

EU Sanctions Against Third Countries Legal Basis for EU Sanctions against Russia and its Citizens

Verica Trstenjak*

Summary: The EU Treaties provide several possibilities to sanction EU Member States for failing to comply with EU law. The EU has a legal basis for so-called EU sanctions in Article 215 of the Treaty on the Functioning of the EU, aimed at third countries (i.e. countries outside the EU) and their legal entities (e.g., in Belarus, Russia). Over recent years, sanctions against third countries have become increasingly frequent. This article delves into the legal framework for adopting EU sanctions, the potential legal protection available to sanctioned individuals, and the relevant case law of the Court of Justice of the EU. In this context, the question of whether Abramovich or some other Russian citizens on the sanctions list can access funds from EU bank accounts or enter the EU will be addressed.

Keywords: EU sanctions, restrictive measures, EU law, sanction against Russia, war in Ukraine, dual citizenship, bank account.

Citation: TRSTENJAK, V. EU Sanctions Against Third Countries – Legal Bases for EU Sanctions against Russia and its Citizens. *European Studies – the Review of European law, Economics and Politics*, 2023, vol. 10, no. 2, pp. 15–32, DOI: 10.2478/eustu-2023-0010

1. Introduction

The EU has several possibilities to sanction EU Member States for failing to comply with EU law. The most effective option is the European Commission's action for failure to fulfil obligations based on Article 258 of the Treaty on the Functioning of the EU (TFEU). EU law also governs rules on sanctions against companies operating in the EU, e.g., Facebook, Apple, etc., if, for example, they do not comply with EU competition rules. In recent years, so-called EU sanctions

* Former Advocate General at the Court of Justice of the EU, University Professor of EU Law in Austria (University of Vienna) and Slovenia (Alma mater Europaea). My grateful thanks to Dr. Petra Weingerl for her help and comments. Contact: Trstenjakverica@gmail.com

against third countries (i.e. countries outside the EU) and their legal entities (e.g., Belarus, Russia, Iran, North Korea, and Syria) have become increasingly frequent. In this context, the question of whether Abramovich or some other Russian citizen can access funds in EU bank accounts is linked to EU law. Such cases are often discussed, especially recently due to the EU sanctions against Russia. There are also UN sanctions based on international law, but this article does not discuss the measures implemented by the UN Security Council.

In the EU practice, the area of sanctions against third countries and their entities and individuals is relevant to civil servants in EU Member States and to all those who carry out activities to which the EU sanctions apply. This concerns, for example, border controls (if sanctions concern entry bans into the EU), banks that must comply with sanctions on “freezing accounts”, companies that are not allowed to export sanctioned products to countries on the list of sanctions, etc. This contribution will discuss the legal basis for adopting EU sanctions, the possibility of the legal protection of sanctioned persons and the relevant case law of the Court of Justice of the EU (CJEU).¹ Moreover, it will present the legal framework and case law concerning sanctions against Russia in response to the war of aggression against Ukraine and conclude with a discussion of the question of the applicability of EU sanctions to dual citizens (i.e., individuals who hold both Russian citizenship and citizenship of an EU Member State).

2. Legal Basis in EU Law

The legal basis for sanctions against third countries is in EU primary law, among the Union’s external action provisions. Restrictive measures (*restriktive Massnahmen*) are covered by Article 215 TFEU. In practice, the notion of “sanctions” is the most frequently used, although the legal term found in the TFEU is “restrictive measures.”

Article 215 provides for adopting a specific decision under Chapter 2 of Title V (Common Foreign and Security Policy) of the Treaty on the European Union (TEU). It allows for the partial or total suspension or restriction of economic and financial relations with one or more third countries. On this basis,

¹ The Court of Justice of the EU is divided into two courts: the Court of Justice and the General Court of the EU. Colloquially, the abbreviation CJEU is used either for the Court of Justice or for the institution as such (comprising both courts). Since the distinction between both courts is crucial for this contribution because of the two-stage procedure in the case of actions for annulments of individuals, I use the abbreviation “CJEU” when referring to the institution as such, and “Court of Justice” and “General Court of the EU” when referring to a specific court dealing with a specific procedure.

the Council, acting by a qualified majority on a joint proposal from the High Representative of the Union for Common Foreign and Security Policy and the European Commission, adopts the necessary measures. It informs the European Parliament of the adopted measures. All the EU's top-level institutions are therefore involved in the procedure. In addition to primary law referred to above, there are several relevant acts of secondary law, such as regulations and decisions, some of which will be mentioned below. All these acts are published in the Official Journal of the EU.

As regards the implementation of the restrictive measures themselves, there is concrete guidance on their implementation, such as the 2018 Sanctions Guidelines approved by the Council.²

2.1. Objectives pursued by EU sanctions

According to the Council's website, the most frequently cited objectives that the EU sanctions aim to achieve are:³

- safeguarding EU's values, fundamental interests, and security,
- preserving peace,
- consolidating and supporting democracy, the rule of law, human rights, and the principles of international law,
- preventing conflicts and strengthening international security.

Concrete sanctions are aimed at preventing and ending wars, preventing terrorism (and disabling terrorist organisations), preventing nuclear proliferation (e.g., North Korea), preventing encroachment on the territory of foreign countries (Russia on Crimea in 2014), preventing human rights violations or democratic elections (e.g., Belarus), etc.

