

JUDICIAL REVIEW OF EU SANCTIONS AGAINST NATURAL AND LEGAL PERSONS: THE CJEU'S ROLE IN BALANCING THE COUNCIL'S DISCRETION IN THE CFSP AND THE PROTECTION OF THE RIGHTS OF INDIVIDUALS

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Abstract: *This article analyses how the CJEU reviews EU sanctions targeted at individuals, adopted within the frame of the EU's Common Foreign and Security Policy. It frames a core tension: preserving the Council's wide policy discretion while safeguarding the targeted persons' fundamental rights. For general criteria defining categories of persons targeted, the Court applies a conservative standard that the measures must not be "manifestly inappropriate or disproportionate." For listings of specific individuals, on the other hand, it requires a "sufficiently solid factual basis" to be established and places the burden of proof on the Council. The article surveys how these standards are applied in the Court's case-law and whether they constitute an adequate method of review. Moreover, the article analyses the Court's scrutiny of procedural safeguards in the process of the adoption of sanctions, focusing on the right to be heard and the duty to state reasons.*

Keywords: *restrictive measures, sanctions, European Union, Common Foreign and Security Policy, Court of Justice of the European Union, fundamental rights*

INTRODUCTION

Restrictive measures, more simply known as sanctions, are a tool of the EU's policy used to achieve the objectives of preserving peace and international security, preventing terrorism, fighting against nuclear proliferation, as well as supporting democracy, the rule of law, and human rights.¹ The EU does not only engage broad economic sanctions targeting third countries, but makes use of "smart sanctions" aimed at specific individuals.² Such restrictions may comprise asset freezes, travel bans, trade restrictions or other limitations placed on certain businesses. Following the commencement of Russia's aggression against Ukraine in February 2022, the topic of restrictive measures has found itself at the centre of extensive academic debate. The EU has adopted the most widespread sanctions regime in its history.³ As of September 2025, eighteen packages of sanctions have been adopted against Russia, with over 2500 persons targeted.⁴ Hundreds of individuals have been sanctioned also with respect to the involvement of Belarus

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¹ WOUTERS, Jan et al. EU Sanctions. In: WOUTERS, Jan et al. *The Law of EU External Relations*. Oxford: Oxford University Press, 2021, p. 177; WIMMER, Michael. Inward and Outward-Looking Rationales behind Kadi II. *Maastricht Journal of European and Comparative Law*. 2014, Vol. 21, No. 4, p. 677.

² For the sake of simplicity, I will use the term "individuals" with reference to natural and legal persons, as well as groups and other non-state entities.

³ 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*. 2023, pp. 2-3.

⁴ Available at: <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/#individual> [2025-09-14].

in Russia's aggression.⁵ Apart from the measures linked to the Ukraine war, more than 50 other EU sanctions regimes are currently in place.⁶

The effect of targeted sanctions on the rights of individuals comes with the inevitable consequence of abundant litigation before the Court of Justice of the EU (the "Court"), which has been served with an unprecedented number of applications challenging the restrictive measures imposed. Consequently, the Court once again finds itself navigating the comprehensive issues that arise with respect to their judicial review.

Restrictive measures may be adopted as part of the EU's Common Foreign and Security Policy ("CFSP"), as well as part of action within the Area of Freedom, Security and Justice, the provisions of which provide for a specific legal basis for counterterrorism measures.⁷ This article will focus on CFSP sanctions, which are governed by two keys set of rules contained in the Treaties: Article 29 TEU⁸ and Article 215 TFEU.⁹ The process of adoption of sanctions usually comprises two steps. First, the Council adopts a CFSP decision based on Article 29 TEU. This step is part of the EU's external action and consists of the Member States defining their position to a particular matter falling within the scope of the CFSP, including possible economic and financial sanctions.¹⁰ Where the CFSP decision so provides, as it often does, it is then followed by a Council regulation issued under Article 215 TFEU, which serves as a means to unanimously implement the CFSP decision in the Member States. These regulations most often contain an annex with a list of namely identified individuals targeted by the sanctions.¹¹

The CFSP is distinct from other areas of EU policy by its largely political nature and traditionally limited competences of the Court within its realms. Thus, when reviewing targeted sanctions, the Court is faced with a unique challenge. On one hand, it must respect the EU's policy choices and the constitutional restraints placed on judicial powers over them,¹² and on the other, it must ensure that sufficient protection is provided to the fundamental rights of the persons targeted. This article aims to identifying the

⁵ Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, OJ L 78, 17. 3. 2014, pp. 16–21; Council Regulation (EU) 2022/398 of 9 March 2022 amending Regulation (EC) No 765/2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine, OJ L 82, 9. 3. 2022, pp. 1–8.

⁶ For a comprehensive overview of the current sanctions regimes, see the European Commission Sanctions Map. In: *EU Sanctions Map* [online]. [2025-09-14]. Available at: <https://sanctionsmap.eu/#/main>

⁷ See Article 75 TFEU. However, in this respect, the Court has confirmed that despite a specific legal basis contained in Article 75 TFEU, counterterrorism sanctions may be adopted on the basis of Article 29 TEU and Article 215 TFEU. See C-130/10 *Parliament v Council*, Judgment of 19 July 2012, ECLI:EU:C:2012:472, particularly paras. 55–78.

⁸ Treaty on the European Union.

⁹ Treaty on the Functioning of the European Union.

¹⁰ ECKHOUT, Piet. *EU External Relations Law*. Oxford: Oxford University Press, 2011, p. 494; WOUTERS, Jan et al. *EU Sanctions*. In: WOUTERS, Jan et al. *The Law of EU External Relations*, p. 178.

¹¹ ECKES, Christina. EU restrictive measures against natural and legal persons: from counterterrorist to third country sanctions. *Common Market Law Review*. 2014, Vol. 51, No. 3, p. 880. Article 215 TFEU reads: "Where a [CFSP] decision so provides, the Council may adopt restrictive measures under the procedure referred to in paragraph 1 against natural or legal persons and groups or non-State entities."

¹² The Court's limited powers of review within the CFSP are illustrated by Article 40 TEU, which limits the Court's jurisdiction only to monitoring compliance with Article 40 TEU and reviewing the legality of restrictive measures against natural and legal persons, as provided by Article 275 TFEU.

Court's approach to balancing these considerations by looking at its decision-making practice from two viewpoints. First, by analysing the standard applied by the Court to the review of the substantive legality of restrictive measures imposed onto individuals. And second, by assessing the way the Court checks that the individuals' procedural rights were safeguarded in the adoption of those measures.

