisive lever of judicial control. In *Aven and Fridman*, the General Court annulled the applicants' listings for the initial period because the Council failed to demonstrate, with sufficiently concrete, precise and consistent evidence, that they met the listing criterion of providing material or financial support for actions undermining Ukraine's territorial integrity; generic inferences drawn from economic prominence or presumed proximity to political power were held insufficient.[25] At the same time, cases such as *Mazepin* and *Rotenberg* show the Court's willingness to uphold listings where the Council establishes an individualized link to the criteria, illustrating a pattern of calibrated deference: the Court does not second-guess CFSP objectives, but it polices the evidentiary chain and the rationality of the reasons given.[26]

The CJEU has responded to confidentiality claims by developing procedural mechanisms intended to balance secrecy with adversarial fairness. Article 105 of the Rules of Procedure of the General Court allows the Court to examine confidential material and, where necessary, to withhold parts of it from the applicant while still ensuring that the essence of the grounds is communicated. The arrangement is a compromise: it acknowledges that sanctions often rely on intelligence that cannot be fully disclosed, yet it rejects the idea that confidentiality permits unreviewable executive assertions. Whether this compromise satisfies the requirements of equality of arms remains contested, but it confirms the Court's broader preference for procedural engineering rather than substantive re-assessment.[27]

4.3. Substantive review and deference in CFSP

Where litigation turns on the substance of CFSP assessments – such as the definition of a crisis, the attribution of responsibility, or the calibration of sectoral restrictions – the CJEU displays greater restraint. The case law confirms that the Council enjoys a wide margin of discretion in complex political, economic and security matters, and that judicial review of proportionality is often limited to manifest error or manifest disproportionality. In *Rosneft*, for example, the Court accepted that sectoral measures restricting access to capital markets and certain technologies pursued legitimate CFSP objectives and were not manifestly inappropriate. The General Court has applied a similar logic when reviewing listings

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[25] Aven v Council, T-301/22, ECLI:EU:T:2024:214, paras 70-79; Fridman v Council, T-304/22, ECLI:EU:T:2024:215, paras 70-82; Prigozhina v Council, T-212/22, ECLI:EU:T:2023:104, paras 62-76.

[26] Prigozhina v Council, T-212/22, ECLI:EU:T:2023:104, paras 62-76; Dmitry Arkadievich Mazepin v Council, T-282/22, ECLI:EU:T:2023:701, paras 58-64; Nikita Dmitrievich Mazepin v Council, T-743/22, ECLI:EU:T:2024:180, paras 80-89; Igor Rotenberg v Council, T-738/22, ECLI:EU:T:2024:398, paras 82-89.

[27] Rules of Procedure of the General Court, *OJ* L 105, 23 April 2015, art. 105; C. Eckes, 888-890.

linked to geopolitical crises, often deferring to the Council's overall assessment while testing whether the evidence supports the individual connection to the listing criteria.[28]

This differential intensity of review is defensible to the extent that courts cannot substitute their judgment for political responsibility in foreign policy. Yet it also creates a structural temptation: if substantive review is expected to be light-touch, the administration may rely on expansive criteria and broad narratives, shifting the burden to procedural compliance. The Court's own jurisprudence suggests that procedural and substantive review cannot be fully separated. When the Court verifies the sufficiency of evidence and the plausibility of the reasons, it necessarily engages with substance – if only to determine whether the asserted foreign-policy rationale is supported in the individual case. The challenge for the future is therefore to stabilise a model in which deference on high-level CFSP choices does not collapse into deference on the legality of individual listings.[29]

5. AUTONOMY, INTERNATIONAL LAW AND EXTERNAL SCRUTINY

5.1. Autonomy through human rights: the "Kadi" settlement

The sanctions case law is inseparable from the CJEU's broader autonomy narrative. In *Kadi*, the Court rejected the proposition that obligations flowing from the UN Charter could displace the constitutional requirements of the EU legal order. The result is often described as a dual move: the Court protected fundamental rights within the EU while simultaneously reasserting the autonomy and self-referential authority of EU law. From an international-law perspective, the judgment has been criticised as contributing to fragmentation; from an EU constitutional perspective, it is defended as a necessary insistence that coercive measures affecting individuals remain subject to legal constraints.[30] Either way, *Kadi* established the premise that targeted sanctions are not "foreign-policy exceptions" but legal acts subject to rule-of-law standards.