2.2. Sanctioned entities

As can be seen from Article 215 TFEU, the addressees of EU sanctions are not only third countries, i.e., countries outside the EU, but also, under certain conditions, legal and natural persons from countries outside the EU. Sanctions or restrictive measures may also be taken against "groups or non-State entities". In practice, this means that in addition to third countries (e.g., Russia, Belarus, Syria), companies and other entities from these countries may be subject to restrictive measures.

² Council of the EU, Sanctions Guidelines – update, 2018, 5664/18. [online] Available at: <<https://data.consilium.europa.eu/doc/document/ST-5664-2018-INIT/en/pdf>>

³ See the Council of the EU's website: <<https://www.consilium.europa.eu/sl/policies/sanctions/>> (on 31. January 2024).

In practice, the EU sanctions can apply to non-EU countries (e.g., currently Russia, Iran, North Korea...) and to legal persons, e.g., companies (e.g., because they facilitate, e.g., through financing, the carrying out of an illicit activity (e.g. terrorism), sanctioned by the EU or because they carry out illicit activities (e.g., nuclear). Moreover, sanctions can apply also to natural persons who cooperate with politicians or entities subject to sanctions (e.g., currently those who cooperate with the Russian government), but also to groups and organisations which are not legal persons (e.g., terrorist organisations, e.g. Hamas, which has even been the subject of litigation before the CJEU in case C-833/19 P, *Council v Hamas*⁴).

Examples of concrete EU sanctions include different measures:⁵ financial restrictive measures (freezing of funds and economic resources of certain persons and entities and prohibition to make funds and economic resources available to such persons and entities); restrictions on entry into the EU (visa or travel bans); arms embargo (e.g., on the Democratic Republic of Congo) and embargo on equipment which might be used for internal repression; other restrictions on exports and imports; flight bans and also other sanctions.

3. Legal Protection at the EU Level and Examples from the Case Law of the CJEU

As mentioned above, acts on EU sanctions are published in the Official Journal of the EU. The addressees (natural and legal persons) can bring an action for annulment based on Article 263(4) TFEU against these acts before the General Court of the EU.⁶ There is also the possibility of bringing an appeal against a judgment of the General Court of the EU to the Court of Justice. This was the case of, for example, Yanukovych (C-598/16 P, *Yanukovych v Council*).⁷ The former Ukrainian politician and his family members and relatives have been subject to several EU sanctions, but their actions before the CJEU have been largely unsuccessful. In actions for annulment, the applicants frequently invoke the restriction of fundamental rights, recognised by the EU Charter of Fundamental Rights (EU Charter), e.g., regarding the right to property and the

⁴ Case C-833/19 P *Council v Hamas* ECLI:EU:C:2021:950.

⁵ Summarised based on Council, Restrictive measures (Sanctions) – Update of the EU Best Practices for the effective implementation of restrictive measures, 2018, available at: <<https://data.consilium.europa.eu/doc/document/ST-8519-2018-INIT/en/pdf>>, and 2018 Sanctions Guidelines. [online] Available at: <https://data.consilium.europa.eu/doc/document/ST-5664-2018-INIT/en/pdf>

⁶ Article 275 TFEU.

⁷ Case C-598/16 P *Yanukovych v Council* ECLI:EU:C:2017:786.

right to a fair trial, the right to be heard, as well as the violation of personal data protection.⁸

Among the interesting cases before the General Court of the EU is the case of Il-Su Kim against the Korea National Insurance regarding nuclear weapons. The persons were on the EU sanctions list based on the 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 329/2007.⁹ The Korea National Insurance brought an action for annulment, which was unsuccessful.¹⁰ There are also several cases concerning Syria.¹¹

4. Current Sanctions against Russia

4.1. Legal Bases in the EU

Sanctions against Russia were originally introduced in 2014 due to the annexation of Crimea. The current sanctions relate to the war in Ukraine and affect Russia and its citizens and companies. They include financial and other economic restrictive measures, diplomatic measures, and media restrictions. Several regulations and decisions were adopted to this end. According to the information provided by the Council, sanctions have already covered 1800 subjects (individuals and entities).¹² Those sanctioned subjects include top politicians, including Vladimir Putin and Sergey Lavrov, members of the Russian State Duma and the National Security Council, other high-ranking officials, and some businessmen and oligarchs, including the aforementioned Roman Abramovich.

Numerous EU legal acts govern the adopted EU sanctions. An example is the Council Regulation (EU) 2022/428 of 15 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures because of Russia's actions

⁸ See, for example, the action brought in the case of T-264/16, *Korea National Insurance Corporation v Council*.

⁹ 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, OJ L 224, 31.8.2017, p. 1–109.

¹⁰ Joined Cases T-533/15 and T-264/16 *Il-Su Kim and Korea National Insurance Corporation v Council* ECLI:EU:T:2018:138.

¹¹ For example, case T-258/19 *Foz v Council* ECLI:EU:T:2021:820.