I. REVIEW OF THE SUBSTANTIVE LEGALITY OF RESTRICTIVE MEASURES: HOW FAR CAN THE COURT GO?

I have highlighted the particular nature that restrictive have measures due to being part of the CFSP, a policy area endowed with a significant political charge. This political character of restrictive measures, aimed at maintaining international peace and security, differentiates CFSP measures from standard EU acts. The question thus arises how to balance the accountability of EU policy makers and their ability to efficiently achieve their policy goals.¹³ With that follows the issue of what, within the described jurisdictional constraints already imposed,¹⁴ should be the subject of the Court's scrutiny of restrictive measures. In other words, what precisely are the factors which the Court can consider when reviewing the legality of restrictive measures imposed onto individuals? How to strike a balance between protecting the rights of the targeted individuals and preserving the Council's discretion in designing the CFSP? I will attempt to clarify the standards which the Court applies when reviewing restrictive measures against natural and legal persons.

As a starting point, I will use the Council's submission in the case of *Alchaar v Council*.¹⁵ The Council put forward the consideration that, since it has broad discretion as to the appropriateness of the restrictive measures adopted, the Court's review should be limited to a "simple review of legality" and should not substitute the Council's assessment of evidence, facts and circumstances justifying the adoption of the measures.¹⁶ As will be illustrated below, this limited review suggested by the Council has, to some extent, found its place in the Court's decision-making practice. However, in terms of the intensity of reviewing the exercise of the Council's discretion, it is necessary to distinguish between two subjects of review.¹⁷ First, the general listing criteria, meaning the generally and abstractly defined categories of persons to whom the restrictive measures shall be applicable, and within which the later specified individuals must fall. And second, individual listing grounds, meaning the reasons for listing a concrete individual in the annex to a CFSP Decision or Article 215 TFEU regulation.¹⁸

¹³ CHACHKOT, Elena. Foreign Affairs in Court: Lessons from CJEU Targeted Sanctions Jurisprudence. *Yale Journal of International Law*. 2019, Vol. 44, No. 1, p. 6.

¹⁴ See footnote 12.

¹⁵ T-203/12 *Alchaar v Council*, Judgment of 3 July 2014, EU:T:2014:602.

¹⁶ *Ibid.*, para. 81.

¹⁷ T-578/12 *National Iranian Oil Company v Council*, Judgment of 16 July 2014, EU:T:2014:678, para. 108.

¹⁸ FILPO, Fabio. Evidence standards in the judicial review of restrictive measures. *ERA Forum*. 2020, Vol. 20, No. 4, p. 622.

1.1 General listing criteria: the “manifestly disproportionate” standard

General listing criteria consist of the identification of a group of persons, defined in an abstract manner, which are to be targeted by the restrictive measures adopted. In the case of regime sanctions¹⁹ adopted against Russia, for example, such a category has been defined as “*natural persons responsible for actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine, and natural or legal persons, entities or bodies associated with them*”²⁰ With respect to counter-terrorism sanctions,²¹ the determined categories have included “*natural or legal persons, groups or entities committing, or attempting to commit, participating in or facilitating the commission of any act of terrorism*”, as well as entities owned or controlled by those persons and natural or legal persons, groups or entities acting on behalf of or at the direction of those persons.²²

It has been established by the Court that the Council enjoys broad discretion in defining these general criteria.²³ Such discretion is granted with the reasoning that defining them involves political, economic and social choices on the Council’s part, in which it must undertake complex assessments.²⁴ In other words, by establishing general listing criteria, the Council implements the CFSP objectives laid down in Article 21 TFEU, and as such, its appreciations are considered policy choices that involve a broad margin of appreciation on its part.²⁵

For these reasons, the legality of the general listing criteria can be affected only if the measure is “*manifestly inappropriate or disproportionate*” to the objective which the Council is seeking to pursue by the adoption of the restrictive measures in question.²⁶ For example, in the context of regime sanctions, the Court has even held in *Sharif v Council* that it is within the Council’s discretion to make presumptions that certain categories of persons contribute to the functioning of the sanctioned third-country regime, drawing certain conclusions on the basis of “*common experience derived from the normal course of events*”.²⁷ Such presumptions, even if they are difficult to rebut, remain within the ac-

¹⁹ The sanctions to which I shall refer as “regime sanctions” have as their primary aim to target the governing regime of a third country. In the context of measures against individuals, this entails the aforementioned smart sanctions which seek to weaken a third-country regime by targeting certain individuals closely connected to it.

²⁰ Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, OJ L 78, 17. 3. 2014, pp. 16–21, Article 2(1).

²¹ In the case of counterterrorism measures, the primary targets are the specified individuals themselves or specific terrorist organisations. The measures are directed at persons personally involved in or otherwise connected to terrorist acts.

²² Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism OJ L 344, 28. 12. 2001, pp. 70–75, Article 2(3).

²³ C-605/13 P *Anbouba v Council*, Judgment of 21 April 2015, EU:C:2015:248, para. 41 and the case-law cited.

²⁴ C-348/12 P *Council v Manufacturing Support & Procurement Kala Naft*, Judgment of 28 November 2013, EU:C:2013:776, para. 120 and the case-law cited.

²⁵ FILPO, Fabio. *Evidence standards in the judicial review of restrictive measures*, p. 626; HARPAZ, Guy. Common Foreign and Security Policy, counter-terrorism measures and judicial review: Hamas and LTTE. *Common Market Law Review*. 2018, Vol. 55, No. 6, p. 1933.

²⁶ C-348/12 *Council v Manufacturing Support & Procurement Kala Naft*, Judgment of 28 November 2013, EU:C:2013:776, para. 120 and the case-law cited; T-578/12 *National Iranian Oil Company v Council*, Judgment of 16 July 2014, EU:T:2014:678, para. 108.