The autonomy narrative has practical implications for sanctions design. If EU measures implementing UN listings must satisfy Charter standards, the Council

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[28] C-72/15 Rosneft, ECLI:EU:C:2017:236, paras 146-149; Kiselev v Council, T-262/15, ECLI:EU:T:2017:392, para. 48.

[29] Vlad Perju, "Reason and authority in the European Court of Justice", *Virginia Journal of International Law* 2/2009, 307-378.

[30] Joined Cases C-402/05 P and C-415/05 P Kadi and Al Barakaat, ECLI:EU:C:2008:461, paras 281-285; Katja S. Ziegler, "Strengthening the rule of law, but fragmenting international law: the Kadi decision of the ECJ from the perspective of human rights", *Human Rights Law Review* 2/2009, 288-305.

must maintain its own procedural framework for listing and delisting, including the collection of reasons and supporting material. At the same time, the Court has avoided constructing a direct hierarchy between UN obligations and EU fundamental rights. Instead, it has pursued an internal solution: EU legality is assessed by EU standards, and potential conflicts with international obligations are handled through interpretation and institutional coordination rather than through the judicial denial of international law as such.[31]

5.2. Opinion 2/13 and the CFSP accountability gap

The constitutional weight placed on internal remedies would be less dramatic if EU acts were subject to external human-rights review. Yet the EU remains outside the ECHR system. In Opinion 2/13, the CJEU found the draft accession agreement incompatible with the Treaties, citing a range of autonomy-related objections.[32] While CFSP is not the sole reason for the impasse, the Court's reasoning reflects a strong concern that external review might affect the special constitutional regime of CFSP, including the distribution of powers and the Court's own jurisdictional limits. The result is an accountability asymmetry: individuals targeted by EU restrictive measures depend primarily on the CJEU for effective protection, while the European Court of Human Rights cannot review EU acts directly.[33]

At the same time, the ECtHR's "equivalent protection" doctrine limits the prospects of indirect review through member-state responsibility. Under the *Bosphorus* presumption, where a member state has no discretion and merely implements EU obligations, Strasbourg review is deferential unless protection is "manifestly deficient".[34] In sanctions matters, implementation is often tightly prescribed, leaving little national discretion. This reinforces the centrality of EU judicial remedies. It also means that the quality of internal review – especially the handling of confidential evidence and proportionality reasoning – acquires systemic importance for the credibility of EU external action.

5.3. Proposals for higher effectiveness and legitimacy

To safeguard both the efficacy and legitimacy of targeted sanctions, the CJEU's focus on procedural constitutionalism must be reinforced by certain reforms. Such

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31 C. Eckes, 889-895.

32 Opinion 2/13, ECLI:EU:C:2014:2454, paras 179-200.

33 Tobias Lock, "The future of the European Union's accession to the European Convention on Human Rights after Opinion 2/13: is it still possible and is it still desirable?", *European Constitutional Law Review* 2/2015, 239-273; Louise Halleskov Storgaard, "EU law autonomy versus European fundamental rights protection-On Opinion 2/13 on EU accession to the ECHR", *Human Rights Law Review* 3/2015, 485-521.

34 Bosphorus Hava Yolları Turizm ve Ticaret A.Ş. v Ireland, no. 45036/98, judgment of 30 June 2005, paras 155-156.

enhancements should be grounded in established case law and current institutional practices to effectively address existing systemic blind spots.