¹² On 23 June 2023, the Council published 11th package of sanctions on Russia's war of aggression against Ukraine. Available at: <<https://www.consilium.europa.eu/en/press/press-releases/2023/06/23/11th-package-of-sanctions-on-russia-s-war-of-aggression-against-ukraine-additional-71-individuals-and-33-entities-included-in-the-eu-s-sanctions-list-and-new-tools-to-counter-circumvention-and-information-warfare/>>

destabilising the situation in Ukraine.¹³ Several implementing regulations have also been adopted, for example, the Council Implementing Regulation (EU) 2022/427 of 15 March 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.¹⁴ This is followed by decisions, e.g. the Council Decision (CFSP) 2022/429 of 15 March 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.¹⁵ Both in the mentioned implementing regulation and in the aforementioned decision, the names of Roman Abramovich and many others are included in the list of persons affected by the sanctions. As an example of the publication of sanctions in the Official Gazette of the EU, below is the publication regarding Abramovich in the Regulation 2022/427 mentioned above:¹⁶

879.	Roman ABRAMOVICH (Роман АБРАМОВИЧ)	Arkadyevich Аркадьевич	Function: Oligarch close to Vladimir Putin; major shareholder of Evraz; former Governor of Chukotka DOB: 24.10.1966 POB: Saratov, Russian Federation Nationality: Russian Gender: male Address: 1 Lipovaya Aleya, Nemchinovo, Odinstvo district, Moscow, Russia Associated individuals: Vladimir Putin Associated entities: Evraz Group SA, LLC Evraz Holding, Millhouse Capital	Roman Abramovich is a Russian oligarch who has long and close ties to Vladimir Putin. He has had privileged access to the president, and has maintained very good relations with him. This connection with the Russian leader helped him to maintain his considerable wealth. He is a major shareholder of the steel group Evraz, which is one of Russia's largest taxpayers. He has therefore been benefitting from Russian decision-makers responsible for the annexation of Crimea or the destabilisation of Ukraine. He is also one of the leading Russian businesspersons 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.	15.3.2022
------	---	---------------------------	---	---	-----------

All these sanctions only make sense if they are consistently observed throughout the EU. In fact, in the EU it is often possible to detect the interests of individual Member States that do not always follow EU law, and this is also possible

¹³ Council Regulation (EU) 2022/428 of 15 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, ST/7130/2022/INIT, OJ L 87I, 15. 3. 2022, p. 13–43.

¹⁴ Council Implementing Regulation (EU) 2022/427 of 15 March 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, ST/7125/2022/INIT, OJ L 87I, 15. 3. 2022, p. 1–12.

¹⁵ Council Decision (CFSP) 2022/429 of 15 March 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, ST/7123/2022/INIT, OJ L 87I, 15. 3. 2022, p. 44–55.

¹⁶ Published on 15 March 2022.

when it comes to the implementation of EU sanctions. Likewise, specific sanctions are less effective if the EU itself, due to, e.g., dependence on Russian gas, cannot adopt comprehensive sanctions or if some countries do not implement them comprehensively.

4.2. Actions for Annulment before the General Court of the EU

4.2.1. Actions Brought by Russian Citizens

Several Russian citizens and companies brought actions against the above-mentioned EU legal acts regarding EU sanctions, which will be discussed below.

An example is the action brought in the case of **T-359/22, *Zubitskiy/Council***,¹⁷ with which the applicant proposes to the General Court of the EU to “declare Article 1(2) of Council Decision (CFSP) 2022/329 of 25 February 2022 1 in that it adds criteria (f) and (g) of Article 2(1) of Decision 2014/145/CFSP unlawful and inapplicable to Mr Evgeny Borisovich Zubitskiy” and to find the implementing Regulation 2022/581¹⁸ of 8 April 2021 null and void in so far as it concerns Mr Evgeny Borisovich Zubitskiy (i.e. Annex I to the amended Regulation 269/2014 – No. 913). As grounds for action, the applicant invokes unlawfulness of Article 2(1) of Decision (CFSP) 2022/329 of 25 February 2022 and the consequent lack of a legal basis, infringement of the duty to state reasons, a manifest error of assessment of the elements constituting relevant criteria of Decision (CFSP) 2022/329 of 25 February 2022, material inaccuracy in the facts, as well as infringement of the fundamental rights of the applicant, because the Regulation 2022/581, in the part in which it refers to him, amounts to an unjustified and disproportionate restriction of his fundamental rights, among which are the right to property (Article 17 of the EU Charter) and the freedom to conduct a business (Article 16 of the EU Charter). The General Court dismissed the action.

There are also other proceedings against the Council Decision (CFSP) 2022/329 of 25 February 2022, e.g.,¹⁹ the case T-313/22, *Abramovich v Council*. The applicant alleges, inter alia, infringement of the right to effective judicial

¹⁷ Action in the case T-359/22 *Zubitskiy/Council*. [online] Available at: <<https://curia.europa.eu/juris/document/document.jsf?jsessionid=A5BE69F5F784059857D88F1341CBF323?text=&docid=263791&pageIndex=0&doclang=SL&mode=req&dir=&occ=first&part=1&cid=1071204>>

¹⁸ Council Implementing Regulation (EU) 2022/581 of 8 April 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, ST/7878/2022/INIT, OJ L 110, 8. 4. 2022, p. 3–54.