²⁷ T-5/17 *Sharif v Council*, Judgment of 4 April 2019, EU:T:2019:216, para. 91.

ceptable limits as long as they are not manifestly disproportionate to the legitimate aims pursued.²⁸ In *Sharif v Council*, the Court considered that a listing criterion defined as “*leading businesspersons operating in Syria*” was proportionate to the objective of the restrictive measures, that being to condemn and end the violent repression pursued by the Bashar Al-Assad regime against the civilian population in Syria. The reasoning was that persons falling within that category provide essential material and financial support to the Syrian regime.²⁹ Consequently, it was up to the applicant to demonstrate that the presumption could not be applied to him.³⁰ This imposition of the burden of proof differs significantly from the case of individual listing grounds, where the burden of proof rests with the Council, which must provide sufficient reasons for the listing of the applicant, and it cannot be asked of the applicant to adduce evidence of the unreasonableness of the listing.³¹

It follows that the Court’s limited judicial review does not apply to checking whether the facts which form the basis of the Council’s assessment are correct,³² but rather whether that assessment is not vitiated by manifest errors causing the general listing criteria to be significantly disproportionate to the objective pursued. While the Court’s respect for the Council’s policy choices is justified on the basis of the principle of separation of powers,³³ the difference between the standard of judicial review of general listing criteria and individual listing grounds may lead to circumvention by the Council of its obligation to sufficiently reason the listing of a specific individual.

This concern can be illustrated on the aforementioned case of *Sharif v Council*, which concerned the Syrian sanctions regime. The listing criteria originally only provided for the sanctioning of persons “*responsible for the violent repression against the civilian population in Syria, persons and entities benefiting from or supporting the regime, and persons and entities associated with them*”.³⁴ Therefore, if the Council wanted to sanction leading businesspersons operating in Syria under this regime, it had to provide sufficient evidence in each individual case that the businessperson in question was a person benefiting from or supporting the regime, or one associated with such a person. However, the Council then amended the decision in question so as to specifically include the category of “*leading businesspersons*” in the general listing criteria,³⁵ thus “moving up” the reason for listing the individual into a sphere where less intense judicial review is applied.³⁶ Thus, by broadening the scope of the category of persons provided for in the general

²⁸ *Ibid.*, paras. 91 and 100.

²⁹ *Ibid.*, paras. 97–98.

³⁰ *Ibid.*, para. 108.

³¹ C-584/10 P, C-593/10 P and C-595/10 P *Commission and others v Kadi*, Judgment of 18 July 2013, EU:C:2013:518, paras. 121–122.

³² FILPO, Fabio. *Evidence standards in the judicial review of restrictive measures*, p. 626.

³³ *Ibid.*

³⁴ Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria, OJ L 147, 1.6.2013, pp. 14–45, Article 28(1).

³⁵ Council Decision (CFSP) 2015/1836 of 12 October 2015 amending Decision 2013/255/CFSP concerning restrictive measures against Syria, OJ L 266, 13. 10. 2015, pp. 75–82, recital 6 and Article 27(2)(a).

³⁶ CREMONA, Marise. “Effective Judicial Review Is of the Essence of the Rule of Law”: Challenging Common Foreign and Security Policy Measures Before the Court of Justice. *European Papers – A Journal on Law and Integration*. 2017, Vol. 2017, No. 2, p. 622.

listing criteria, the Council can avoid this stricter review pertaining to individual listing grounds, the scope of which I will now elaborate on.

1.2. Individual listing grounds: the “sufficiently solid factual basis” standard

Individual listing grounds consist of the reasons on which the EU authorities base its conclusion that a specific individual falls within the scope of the general listing criteria. With respect to these grounds, the Court still conducts limited review, albeit much stricter than in the case of general listing criteria.

The Court has established that it is the task of the EU courts to determine whether the situation of the person or entity listed in an annex to a restrictive measure corresponds to the abstract listing criteria defined by the Council.³⁷ In other words, the Court must ensure that the legal conditions for applying the decision or regulation prescribing restrictive measures are fulfilled.³⁸ Still, the Court has acknowledged that a “restricted” or “limited” review is to be carried out with regard to the exercise of the Council’s discretion in determining the list of sanctioned persons.³⁹ This limited review applies especially to the Council’s assessment of the considerations of appropriateness of imposing the measure in question.⁴⁰

However, unlike in the case of general listing criteria, the Council’s discretion does not prevent the Court from determining whether the facts on which the Council has relied are true and accurate.⁴¹ Thus, as highlighted in the case of *Bank Melli Iran*,⁴² the Court’s powers of review extend to the assessment of the facts and circumstances relied on as justifying the listing of the person concerned, as well as to the verification of the evidence and information on which that assessment is based. The standard which the Court applies in this regard is the following: to ensure the right to effective judicial protection, the decision which affects the listed individual must be taken on a “sufficiently solid factual basis”.⁴³

As held in *Kadi II*⁴⁴ and reaffirmed by a body of later case-law,⁴⁵ the concept of “sufficiently solid factual basis” entails the verification whether the reasons provided for the listing of an individual are substantiated by a sufficiently concrete, precise and consis-

³⁷ T390/08 *Bank Melli Iran v Council*, Judgment of 14 October 2009, EU:T:2009:401, para. 37; see also T190/12 *Tomana v Council*, Judgment of 22 April 2015, EU:T:2015:222, para. 222.

³⁸ T-228/02 *OMPI v Council*, Judgment 12 December 2006, EU:T:2006:384, para. 154.

³⁹ T-400/10 *Hamas v Council*, Judgment of 17 December 2014, EU:T:2014:1095, para. 132; T-208/11 *LTTE*, Judgment of 16 October 2014, EU:T:2014:885, para. 220.

⁴⁰ T190/12 *Tomana v Council*, Judgment of 22 April 2015, EU:T:2015:222, paras. 216–217; T390/08 *Bank Melli Iran v Council*, Judgment of 14 October 2009, EU:T:2009:401, para. 36.

⁴¹ T190/12 *Tomana v Council*, Judgment of 22 April 2015, EU:T:2015:222, para. 218.

⁴² T390/08 *Bank Melli Iran v Council*, Judgment of 14 October 2009, EU:T:2009:401.

⁴³ *Ibid.*, para. 218; C280/12 P *Council v Fulmen and Mahmoudian*, Judgment of 28 November 2013, EU:C:2013:775, para. 64 and the case-law cited.

⁴⁴ C-584/10 P *Commission and Others v Kadi*, Judgment of 18 July 2013, EU:C:2013:518, para. 119.