First, proportionality review should be made more structured in both administration and adjudication. This does not require courts to second-guess CFSP strategy. It requires the Council to articulate the specific objective pursued by a given restriction, to explain why the targeted person falls within the listing criteria, and to show why less intrusive measures were not sufficient. Where listings are maintained over long periods, periodic review should include an explicit assessment of continuing necessity and the availability of delisting benchmarks. Such structuring would mitigate the risk that sanctions become punitive in effect while remaining formally "preventive".[35]

Second, evidentiary thresholds and the handling of confidentiality should be clarified further. The existing requirement of a "sufficiently solid factual basis" could be operationalised through clearer internal standards on what counts as reliable, corroborated material for listing and relisting, and through a consistent practice of communicating the essence of the evidence to the listed person. The CJEU should continue to insist that confidentiality cannot function as a blanket shield, while procedural safeguards (including the careful use of Article 105 procedures) should be applied in a manner that preserves the core of the adversarial principle.[36]

Third, the institutional environment of sanctions review should be strengthened. Internally, this points to better coordination between the Council, the European External Action Service (EEAS) and the Commission in record-keeping and disclosure, as well as to a more transparent delisting practice. Externally, the long-term solution remains the EU's accession to the ECHR, which would add an additional layer of accountability and help address perceptions that CFSP operates in a constitutional "grey zone".[37] Even short of accession, EU institutions could institutionalise independent review functions within the listing process, drawing on comparative models developed in the UN context and in national security law.

6. CONCLUSION

EU restrictive measures represent a paradigmatic test of the Union's capacity to conduct an effective foreign policy while remaining faithful to its constitutional commitment to the rule of law. The post-Lisbon jurisprudence of the CJEU

[35] Council of the European Union, *Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU CFSP* (ST 5664/18, 4 May 2018), para. 11; A. Hofer, 145-167.

[36] Joined Cases C-584/10 P, C-593/10 P and C-595/10 P Commission and Others v Kadi, ECLI:EU:C:2013:518, paras 119-128; C. Eckes, 888-895.

[37] Ivana Krstić, Bojana Čučković, "Accession of the EU to the ECHR: the essential role of the Strasbourg Court", *Annals of the Faculty of Law in Belgrade* 3/2016, 33-57.

shows a deliberate calibration. On the one hand, the Court has developed demanding procedural requirements – reasons-giving, evidentiary substantiation and mechanisms for contestation – that have significantly improved the legality of individual listings. On the other hand, it has remained cautious in reviewing the substantive foreign-policy assessments that drive CFSP sanctions, relying on deference and the preventive framing of restrictive measures. Read through the lens of procedural constitutionalism, and in line with the Court's process-oriented review, this reflects a broader procedural turn after *Kadi* and *Rosneft*. The Grand Chamber's judgment in *Neves 77 Solutions* further illustrates this dynamic by extending preliminary-ruling jurisdiction to the interpretation of certain CFSP decisions on restrictive measures, reinforcing the "normalisation" of CFSP litigation within the EU legal order. This model of procedural constitutionalism has clear virtues, but it also has limits when sanctions operate as long-term constraints with punitive effects and when external accountability is absent.

The current framework could be strengthened by a more structured proportionality inquiry, more clearly articulated and consistently applied evidentiary expectations, and more rigorous use of existing safeguards for confidential material. In addition, the Council's periodic renewal of listings should be accompanied by an explicit, criteria-based assessment of continuing necessity. Together, clearer evidentiary expectations and a more transparent renewal rationale would better reconcile effectiveness with legitimacy and reinforce the EU's claim that its external action remains governed by the rule of law.

REFERENCES

Books and Articles

Alexy Robert, *A Theory of Constitutional Rights*, Oxford 2002, 66-69;

Biersteker Thomas J., Eckert Sue E., Halegua Aaron (eds.), *Targeted Financial Sanctions: A Manual for Design and Implementation*, Providence, RI 2001, 11;

Biersteker Thomas J., Eckert Sue E., Tourinho Marcos (eds.), *Targeted Sanctions: The Impacts and Effectiveness of United Nations Action*, Cambridge 2016, iii;

Brkan Maja, "The role of the European Court of Justice in the field of Common Foreign and Security Policy after the Treaty of Lisbon: new challenges for the future", *EU External Relations Law and Policy in the Post-Lisbon Era* (ed. Paul James Cardwell), The Hague 2012, 97-115;

Csonka Peter, Zoli Lucia, "The new directive on the violation of Union restrictive measures in the context of the EPPO", *eucrim* 1/2024, 76-80;