¹⁹ As examples: cases T-234/22 *Ismailova v Council*, pending, T-238/22 *Narzieva v Council*, pending, T-290/22 *Kesaev v Council*, pending, T-363/22 *Akhmedov v Council*, pending, and other cases.

protection and the administration's obligation to state reasons, as well as infringement of the principle of proportionality and the principle of equal treatment concerning the adoption of restrictive measures against the applicant. The General Court of the EU²⁰ dismissed the action in December 2023 and decided to uphold the restrictive measures taken against Abramovich. Abramovich initiated the appeal procedure before the CJEU (C-159/24 P).

4.2.2. Actions of Companies with Russian Influence

Media with Russian Influence

An interesting issue concerning EU sanctions relates to media restrictions. RT France, a company based in France, was also subject to EU sanctions. The case was widely reported in the media.²¹ The case concerns the media house RT France, which broadcasts from France, and as the judgment states, the company is owned by a Russian company and financed by the Russian State.²² The company brought an action for annulment because of its inclusion on the list of sanctions. In the action, RT France relied on four pleas in law, i.e. alleging infringement of the rights of the defense (right to be heard), freedom of expression and information, the right to conduct a business, and the principle of non-discrimination on grounds of nationality. On 27 July 2022, the General Court of the EU brought its decision in the case of T-125/22, *RT France v Council*.²³ This was the first ruling given by the Grand Chamber of the General Court of the EU²⁴ under the expedited procedure.

What is special in this case is the specific reference to the violation of the fundamental right of freedom of expression and information (Article 11 of the EU Charter).²⁵ In this regard, the General Court of the EU first warned “that the right to freedom of expression, which is invoked by the applicant and which is protected by Article 11 of the Charter, may be limited under the conditions of

²⁰ Case T-313/22 *Abramovich v Council* ECLI:EU:T:2023:830.

²¹ See Reuters, *Russia Today loses fight against EU ban, Moscow warns of retaliation*, 2022. [online] Available at: <<https://www.reuters.com/business/media-telecom/eu-court-backs-eu-ban-russia-today-2022-07-27/>>. Similarly see Euractiv, *EU court confirms ban on Russia Today*, 2022. [online] Available at: <<https://www.euractiv.com/section/media/news/eu-court-confirms-ban-on-russia-today/>>

²² See para. 2 of the judgment in the case T-125/22 *RT France v Council* ECLI:EU:T:2022:483.

²³ Case T-125/22 *RT France v Council* ECLI:EU:T:2022:483.

²⁴ The decisions of the General Court may, within two months, be subject to an appeal before the Court of Justice, limited to points of law.

²⁵ See e.g. FATHAIGH, R. O. and VOORHOOF, D. *Freedom of Expression and the EU's Ban on Russia Today: A Dangerous Rubicon Crossed*. *Communications Law*, 2022, vol. 27, no. 4, pp. 186-193.

Article 52(1) of the Charter, according to which it must be on the one hand, “[any] limitation of the exercise of rights and freedoms recognized by [the above-mentioned law, prescribed by law and to respect the essential content of these rights and freedoms]”, on the other hand, “[o]n consideration of the principle of proportionality, restrictions allowed, only if they are necessary and if they actually correspond to the goals of general interest recognized by the Union, or if they are necessary for the protection of the rights and freedoms of others.”²⁶ The General Court of the EU found that conditions set by Article 52 of the EU Charter are fulfilled, and therefore the Council’s decision is legal and justified.

The General Court of the EU decided that it must be considered that the Council, taking into account a wide discretion, could validly assess “that the restrictive measures in question, which refer to media houses under the control of the Russian Federation, which carry out propaganda activities in favour of its military invasion of Ukraine, can protect public order and the security of the Union and preserve the integrity of democratic debate in European society, peace and international security. a gradual and coordinated response introduced by the adoption of a series of restrictive measures, an appropriate measure to achieve the goal of putting as much pressure as possible on the Russian authorities to stop actions and policies that destabilize Ukraine and military aggression against that country”²⁷

Therefore, the General Court of the EU emphasises that interference with the right to broadcast programs that include support for an act of aggression is justified and proportionate. The same applies to restricting the public’s right to receive such programs.²⁸

The General Court of the EU decided that the “extreme urgency” of the circumstances meant that the Council did not violate RT’s right to be heard.²⁹ According to the General Court of the EU, the measures were considered proportionate. They did not violate RT France’s right to conduct a business (Article 16 of the EU Charter) since they are temporary and reversible.

The General Court dismissed RT France’s application for annulment of acts of the Council, concerning sanctions against Russia and adopted following the outbreak of the war in Ukraine, with which RT France was temporarily prohibited from broadcasting content. An appeal to the Court of Justice as the supreme

²⁶ See para. 144 of the judgment in the case T-125/22 RT France v Council ECLI:EU:T:2022:483.

²⁷ See paras. 116–117 of the judgment in the case T-125/22 RT France v Council ECLI:EU:T:2022:483.

²⁸ Para. 214 of the judgment in the case T-125/22 RT France v Council ECLI:EU:T:2022:483. See also Trstenjak, V. *Limitations of Fundamental Rights in EU Law: Are Human Rights Absolute?* European Review, Cambridge University Press, pp.1–15.

²⁹ Para. 198 of the judgment in the case T-125/22 RT France v Council ECLI:EU:T:2022:483.