⁴⁵ See, *inter alia*, T-331/14 *Azarov v Council*, Judgment of 28 January 2016, EU:T:2016:49, para. 43; C-176/13 P *Council v Bank Mellat*, Judgment of 18 February 2016, EU:C:2016:96, para. 109; C280/12 P *Council v Fulmen and Mahmoudian*, Judgment of 28 November 2013, EU:C:2013:775, para. 64; T190/12 *Tomana v Council*, Judgment of 22 April 2015, EU:T:2015:222, para. 218.

tent body of evidence.⁴⁶ According to the Court, at the very least, one of those reasons must be sufficiently detailed and specific so that it in itself constitutes a sufficient basis to support the decision.⁴⁷ In the specific context of sanctions implementing United Nations decisions,⁴⁸ this entails a verification of the factual allegations in the summary of reasons underpinning the UN-level listing provided by the UN Sanctions Committee.⁴⁹ In that regard, the Court has held that the Council must assess whether it needs to seek assistance from the UN Security Council to obtain the disclosure of information or evidence, or whether it can verify those reasons on the basis of information already available to it.⁵⁰

The burden of proof in that regard lies with the Council, who must, in the event that the listing is challenged, adduce evidence to support that the reasons relied on against the person concerned are well founded.⁵¹ While it is not necessary for it to produce before the Court *all* the information and evidence underlying the reasons for the listing,⁵² it is necessary for the information or evidence that has been provided to *support* the reasons relied on.⁵³ Conversely, if the EU authorities do not provide evidence which might substantiate the listing, the Court will annul the restrictive measures in so far as it concerns the individual concerned.⁵⁴ A recent example can be found in the case of *Belshyna v Council*,⁵⁵ where the Council listed the applicant claiming that it fell under the general listing criterion of “persons responsible for the repression of civil society in Belarus” because it had dismissed employees who demonstrated and went on strike following the 2020 presidential elections.⁵⁶ The Council, however, based its assessment solely on two online articles reporting on this event and did not provide any further evidence corroborating the content of those articles. Consequently, the Court annulled the restrictive measures in so far as they concerned the applicant.⁵⁷

Turning to the issue what exactly are these “reasons” which the Council must prove, this entails, in particular, proving that there is a sufficient link between the entity subject

⁴⁶ T617/18 *Kanyama v Council*, Judgment of 12 February 2020, EU:T:2020:49, para. 93 and the case-law cited.

⁴⁷ C-584/10 P, C-593/10 P and C-595/10 P *Commission and Others v Kadi*, Judgment of 18 July 2013, EU:C:2013:518, para. 130.

⁴⁸ Where the United Nations Security Council adopts restrictive measures pursuant to Chapter VII of the UN Charter, the Council may consider that EU action is necessary to implement that resolution and adopt a CFSP decision which provides for those measures at an EU level. See, for example, Council Common Position 1999/727/CFSP of 15 November 1999 concerning restrictive measures against the Taliban, OJ L 294, 16. 11. 1999, p. 1, preamble.

⁴⁹ *Ibid.*, para. 119.

⁵⁰ T-107/15 and T-347/15 *Uganda Commercial Impex v Council*, Judgment of 18 September 2017, EU:T:2017:628, para. 53.

⁵¹ *Ibid.*, para. 124.

⁵² For more information of obtaining evidence by the Council, see, for example, FILPO, Fabio. *Evidence standards in the judicial review of restrictive measures*, pp. 615–635.

⁵³ C280/12 P *Council v Fulmen and Mahmoudian*, Judgment of 28 November 2013, EU:C:2013:775, paras. 65–67; T190/12 *Tomana v Council*, Judgment of 22 April 2015, EU:T:2015:222, para. 219.

⁵⁴ C-584/10 P, C-593/10 P and C-595/10 P *Commission and Others v Kadi*, Judgment of 18 July 2013, EU:C:2013:518, para. 153.

⁵⁵ T115/22 *Belshyna v Council*, Judgment of 20 March 2024, EU:T:2024:187.

⁵⁶ *Ibid.*, paras. 65–66.

⁵⁷ *Ibid.*, paras. 73–82.

to a restrictive measure and the situation being combated by that measure.⁵⁸ Drawing on the examples used in the previous section of this article, in the case of the counter-terrorism sanctions regime, the Council will have to substantiate that the listed individual is a person “committing, or attempting to commit, participating in or facilitating the commission of any act of terrorism” or “acting on behalf of or at the direction of those persons”.⁵⁹ In *Kadi II*, for example, the sanctions regime in question was directed specifically at persons associated with Usama bin Laden and the Al-Qaeda network.⁶⁰ The Court examined whether the Council had presented sufficiently detailed and specific reasoning and evidence as to why *Kadi* should fall within that category, ultimately holding that it had failed to prove the existence of a link of his activities with the terrorist activities of the Al-Qaeda network.⁶¹

In the case of regime sanctions, using the above example of the Russia sanctions regime, this means proving that the listed person is a “person responsible for actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine”, or at least one associated with such persons.⁶² Advocate General Mengozzi identified essentially three categories of persons to whom regime sanctions are addressed.⁶³ The first category comprises the rulers of the sanctioned regime, the inclusion of which has not given rise to debate, as they are undoubtedly linked to the sanctioned regime. The second category comprises persons associated with those rulers, which may include family members, but also persons who benefit from the economic policies of the regime in question. In this respect, the Court has acknowledged the existence of a sufficient link with the governing regime for example in the cases of individuals holding senior posts in the military, police or security operations,⁶⁴ or even leading businessmen in the country concerned.⁶⁵ The third category then includes the family members of such persons who benefit from the regime’s economic policies.⁶⁶

With respect to the family members included in the second and third categories, the Court has consistently held that the sole existence of a family connection with persons associated with the leaders of the country, irrespective of the personal conduct of the specific person, cannot on its own establish a link with the regime.⁶⁷ In the context of the 2022 sanctions adopted against Russia, the Court clarified that in order to fall with-

⁵⁸ C-330/15 P *Tomana and Others v Council and Commission*, Judgment of 28 July 2016, EU:C:2016:601, para. 46; C-376/10 P *Tay Za v Council*, Judgment of 13 March 2012, EU:C:2012:138, paras. 63-54.

⁵⁹ Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism OJ L 344, 28. 12. 2001, pp. 70-75, Article 2(3).

⁶⁰ C-584/10 P, C-593/10 P and C-595/10 P *Commission and Others v Kadi*, Judgment of 18 July 2013, EU:C:2013:518.

⁶¹ *Ibid.*, paras. 151-153.

⁶² Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, OJ L 78, 17. 3. 2014, pp. 16-21, Article 2(1).

⁶³ C-376/10 P *Tay Za v Council*, Opinion of Advocate General Mengozzi of 29 November 2011, EU:C:2011:786, point. 40.

⁶⁴ C-330/15 P *Tomana and Others v Council and Commission*, Judgment of 28 July 2016, EU:C:2016:601, para. 84.

⁶⁵ C-376/10 P *Tay Za v Council*, Judgment of 13 March 2012, EU:C:2012:138, paras. 55, 61-62, 70.