Eckes Christina, "EU restrictive measures against natural and legal persons: from counterterrorist to third country sanctions", *Common Market Law Review* 3/2014, 869-906;

Giumelli Francesco, "Winning without killing: the case for targeted sanctions", *Winning Without Killing: The Strategic and Operational Utility of Non-Kinetic Capabilities in Crises* (eds Paul A.L. Ducheine, Frans P.B. Osinga), The Hague 2017, 91-106;

Hofer Alexandra, "The proportionality of unilateral 'targeted' sanctions: whose interests should count?", *Revisiting Proportionality in International and European Law: Interests and Interest-Holders* (eds Ulf Linderfalk, Eduardo Gill-Pedro), Leiden 2021, 145-167;
Krstić Ivana, Čučković Bojana, "Accession of the EU to the ECHR: the essential role of the Strasbourg Court", *Annals of the Faculty of Law in Belgrade* 3/2016, 33-57;
Lenaerts Koen, "The European Court of Justice and process-oriented review", *Conference 'Judicial Activism at the European Court of Justice'*, November 2012, Saint-Louis University and the University of Antwerp, Brussels, 1-3;
Lock Tobias, "The future of the European Union's accession to the European Convention on Human Rights after Opinion 2/13: is it still possible and is it still desirable?", *European Constitutional Law Review* 2/2015, 239-273;
Lonardo Luigi, "Challenging EU sanctions against Russia: the role of the Court, judicial protection, and common foreign and security policy", *Cambridge Yearbook of European Legal Studies* 25/2023, 40-63;
Moret Erica S., "Humanitarian impacts of economic sanctions on Iran and Syria", *European Security* 1/2015, 120-140;
Nossal Kim Richard, "International sanctions as international punishment", *International Organization* 2/1989, 301-322;
Perju Vlad, "Reason and authority in the European Court of Justice", *Virginia Journal of International Law* 2/2009, 307-378;
Portela Clara, "Are European Union sanctions 'targeted'?", *Cambridge Review of International Affairs* 3/2016, 912-929;
Storgaard Louise Halleskov, "EU law autonomy versus European fundamental rights protection-On Opinion 2/13 on EU accession to the ECHR", *Human Rights Law Review* 3/2015, 485-521;
Szép Viktória, Wessel Ramses A., "Balancing restrictive measures and media freedom: RT France v Council", *Common Market Law Review* 5/2023, 1383-1396;
Terlinden Marie, "Sanctions without scrutiny? The role of proportionality in EU sanctions litigation", *Leuven Global Governance Series Working Paper*, May 2025, 1-4;
Ziegler Katja S., "Strengthening the rule of law, but fragmenting international law: the Kadi decision of the ECJ from the perspective of human rights", *Human Rights Law Review* 2/2009, 288-305.

Case Law

C-130/10 European Parliament v Council, ECLI:EU:C:2012:472;
C-72/15 Rosneft, ECLI:EU:C:2017:236;
C-351/22 Neves 77 Solutions, ECLI:EU:C:2024:723;
C-134/19 P Bank Refah Kargaran v Council, ECLI:EU:C:2020:793;
C-266/15 P Central Bank of Iran v Council, ECLI:EU:C:2016:208;
C-280/12 P Council v Fulmen and Mahmoudian, ECLI:EU:C:2013:775;
C-331/88 Fedesa, ECLI:EU:C:1990:391;
C-348/12 P Council v Kala Naft, ECLI:EU:C:2013:776;
C-872/19 P Venezuela v Council, ECLI:EU:C:2021:507;
Joined Cases C-402/05 P and C-415/05 P Kadi and Al Barakaat, ECLI:EU:C:2008:461;
Joined Cases C-584/10 P, C-593/10 P and C-595/10 P Commission and Others v Kadi, ECLI:EU:C:2013:518;