(a kind of constitutional) court of the EU is possible against the judgments of the General Court of the EU. In September 2022, in case C-620/22 P³⁰, an appeal to the Court of Justice was filed on the grounds of violation of the existing rights to good governance (Article 41 of the EU Charter), as well as restrictions on freedom of expression (Article 11 of the EU Charter), restrictions on freedom to conduct a business (Article 16 of the EU Charter) and due to discrimination (21 Article of the EU Charter). The appeal case was removed from the court register in 2023 due to the withdrawal of the appeal by RT France.³¹

Banks with Russian Influence

Another interesting example of activities that are impacted by EU sanctions is the case of banks in the EU that are owned by Russia. In some countries (e.g., Austria, Slovenia, Croatia) an example of such a bank was Sberbank.

The EU (or Single Resolution Board – SRB³²) adopted various decisions regarding these banks within the framework of Sberbank Europe.³³ The SRB decided on 1 March 2022 to transfer all shares of the group’s Croatian subsidiary Sberbank d.d. to Hrvatska Poštanska Banka d.d. (Croatian Postbank) and all shares of the group’s Slovenian subsidiary Sberbank banka d.d. to Nova Ljubljanska banka d.d. (NLB d.d.).³⁴ The advantage was that the banks were open on Wednesday, 2 March, as normal with no disruption to depositors or clients.

The SRB has also decided that resolution is not necessary for the Austrian parent of Sberbank Europe AG. This decision means that for Austrian Sberbank the insolvency procedures will be carried out according to national law. The Austrian deposit guarantee system protects eligible deposits up to €100,000.³⁵

³⁰ Case C-620/22 P *RT France v Council*.

³¹ Ordonnance de President de la Cour, 28. 7. 2023, ECLI:EU:C:2023:615.

³² The Single Resolution Board (SRB) is the central resolution authority within the Banking Union (20 eurozone countries and Bulgaria). It works closely with the European Commission, the European Central Bank, the European Banking Authority and national authorities. The SRB’s mission is to ensure an orderly resolution of failing banks, protecting the taxpayer from state bail-outs, and thus promoting financial stability. See <https://www.srb.europa.eu/en/about>.

³³ Sberbank Europe is a universal banking group operating in eight different markets in Central and Eastern Europe (“CEE”) with Sberbank Europe AG (the parent institution) established in Austria and subsidiaries in Slovenia, Croatia, the Czech Republic, Hungary, Bosnia and Herzegovina and Serbia, as well as a branch in Germany. See https://www.srb.europa.eu/system/files/media/document/2022-06-10_SRB-Non-confidential-version-of-the-decision-in-respect-of-Sberbank-Europe-AG.pdf.

³⁴ See <https://www.srb.europa.eu/en/content/sberbank-europe-ag-croatian-and-slovenian-subsidaries-resume-operations-after-being-sold>. See the NLB d.d. press release, available at <https://www.nlb.si/sporocilo-za-javnost-1-3-2022>.

³⁵ See <https://www.srb.europa.eu/en/content/sberbank-europe-ag-croatian-and-slovenian-subsidaries-resume-operations-after-being-sold>.

It was the EU that gave the final approvals for these procedures. Therefore, actions against these decisions of the European authorities have been expected. Several actions have already been filed before the General Court of the EU. Examples are cases T-790/22, *Sberbank Europe versus ECB*,³⁶ and T-572/22, *Sberbank Europe versus SRB (Single resolution board)*,³⁷ due to the nullity of the resolutions authorizing the dissolution of Sberbank. Among other things, the appellants refer to the violation of fundamental rights, especially the right to property, which is enshrined in Article 17 of the EU Charter, the principle of effective legal protection under Article 47 of the EU Charter, and the right to good administration enshrined in Article 41 of the EU Charter. The General Court of the EU has not decided these cases yet.

5. The Problem of Sanctions According to Article 215 TFEU in the Case of Dual Citizenship: EU Citizenship and Citizenship of Third Countries

5.1. The Problem of Dual Citizenship

One of the biggest impediments to implementing sanctions based on Article 215 of the TFEU is dual citizenship, especially of Russian citizens. Some Russian nationals subjected to the sanctions also hold citizenship of one of the EU Member States. Although, in practice, the EU has dealt with the problems of the so-called dual citizenships in connection with Cyprus and Malta³⁸ due to the controversial citizenship by investment schemes, Russian citizens often have the citizenship of Lithuania³⁹ or some other EU country. For example, Abramovic is also a citizen of Portugal.

The problem with granting the citizenship of one of the EU Member States to a person is that it also means acquiring citizenship of the Union. Article 20 TFEU provides that “Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship

³⁶ Case T-790/22 *Sberbank Europe versus ECB*, pending.

³⁷ Case T-572/22 *Sberbank Europe versus SRB (Single resolution board)*, pending.

³⁸ See <https://ec.europa.eu/commission/presscorner/detail/en/IP_22_2068>.