⁶⁶ C-376/10 P *Tay Za v Council*, Opinion of Advocate General Mengozzi of 29 November 2011, EU:C:2011:786, point. 40.

⁶⁷ C-376/10 P *Tay Za v Council*, Judgment of 13 March 2012, EU:C:2012:138, para. 66; T190/12 *Tomana v Council*, Judgment of 22 April 2015, EU:T:2015:222, para. 127.

in scope of “associated persons”, there must exist a link which goes beyond a family relationship and which comprises of the existence, at the time of the adoption of the restrictive measures, of common interests, economic or other.⁶⁸ For these reasons, the Court has annulled the listing of Formula 1 driver Nikita Mazepin due to the failure of the Council to discharge its burden of proof regarding the existence of common interests going beyond a family link between Mazepin and his father.⁶⁹ By contrast, in the case of the sister of Syrian leader Bashar Al-Assad, this family link was found to be adequately strong to justify the presumption that she profited from the Syrian regime.⁷⁰

As for the category of leading businesspersons, while the Court did acknowledge in *Tay Za v Council* that persons in charge of certain businesses in a given country may, in principle, be subject to restrictive measures as persons associated with the leaders of that country, the Council may do so only in reliance on precise and concrete evidence which enables it to establish that those businessmen benefit from the economic policies of the regime.⁷¹ For example, the Court has ruled that where the applicant was a leading businessman involved in the oil and gas industry sectors which represent a substantial source of revenue for the Russian government, it was justified to conclude that he was linked to the Russian regime by virtue of common interests.⁷² In another case, the fact that the businessman benefited from the privatisation carried out by the Lukashenko regime in Belarus, as well as that he used to sit on the board of a public body advising on Belarusian business legislation, was deemed as sufficiently precise and concrete evidence of the applicant benefited from that regime.⁷³

It thus follows that, when it comes to deciding who may be subject to restrictive measures, the Council may not simply rely on presumptions that a certain person contributes to the situation which the measures aim to combat but must present sufficiently concrete and precise reasons and evidence as to why it has reached that conclusion. It is true, as noted by Chachkot,⁷⁴ that the Court’s judicial review of the substantive legality is still significantly limited and grants due deference to the Council’s policy choices, especially regarding the appropriateness of the listings. Still, the judicial scrutiny of the reasons presented for the listing of a specific individual is capable of at least excluding cases of arbitrary listings of persons who are not, or only very distantly, linked with the targeted regime or terrorist organization.

In summary, it follows that although the Court applies limited review of the substance of the restrictive measures, these limits are placed much lower with respect to the reasons for listing a specific individual. Despite the Council’s discretion regarding the appropriateness of that listing, EU courts are entitled to verify whether the Council’s decision was based on a sufficiently solid factual basis. For that reason, the Council bears the burden

⁶⁸ T212/22 *Prigozhina v Council*, Judgment of 8 March 2023, EU:T:2023:104, paras. 92-93 and the case-law cited; T743/22 *Mazepin v Council*, Judgment of 20 March 2024, EU:T:2024:180, para. 74.

⁶⁹ T-743/22 *Mazepin v Council*, Judgment of 20 March 2024, EU:T:2024:180, para. 155.

⁷⁰ T-202/12 *Bouchra Al Assad v Council*, Judgment of 12 March 2014, EU:T:2014:113, paras. 96-97.

⁷¹ C-376/10 P *Tay Za v Council*, Judgment of 13 March 2012, EU:C:2012:138, paras. 55, 61-62 and 70.

⁷² T-270/22 *Pumpyanskiy v Council*, Judgment of 6 September 2023, EU:T:2023:490, paras. 44-69.

⁷³ T141/21 *Shakutin v Council*, Judgment of 7 June 2023, ECLI:EU:T:2023:303, paras. 148-166.

⁷⁴ CHACHKOT, Elena. *Foreign Affairs in Court: Lessons from CJEU Targeted Sanctions Jurisprudence*, p. 14.

of proof regarding the reasons determining that a specific individual should be included in the annex to a restrictive measure. That burden is discharged if at least one of those reasons is deemed sufficient enough to support the Council's decision. However, if the burden is not satisfied, the Court will annul the measure. By contrast, when it comes to defining the general listing criteria, the Court shows much more restraint, limiting itself to assessing whether the criteria defined by the Council are not manifestly disproportionate. This is problematic particularly in that it provides the possibility for the Council to "move up" a criterion from being an individual listing ground by simply including it directly in the definition of the category of targeted persons, thus circumventing stricter review. In other words, the Council may avoid needing to prove that each individual "leading businessperson" indeed supports or profits from the governing regime by including this general category in the general listing grounds.

II. ENSURING PROCEDURAL RIGHTS IN THE ADOPTION OF RESTRICTIVE MEASURES: THE COURT'S MOST POWERFUL TOOL?

*"As is clear from Article 6 EU, the Union is founded on the principle of the rule of law and it respects fundamental rights as general principles of Community law. It follows that the institutions are subject to review of the conformity of their acts with the treaties and the general principles of law, just like the Member States when they implement the law of the Union."*⁷⁵ This quote can be found in the judgement of the Court's Grand Chamber in the case of *Segi*, issued in the pre-Lisbon days when the Charter was not yet a part of the EU legal order. Even more significantly, it was rendered in the context of restrictive measures adopted under the second and third pillar, where the Court had very limited jurisdiction, even more so than today.⁷⁶ It follows that there was never any doubt that fundamental rights form a frame of reference for the review of restrictive measures adopted by the EU. This is readily apparent from the appellate judgement in *Kadi*, where the Court put great emphasis on the necessity of safeguarding fundamental rights even in the context of sanctions implementing UN decisions and placed those rights at top of the hierarchy of Community values.⁷⁷ This emphasis has grown even stronger with the adoption of the Charter, which transferred what previously formed general principles of EU law into primary law. As its Article 51 states that the Charter's provisions are applicable to EU institutions without ruling out certain areas of activities, it follows that the institutions must

⁷⁵ C-355/04 P *Segi and Others v Council*, Judgment of 27 February 2007, EU:C:2007:116, para. 51.

⁷⁶ KOUTRAKOS, Panos. Judicial Review in the EU's Common Foreign and Security Policy. *International and Comparative Law Quarterly*. 2018, Vol. 67, No. 1, p. 28.