Opinion 2/13, ECLI:EU:C:2014:2454;
T-128/12 HTTS v Council, ECLI:EU:T:2013:520;
T-256/11 Ezz and Others v Council, ECLI:EU:T:2014:93;
T-262/15 Kiselev v Council, ECLI:EU:T:2017:392;
T-290/14 Chtoura, ECLI:EU:T:2016:712;
T-65/18 RENV Venezuela v Council, ECLI:EU:T:2023:529;
T-125/22 RT France v Council, ECLI:EU:T:2022:483;
T-212/22 Prigozhina v Council, ECLI:EU:T:2023:104;
T-282/22 Dmitry Arkadievich Mazepin v Council, ECLI:EU:T:2023:701;
T-301/22 Aven v Council, ECLI:EU:T:2024:214;
T-304/22 Fridman v Council, ECLI:EU:T:2024:215;
T-738/22 Igor Rotenberg v Council, ECLI:EU:T:2024:398;
T-743/22 Nikita Dmitrievich Mazepin v Council, ECLI:EU:T:2024:180;
T-795/14 Sport-pari v Council, ECLI:EU:T:2018:123;
Bosphorus Hava Yolları Turizm ve Ticaret A.Ş. v Ireland, no. 45036/98, judgment of 30 June 2005;
M. v Germany, no. 19359/04, judgment of 17 December 2009.

Legal Acts and Documents

Council of the European Union, *Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU CFSP* (ST 5664/18, 4 May 2018);
Council Regulation (EU) 2020/1998 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses, *OJ* L 410I, 7 December 2020;
Council Decision (EU) 2022/2332 of 28 November 2022 on identifying the violation of Union restrictive measures as an area of crime that meets the criteria specified in Article 83(1) TFEU, *OJ* L 308, 29 November 2022, 18;
Directive (EU) 2024/1226 of the European Parliament and of the Council of 24 April 2024 on the definition of criminal offences and penalties for the violation of Union restrictive measures and amending Directive (EU) 2018/1673, *OJ* L, 2024/1226, 29 April 2024, 1;
Proposal for a Directive of the European Parliament and of the Council on the definition of criminal offences and penalties for the violation of Union restrictive measures, COM(2022) 684 final;
Rules of Procedure of the General Court, *OJ* L 105, 23 April 2015.

Internet Sources

Ellen Cantraine, "Effective Remedies or Empty Promises? The General Court's Order in KS and KD and the Limits of Judicial Protection in the Common Foreign and Security Policy", European Law Blog, 17 December 2025, *https://www.europeanlawblog.eu/pub/x6bjk05z/release/2,* 20 February 2026.
Thomas Verellen, "Effective judicial protection in the CFSP after KS and KD: The Court of Justice (finally) closes the 'Kadi-gap'?", EU Law Analysis (blog), 26 March 2024, *https://eulawanalysis.blogspot.com/2024/03/effective-judicial-protection-in-cfsp.html*, 20 February 2026.

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Рестриктивне мере у оквиру Заједничке спољне и безбедносне политике у пракси Суда правде ЕУ: између људских права и аутономије Уније

Сажетак: *У раду се анализира начин на који Суд правде Европске уније (СПЕУ) врши судску контролу рестриктивних мера донетих у оквиру Заједничке спољне и безбедносне политике (ЗСБП) и како, у том контексту, балансира ефикасност спољне политике са захтевима Повеље о основним правима. Полазећи од анализе уговорног оквира (нарочито члана 275(2) УФЕУ) и кључних пресуда од Kadi преко Rosneft до Neves 77 Solutions, рад показује да је Суд развио претежно процедурални модел контроле, уз постепено ширење сопствених овлашћења. СПЕУ примењује појачан надзор у погледу образложења, права на саслушање и доказне поткрепљености уврштења на листу, док остаје уздржан у односу на сложене политичке одлуке и процене Савета. У раду се тврди да такав аранжман доприноси законитости и транспарентности, али може довести до пропуста у заштити људских права када уврштења трају дуго и производе последице упоредиве са казненим мерама. Предлажу се структурисанија анализа пропорционалности, јаснији доказни стандарди и боље поступање са поверљивим материјалом кроз ригорознију периодичну ревизију.*

Кључне речи: *људска права, рестриктивне мере, Заједничка спољна и безбедносна политика, Суд правде ЕУ, судска контрола.*

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