³⁹ It is stated in the following article that in 2021 150 Russian citizens obtain Lithuanian citizenship: „Last year, Lithuanian citizenship was restored to some 150 Russian nationals. Currently, 12,000 people hold both Lithuanian and Russian passports. Two thirds of them have indicated that they live abroad.“ LRT, More Russians are applying for Lithuanian citizenship – should Vilnius be cautious?, 2022. [online] Available at: <<https://www.lrt.lt/en/news-in-english/19/1702112/more-russians-are-applying-for-lithuanian-citizenship-should-vilnius-be-cautious>>.

of the Union shall be additional to and not replace national citizenship.” In this regard, attention is drawn to the so-called problem of “golden passports”. In its opinion of April 2022, the European Commission warned Malta, “that the granting of EU citizenship in return for pre-determined payments or investments, without any genuine link to the Member State concerned, is in breach of EU law.”⁴⁰ The Commission specifically emphasizes that European values are not for sale. In this regard, it also brought an action before the Court of Justice in an infringement procedure against Malta in March 2023.⁴¹ The European Commission considers that such a scheme is in breach of the principle of sincere cooperation (Article 4(3) TEU). The Commission also emphasizes that it violates the very status of citizenship of the Union as laid down in Article 20 TFEU. The Court of Justice will decide in 2024. It will be interesting to follow further developments regarding actions against EU Member States regarding these citizenships.

At the same time, a discussion can also be held regarding the citizenships that the Member States grant to athletes, artists and other persons “deserving” of the country. In Austria, there was a public debate about the opera singer Ana Netrebko, who, as an artist, also holds Austrian citizenship, although, *inter alia*, she does not speak German.⁴²

5.2. Dual Citizenship and EU Sanctions

The question with dual citizens on the list of sanctions is whether it is possible to restrict the entry of a citizen of the Union into one’s own country.⁴³ Another issue is restrictions on the right to property or property sanctions (freezing bank accounts, seizure of property, ships, etc.).

The problem was also pointed out by the European External Action Service (EEAS), which published the following statement on its website: “EU sanctions create legal obligations for all EU operators, and in respect of any business conducted within the EU. Article 13 of the Regulation defines the scope of jurisdiction. Dual nationality does not release a person from EU sanctions.”⁴⁴

⁴⁰ Available at: <https://ec.europa.eu/commission/presscorner/detail/en/IP_22_2068>. See WEINGERL, P., TRATNIK, M. Citizenship by Investment Programs from the Perspective of International and EU Law. *LeXonomica*. 2019, vol. 11, no. 2., pp. 95–126.

⁴¹ Case C-181/23 *European Commission v Republic of Malta*, pending.

⁴² Available at: <https://www.wienerzeitung.at/nachrichten/english_news/63112_Citizenship-not-for-sale-Fekter-says.html>

⁴³ See: DELGADO, M. M. *Can EU citizens like Roman Abramovich be sanctioned?* [online]. Available at: <<https://euidas.eu.eu/2022/03/09/can-eu-citizens-like-roman-abramovich-be-sanctioned/>>

⁴⁴ EASE, FAQ n.136155. [online] Available at <<https://www.easa.europa.eu/en/faq/136155>>. The mentioned regulation is Council Regulation (EU) No 833/2014 of 31 July 2014 concerning

There was also a petition in the EU regarding the prohibition of dual citizenship for Russian citizens,⁴⁵ and it was discussed in several EU Member States.

5.3. The Case Law of the General Court of the EU

In case T-307/12, *Majaleh*, the General Court of the EU has already ruled on sanctions against persons with dual citizenship.⁴⁶ An appeal within two months to the Court of Justice is possible against the judgments of the General Court of the EU, but it has not been brought in this case. Thus, the judgment of the General Judge of the EU in case T-307/12, *Majaleh*, is final and binding.

In this case, the person held Syrian and French citizenship. The applicant, Mr. Adib Mayaleh, is a Syrian national and naturalised French citizen. At the time of the proceedings, he was the Governor of the Central Bank of Syria. At the time of his naturalisation, his name was Gallicised to André Mayard. This is the only name on his French passport.⁴⁷ In 2011, sanctions were imposed against Syria based on the Council's Decision 2011/273/CFSP concerning restrictive measures against Syria.⁴⁸ The applicant was added to the list of sanctions due to providing economic and financial support to the Syrian regime through his functions as the Governor of the Central Bank of Syria.⁴⁹

In the General Court of the EU's judgment, of particular importance is the decision regarding grounds of action in connection with the violation of fundamental rights. Regarding the breach of the right to property, the General Court of the EU decided on the principle of proportionality and held that "it must be concluded that the measures relating to the freezing of the applicant's funds, financial assets and other economic resources respect the principle of proportionality and are therefore compatible with his right to property."⁵⁰

Moreover, the General Court of the EU dealt extensively with restrictions on the entry of EU citizens into the territory of the EU because of EU sanctions. The issue of the right to enter into one's own country is particularly problematic due to the fact that the persons in question also have the citizenship of an EU

restrictive measures in view of Russia's actions destabilising the situation in Ukraine, OJ L 229, 31. 7. 2014, p. 1–11.

⁴⁵ See OpenPetition, To Prohibit holding both EU and Russian Federation citizenships, available at: <<https://www.openpetition.eu/petition/online/to-prohibit-holding-both-eu-and-russian-federation-citizenships>>.

⁴⁶ Case T-307/12 *Majaleh* ECLI:EU:T:2014:926.

⁴⁷ Para. 1 of the judgment in the case of T-307/12 *Majaleh* ECLI:EU:T:2014:926.

⁴⁸ Council Decision 2011/273/CFSP of 9 May 2011 concerning restrictive measures against Syria, OJ 2011 L 121, p. 11.