⁷⁷ C-402/05 P and C-415/05 P *Kadi and Al Barakaat*. In short, the Court held that obligations flowing from an international agreement cannot prejudice the constitutional principles of the EC Treaty, including the requirement of observance of fundamental rights by Community acts and the review of the compliance with such requirement by the Court. On that basis, it ruled that although EU courts cannot review the lawfulness of the United Nations decisions providing for sanctions, they are fully entitled (within the scope of the powers conferred on them by the Treaties) to review Community acts intended to give effect to those resolutions on a Community level, without that review entailing any challenge to the primacy of that resolution in international law.

respect the Charter even when acting in the specific area of the CFSP.⁷⁸ This conclusion has also been confirmed by the Court, which recalled respect for fundamental rights is required in all actions of the EU, including those within the CFSP.⁷⁹

I have explained above how the Court takes a conservative approach in its review of the substantive validity of restrictive measures. As observed by Lenaerts, such instances of the Court's judicial deference in relation to substantive choices are counterbalanced by a strict process review.⁸⁰ This is certainly the case with jurisprudence in the field of restrictive measures, where the Court puts great emphasis on the observance of procedural rights of the listed persons within the process of adoption. In particular, the Court is known to intensely scrutinize the observation of the rights to defence, specifically the right to be heard, and the right to a statement of reasons.

II.1. The right to be heard

In the context of administrative procedures, Article 41(2) of the Charter provides for the right to good administration, which consists of three fundamental guarantees: the right to be heard, the right of every person to have access to their file, and the obligation of the administration to give reasons for its decisions.⁸¹ The first two guarantees have been regarded by the Court as the rights of defence⁸² and the obligation to state reasons is inherently linked to those rights. Particularly the respect for the right to be heard and the obligation to state reasons have garnered the most of the Court's attention in the sphere of restrictive measures, and their violation is one of the most common reasons for their annulment.

Under Article 41(2)(a) of the Charter, every person has the right to be heard *before* any individual measure taken which would affect them adversely. It is apparent that sanctions targeting listed individuals are acts which adversely affect those persons. That said, significant limitations have been placed on the right to be heard when it comes to their adoption. With reference to the case-law of the European Court of Human Rights, the Court has ruled that restrictions on the right to a fair hearing are permissible if they are legally justified particularly on grounds of public policy, public security or the maintenance of international relations.⁸³ On those grounds, the EU authorities are not required to hear the targeted person prior to including their name in the sanctions list for the first time, nor are they required to communicate the grounds on which the decision on their listing was taken before that listing is realised.⁸⁴ This conclusion is legitimised by

⁷⁸ KOUTRAKOS, Panos. *Judicial Review in the EU's Common Foreign and Security Policy*, p. 28.

⁷⁹ T-288/15 *Ezz and Others v Council*, Judgment of 27 December 2018, EU:T:2018:619, para. 58 and the case-law cited; T-125/22 *RT France v Council*, Judgment of 27 July 2022, EU:T:2022:483, para. 131.

⁸⁰ LENAERTS, Koen. The European Court of Justice and Process-Oriented Review. *Yearbook of European Law*. 2012, Vol. 31, No. 1, p. 4.

⁸¹ C-584/10 P, C-593/10 P and C-595/10 P *Commission and Others v Kadi*, Judgment of 18 July 2013, EU:C:2013:518, para. 99.

⁸² *Ibid.*, para. 99.

⁸³ T-228/02 *OMPI v Council*, Judgment 12 December 2006, EU:T:2006:384, para. 119; European Court of Human Rights, *Tinnelly & sons Ltd and others and McElduff and others v United Kingdom*, nos. 20390/92 and 21322/93, 10 July 1998, para. 78.

⁸⁴ C-402/05 P and C-415/05 P *Kadi and Al Barakaat*, Judgment of 3 September 2008, EU:C:2008:461, paras. 339-341; T-228/02 *OMPI v Council*, Judgment 12 December 2006, EU:T:2006:384, para. 129; T-715/14 *NK Rosneft and Others v Council*, Judgment of 13 September 2018, EU:T:2018:544, para. 137.

the need to ensure the effectiveness of the restrictive measures. In order not to jeopardise that effectiveness, the imposition of restrictive measures must have a “surprise effect” and be applied immediately.⁸⁵ This is particularly important in the case of asset freezes, the logic being that if the person was informed beforehand that sanctions will be imposed on them, they would have the opportunity to dispose of those funds in order to escape the consequences of the asset freeze. Instead, the person shall be notified either at the same time that the listing occurs or immediately after the decision is adopted.⁸⁶

By contrast, in the absence of the proven need for surprise effect in order to ensure effectiveness of the sanctions, the targeted person must be heard and the grounds for the listing communicated to them prior to their adoption, in line with the requirement prescribed by Article 41(2)(c) of the Charter.⁸⁷ Moreover, this limitation of the right to be heard is applicable only in the case of the initial listing of a certain person. When it comes to taking the decision on maintaining the same person’s name on the list, there is no longer a need for surprise effect, since the assets are already frozen. For that reason, any subsequent decision on maintaining the targeted person on the sanctions list must be preceded by the possibility of a hearing and the notification of new evidence.⁸⁸ This was later specified as only being applicable when the Council indeed relies on new evidence to maintain the applicant on the sanctions list. Conversely, if the measures are maintained based on the same grounds as those that justified the initial listing, the Council is not bound to hear the person in question before the adoption of the maintaining act.⁸⁹

The importance which the Court attributes to the right to be heard can be illustrated by cases in which the Council has relied on decisions of third-country authorities to justify the listing of an individual. In *LTTE*,⁹⁰ a case involving counter-terrorism sanctions, the statement of reasons provided by the Council included several decisions of British and Indian authorities regarding attacks which were imputed to LTTE.⁹¹ The Court held that for the Council to be entitled to act on the basis of such decisions, it must first carefully verify that the legislation of that third country ensures protection of the rights of defence and a right to effective judicial protection. What is more, the protection must be equivalent to that guaranteed at the EU level.⁹² Moreover, there cannot be evidence showing that the third state fails to apply that legislation in practice.⁹³ The reasoning behind this logic is that, unlike EU Member States, such third states are not only not subject to the provisions of the Charter, but many of them are also not bound by the European

⁸⁵ C-402/05 P and C-415/05 P *Kadi and Al Barakaat*, Judgment of 3 September 2008, EU:C:2008:461, paras. 340; T-228/02 *OMPI v Council*, Judgment 12 December 2006, EU:T:2006:384, para. 129; T-715/14 *NK Rosneft and Others v Council*, Judgment of 13 September 2018, EU:T:2018:544, para. 137.