⁴⁹ See para. 10 of the judgment in the case of T-307/12 *Majaleh* ECLI:EU:T:2014:926.

⁵⁰ See para. 181 of the judgment in the case of T-307/12 *Majaleh* ECLI:EU:T:2014:926.

Member State, and thus the citizenship of the Union. Therefore, two questions arise: whether a Member State must or can prohibit its citizen from entering its own country (specifically, restrictions on entry to French territory). Another question is whether other Member States can restrict the movement of such a citizen of the Union who is already in the EU and has the citizenship of one of the EU countries (e.g. whether a person from France could travel to Germany).

The General Court of the EU answered both questions. To this end, it emphasised that in examining the arguments against the restrictions on access to the territories of the Member State, it is appropriate to distinguish the territory of the French Republic, of which the applicant is a national, on the one hand, and the territories of the other Member States on the other hand.⁵¹

5.3.1. Restriction on Access to National Territory

The restriction on access to national (in this case French) territory was explained in several points of the judgment. The General Court of the EU emphasised that the basic provision on the right to ban entry was contained already by the challenged acts of the Council.⁵² Article 18(2) of Decision 2011/782, Article 24(2) of Decision 2012/739 and Article 27(2) of Decision 2013/255 are particularly important (‘the provisions relating to nationals’) and read as follows: “Paragraph 1 shall not oblige a Member State to refuse its own nationals entry into its territory.”

That means that “that provision thus recognises that the Member States have exclusive competence as regards the application of the restrictions at issue to their own nationals. It follows that, in the case of a person who, like the applicant, in addition to having Syrian nationality, has French nationality, EU law does not require the French authorities to deny him access to the territory of the French Republic.”⁵³ Moreover, the General Court of the EU stressed that the Council, in its written answer, confirmed that it was for the Member States to

⁵¹ Para. 182 of the judgment in the case of T-307/12 *Majaleh* ECLI:EU:T:2014:926.

⁵² In Article 18(1) of Council Decision 2011/782/CFSP of 1 December 2011 concerning restrictive measures against Syria and repealing Decision 2011/273/CFSP, OJ L 319, 2. 12. 2011, p. 56–70, Article 24(1) of Council Decision 2012/739/CFSP of 29 November 2012 concerning restrictive measures against Syria and repealing Decision 2011/782/CFSP, OJ L 330, 30. 11. 2012, p. 21–51, and Article 27(1) of Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria, OJ L 147, 1. 6. 2013, p. 14–45 (‘the provisions on restrictions on entry’), the Council provided as follows:

‘Member States shall take the necessary measures to prevent the entry into, or transit through, their territories of the persons responsible for the violent repression against the civilian population in Syria, persons benefiting from or supporting the regime, and persons associated with them, as listed in Annex I.’

⁵³ Para. 186 of the judgment in the case of T-307/12 *Majaleh* ECLI:EU:T:2014:926.

apply the provisions relating to their nationals, and the Member States “were not even required to inform the Council that they were applying those provisions”.⁵⁴ Therefore, the cause of action of the applicant regarding the restriction on access to French territory is groundless, because “it must be held that his complaint relating to the alleged impossibility of travelling to France, where his family lives, is factually incorrect and must therefore be rejected.”⁵⁵

5.3.2. *Restriction of Freedom of Movement within the European Union*

Freedom of movement can also be a problem linked to EU sanctions against third-country subjects. Movement between Member States of the EU is a particularly salient issue, as EU law recognizes free movement of citizens of the Union. Thus, Article 21(1) TFEU stipulates that “Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.” This is reiterated with Article 45 of the EU Charter. Directive 2004/38 on the rights of Union citizens is also important regarding the movement of citizens of the Union.⁵⁶

The General Court of the EU invoked Article 27 of Directive 2004/38. The Court specifically emphasised that that Directive does not confer on citizens of the Union an unconditional right to freedom of movement in the EU, but allows the Member States to restrict that freedom on grounds, in particular, of public policy or public security, in accordance with the principle of proportionality,⁵⁷ and drew attention to the already existing case law of the CJEU.⁵⁸

Thus, the General Court of the EU therefore noted that the Council was in principle entitled to limit the right to freedom of movement within the EU which the applicant derives from his status as a citizen of the Union. Nevertheless, the General Court of the EU assessed whether this restriction is proportionate, “and concluded that the measures are proportionate, as they are appropriate, necessary and temporary in nature”.⁵⁹

⁵⁴ Para. 188 of the judgment in the case of T-307/12 *Majaleh* ECLI:EU:T:2014:926.

⁵⁵ Para. 189 of the judgment in the case of T-307/12 *Majaleh* ECLI:EU:T:2014:926.

⁵⁶ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77), OJ L 158, 30.4.2004, p. 77–123.

⁵⁷ See para. 199 of the judgment in the case of T-307/12 *Majaleh* ECLI:EU:T:2014:926.

⁵⁸ Case C33/07 *Jipa* ECLI:EU:C:2008:396, paras. 22 and 29.

⁵⁹ See especially paras. 196 and 197 of the judgment in the case of T-307/12 *Majaleh* ECLI:EU:T:2014:926.

It can be concluded that all the adopted measures of the Council have been found lawful in this case. The important decision regarding dual citizenship is that entry into one's own country cannot be restricted based on EU law. However, exceptions can apply to the movement of such a Union citizen within the EU.