⁸⁶ T-228/02 *OMPI v Council*, Judgment 12 December 2006, EU:T:2006:384, para. 129; T-715/14 *NK Rosneft and Others v Council*, Judgment of 13 September 2018, EU:T:2018:544, para. 137; C-27/09 *France v People’s Mojahedin Organization of Iran*, Judgment of 21 December 2011, EU:C:2011:853, para. 61.

⁸⁷ T-715/14 *NK Rosneft and Others v Council*, Judgment of 13 September 2018, EU:T:2018:544, para. 139.

⁸⁸ T-228/02 *OMPI v Council*, Judgment 12 December 2006, EU:T:2006:384, para. 131

⁸⁹ T141/21 *Shakutin v Council*, Judgment of 7 June 2023, ECLI:EU:T:2023:303, para. 74; C330/15 P *Tomana and Others v Council and Commission*, Judgment of 28 July 2016, EU:C:2016:601, para. 67.

⁹⁰ T-208/11 *LTTE*, Judgment of 16 October 2014, EU:T:2014:885.

⁹¹ *Ibid.*, para. 84.

⁹² *Ibid.*, para. 139.

⁹³ *Ibid.*, para. 139.

Convention on Human Rights (“ECHR”).⁹⁴ Hence, the Court held that while the Council could have relied on the decisions of British authorities, since the United Kingdom (as a then-Member State) enjoyed the presumption of the existence of an adequate level of fundamental rights protection, it could not have acted on the decisions of Indian authorities without verifying whether those guarantees are in place.⁹⁵

The benchmark presented by the Court in *LTTE* was therefore the country being subject to obligations imposed by the Charter and the ECHR. The question remained whether this implied that non-EU states which are bound by the ECHR would enjoy the same presumption as EU Member States.⁹⁶ It was ultimately answered in the Court of Justice’s judgement in the *Azarov*⁹⁷ case, which related to restrictive measures linked to the misappropriation of state funds⁹⁸ in Ukraine.⁹⁹ After confirming the applicability of the *LTTE* case-law requirements also to restrictive measures targeting the misappropriation of state funds,¹⁰⁰ the Court clearly stated the following: the mere fact that the third state is a party to the ECHR cannot render superfluous the verification to be carried out by the Council that the national decision was taken in compliance with fundamental rights, in particular the rights of defence and the right to effective judicial protection.¹⁰¹ Thus, the Court rejected the presumption of compliance with EU-level guarantees for ECHR signatory states.

It follows that although the right to be heard is applicable in the context of the adoption of sanctions, their sensitive nature calls for certain limitations to be set in order to ensure that the measures may effectively achieve their objective. This restriction is, in my view, justified. First, the Court has been very clear that it applies only to the initial listing and where the need for surprise effect is proven. And second, the restriction is not ultimate; the Council is still obligated to inform the targeted person of the listing as soon as possible after the decision is taken, thus giving that person the opportunity to make their view known and provide the Council with evidence in support of their claim that the listing is unjustified. This opportunity is ultimately the essence of the right to be heard, as is apparent from the consequences of its violation: according to the Court, the mere fact that the right to be heard was not respected cannot, on its own, result in the annulment of the contested act. The applicant must demonstrate that, had they been allowed the possibility of presenting their arguments, the outcome of the procedure might have been

⁹⁴ *Ibid.*, para. 138.

⁹⁵ *Ibid.*, para. 151.

⁹⁶ HARPAZ, Guy. Common Foreign and Security Policy, counter-terrorism measures and judicial review: Hamas and LTTE. *Common Market Law Review*. 2018, Vol. 55, No. 6, p. 1932.

⁹⁷ C-530/17 *Azarov v Council*, Judgment of 19 December 2018, EU:C:2018:1031.

⁹⁸ Such restrictive measures are imposed with the view to support third states in their democratic transitions, by targeting persons supporting the undemocratic regime. For more information, see, for example, CHALLET, Celia, GRUMAZ, Dorin-Ciprian. EU Restrictive Measures and Third Countries’ Evidence. *European Foreign Affairs Review*. 2023, Vol. 28, No. 1.

⁹⁹ Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, OJ L 66, 26–30; Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, OJ L 66, pp. 1–10.

¹⁰⁰ C-530/17 *Azarov v Council*, Judgment of 19 December 2018, EU:C:2018:1031, paras. 27–28, 32 and 37.

¹⁰¹ *Ibid.*, para. 36.

different.¹⁰² Therefore, in the annulment procedure, the applicant must explain which arguments and information they could have relied on and why these could result in a different conclusion on the Council's part.¹⁰³

II.2. The obligation to state reasons

The right to be heard is directly linked to the corresponding obligation of the EU authorities to state the reasons for their decisions, enshrined in Article 296(2) TFEU¹⁰⁴ and Article 41(2)(c) of the Charter. According to settled case-law, the purpose of that obligation is twofold. First, to enable the person concerned to ascertain the reasons for the measures adopted, and second, to enable the Court to exercise its power of review over that measure.¹⁰⁵ At this point, it is necessary to distinguish between the obligation to state the reasons as an essential procedural requirement, *i.e.*, a formal statement of the grounds on which a decision is based, and the question whether the reasons given are well founded, which is a matter of the substantive legality of the act.¹⁰⁶ This means that the act may sufficiently describe the reasons for which it was adopted, even if those reasons are vitiated by errors and do not constitute a sufficiently solid factual basis justifying the adoption of the measure, which is the standard applied by the Court in the review of the substantive legality of individual listing grounds (*see* section I.2 of this article).

As for the requirements placed on the content of the statement of reasons, the Council cannot simply repeat the conditions set out in the general listing criteria, but must state actual and specific reasons why it considers that the general listing criteria are applicable to the person concerned.¹⁰⁷ It is not necessary to go into all the relevant facts and points of law, but the question whether the statement of reasons is sufficient must rather be assessed with regard to the context of the measure and the legal rules governing the matter.¹⁰⁸ This context argument has been largely relied on in case-law regarding regime sanctions. In *Bamba*,¹⁰⁹ for example, the Court ruled on an action for annulment brought by an Ivorian director of a media group disseminating disinformation campaigns in the Ivory Coast.¹¹⁰ It was deemed sufficient that the contested act clearly specified the general context of the situation in the country which the restrictive measures aimed to combat, as this context was necessarily known to the applicant in view of her (proven) professional position in the country's media.¹¹¹ Similarly, in the annulment procedure initiated by *Rosneft*,¹¹² the Court ruled that the Council was not obligated to explain why it chose to

¹⁰² T-715/14 *Rosneft*, paras. 141-142.