6. Conclusion

The EU Treaties contain the legal basis for sanctioning third countries and their entities threatening peace, security, and EU values. These sanctions, or formally “restrictive measures”, can significantly contribute to ensuring peace, security, prevention of terrorism, etc. However, they will only have an effect if they are strictly respected by all the Member States and the EU. The current situation shows that due to economic interests and the need for gas in several EU countries, these sanctions are not fully effective for some sanctioned entities (e.g. gas payment). All this requires the EU to make broader changes in policies and practices also in other areas, not just the adoption of legal acts.

The EU Charter became legally binding in 2009. It obliges the EU and its Member States to respect fundamental rights as part of primary law of the EU. Therefore, the restriction of fundamental rights in cases of EU sanctions must be specifically justified, so that the EU itself is not on the list of those who violate the principles of the rule of law.

List of references

Articles and books:

DELGADO, M. M. *Can EU citizens like Roman Abramovich be sanctioned?* [online]. Available at: <<https://euideas.eui.eu/2022/03/09/can-eu-citizens-like-roman-abramovich-be-sanctioned/>>.

FATHAIGH, R. O. and VOORHOOF, D. Freedom of Expression and the EU's Ban on Russia Today: A Dangerous Rubicon Crossed. *Communications Law*. 2022, vol. 27, no. 4, pp. 186–193.

TRSTENJAK, V. Limitations of Fundamental Rights in EU Law: Are Human Rights Absolute? *European Review*. page 1 of 15, 2023, Cambridge University Press.

WEINGERL, P.; TRATNIK, M. Citizenship by Investment Programs from the Perspective of International and EU Law. *LeXonomica*. 2019, vol. 11, no. 2, pp. 95–126.

Court cases and other documents:

Case C33/07 *Jipa* ECLI:EU:C:2008:396.

Case C-181/23 *European Commission v Republic of Malta*, pending.

Case C-598/16 P *Yanukovych v Council* ECLI:EU:C:2017:786.

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

- Case C-833/19 P *Council v Hamas* ECLI:EU:C:2021:950.
- Case T-125/22 *RT France v Council* ECLI:EU:T:2022:483.
- Case T-234/22 *Ismailova v Council*, pending.
- Case T-238/22 *Narzieva v Council*, pending.
- Case T-258/19 *Foz v Council* ECLI:EU:T:2021:820.
- Case T-264/16, *Korea National Insurance Corporation v Council*, nyr.
- Case T-290/22 *Kesaev v Council*, pending.
- Case T-307/12 *Majaleh* ECLI:EU:T:2014:926.
- Case T-313/22 *Abramovich v Council* ECLI:EU:T:2023:830.
- Case T-359/22 *Zubitskiy/Council*, pending.
- Case T-363/22 *Akhmedov v Council*, pending.
- Case T-572/22 *Sberbank Europe versus SRB (Single resolution board)*, pending.
- Case T-790/22 *Sberbank Europe versus ECB*, pending.
- Council of the EU, Restrictive measures (Sanctions) – Update of the EU Best Practices for the effective implementation of restrictive measures, 2018. Available at: <<https://data.consilium.europa.eu/doc/document/ST-8519-2018-INIT/en/pdf>>.
- Council of the EU, Sanctions Guidelines – update, 2018, 5664/18. Available at: <<https://data.consilium.europa.eu/doc/document/ST-5664-2018-INIT/en/pdf>>
- Council Decision 2011/273/CFSP of 9 May 2011 concerning restrictive measures against Syria, OJ 2011 L 121, p. 11.
- Council Decision 2011/782/CFSP of 1 December 2011 concerning restrictive measures against Syria and repealing Decision 2011/273/CFSP, OJ L 319, 2.12.2011, p. 56–70.
- Council Decision 2012/739/CFSP of 29 November 2012 concerning restrictive measures against Syria and repealing Decision 2011/782/CFSP, OJ L 330, 30.11.2012, p. 21–51.
- Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria, OJ L 147, 1.6.2013, p. 14–45.
- Council Decision (CFSP) 2022/429 of 15 March 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, ST/7123/2022/INIT, OJ L 87I, 15.3.2022, p. 44–55.
- Council Implementing Regulation (EU) 2022/427 of 15 March 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, ST/7125/2022/INIT, OJ L 87I, 15.3.2022, p. 1–12.
- Council Implementing Regulation (EU) 2022/581 of 8 April 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, ST/7878/2022/INIT, OJ L 110, 8.4.2022, p. 3–54.
- Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, OJ L 229, 31.7.2014, p. 1–11.
- Council Regulation (EU) 2022/428 of 15 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, ST/7130/2022/INIT, OJ L 87I, 15.3.2022, p. 13–43.

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, OJ L 224, 31.8.2017, p. 1–109.

Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77), OJ L 158, 30.4.2004, p. 77–123.

EASE, FAQ n.136155, available at <<https://www.easa.europa.eu/en/faq/136155>>.

Joined Cases T-533/15 and T-264/16 *Il-Su Kim and Korea National Insurance Corporation v Council* ECLI:EU:T:2018:138.

Ordonnance de President de la Cour, 28.7.2023, ECLI:EU:C:2023:615.