¹⁰³ *Ibid.*, para. 143.

¹⁰⁴ Article 296(2) TFEU reads: "Legal acts shall state the reasons on which they are based and shall refer to any proposals, initiatives, recommendations, requests or opinions required by the Treaties."

¹⁰⁵ *See, inter alia*, T256/11 *Ezz and Others v Council*, para. 107; C-417/11 P *Council v Bamba*, Judgment of 15 November 2012, EU:C:2012:718, paras. 50 and 53 and the case-law cited.

¹⁰⁶ T-262/15 *Kiselev v Council*, Judgment of 15 June 2017, EU:T:2017:392, para. 52.

¹⁰⁷ T-228/02 *OMPI v Council*, Judgment 12 December 2006, EU:T:2006:384, paras. 143-144; T-86/11 *Bamba v Council*, Judgment of 8 June 2011, EU:T:2011:260, para. 47.

¹⁰⁸ T-715/14 *NK Rosneft and Others v Council*, Judgment of 13 September 2018, EU:T:2018:544, para. 112.

¹⁰⁹ C417/11 P *Council v Bamba*, Judgment of 15 November 2012, EU:C:2012:718.

¹¹⁰ *Ibid.*, para. 20.

¹¹¹ *Ibid.*, paras. 54-59.

¹¹² T-715/14 *NK Rosneft and Others v Council*, Judgment of 13 September 2018, EU:T:2018:544.

target entities active in the Russian oil sector since, because of its position on that market, the applicant must have been aware of the importance of that sector for the Russian economy. Consequently, the Council's decision to adopt restrictive measures against the players in that industry, including the applicant, could be readily understood in the light of the declared objective of those restrictive measures.¹¹³

This heavy reliance on contextual arguments has been criticized by some for relativising the obligation to state reasons.¹¹⁴ In my view, if paired with sufficient evidence proving the involvement of the targeted entities in the relevant public sector, it is not such as to impair the function of the statement of reasons. In *Rosneft*, it was undisputed that 50% of the shares of the company were held by Russian state-owned entities.¹¹⁵ In *Bamba*, the Council had also proven that Ms. Bamba was involved in the disinformation campaigns aimed at obstructing peace on the Ivory Coast.¹¹⁶ If the sanctioned person is demonstrably controlled by the targeted regime or active in a field closely linked to that regime (e.g., distributing military equipment to the state), it is not, in my opinion, to the detriment of their rights of defence to presume that they understood the context in which the Council had decided to impose restrictive measures on a category of persons to which it belongs.

Finally, I come to the question what happens if the Court finds that the statement of reasons provided by the Council is not sufficient. Unlike in the case of a violation of the right to be heard, the absence of a proper statement of reasons is a deficiency which will automatically result in the annulment of the contested measure. This is because where an act is not sufficiently reasoned, the Court is not in a position to properly review the lawfulness of that act.¹¹⁷ Such a finding is essential, as it means that although the substantive illegality of the measures cannot influence the question of compliance with the statement of reasons, this does not go both ways. On the contrary, if the Council fails to properly comply with that obligation, the issue of substantive validity will be irrelevant, as the Court will never get around to assessing it.

Above, I have stated that the Court counterbalances judicial restraint in its review of the substantive legality of sanctions by a stricter review of procedural safeguards. This holds true and is especially apparent when it comes to the Court's scrutiny of the compliance with the right to be heard. The Court places significant obligations on the Council not only at the stage of the adoption of the measure, but already at the preceding stage of gathering evidence substantiating that adoption. This strict approach is evident also with respect to the obligation to state reasons, as the failure to comply with that obligation is one of the most common reasons for annulling restrictive measures.¹¹⁸ This increased

¹¹³ *Ibid.*, paras. 121-126.

¹¹⁴ See, for example, OVER DE LINDEN, Heleen. The Court of Justices Difficulty with Reviewing Smart Sanctions as Illustrated by *Rosneft*. *European Foreign Affairs Review*. 2019, Vol. 24, No. 1, p. 35.

¹¹⁵ T-715/14 *NK Rosneft and Others v Council*, Judgment of 13 September 2018, EU:T:2018:544, para. 122.

¹¹⁶ C417/11 P *Council v Bamba*, Judgment of 15 November 2012, EU:C:2012:718, para. 54.

¹¹⁷ T-228/02 *OMPI v Council*, Judgment 12 December 2006, EU:T:2006:384, paras. 172-174.

¹¹⁸ See, *inter alia*, T-316/11 *Kadio Morokro v Council*, Judgment of 16 September 2011, EU:T:2011:484; T-421/11 *Qualitest v Council*, Judgment of 5 December 2012, EU:T:2012:646; T-493/10 *Persia International Bank v Council*, Judgment of 6 September 2013, EU:T:2013:398; T-24/11 *Bank Refah Kargaran v Council*; T-489/10 *Islamic Republic of Iran Shipping Lines and Others v Council*, Judgment of 16 September 2013, EU:T:2013:453; T-565/12 *National Iranian Tanker Company v Council*, Judgment of 3 July 2014, EU:T:2014:608.

scrutiny is justified, *inter alia*, by the close relationship between the rights of defence and the right to an effective remedy. As held in *Kadi I*, a lack of statement of reasons makes it particularly hard for the targeted person to effectively defend themselves against the measures adopted against them before EU courts, leading to an infringement also of their right to an effective legal remedy.¹¹⁹

CONCLUSION

It follows that the Court intensely checks whether due regard has been given to procedural rights of the targeted persons during the adoption of restrictive measures. For that reason, I conclude that the *procedural safeguards* afforded provide sufficient guarantees of the protection of individual rights, namely the rights of defence and the closely linked right to effective judicial protection. However, the same cannot be said for the *intensity* of that review, where the Court shows significant restraint in scrutinising the substantive validity of restrictive measures. Although particularly the requirement of a “sufficient solid factual basis” places certain limits on the Council’s discretion in listing individuals, the Court still largely respects that discretion and only limits itself to rectifying situations of arbitrariness. In conclusion, as the Court’s case law currently stands, I consider that judicial review of restrictive measures provides sufficient safeguards of the targeted individuals’ rights by imposing substantial procedural requirements but seems to fall short when it comes to substantive review. However, the question remains whether the limitations placed onto the Court’s powers within the CFSP could allow for the widening of that substantive review, thus providing greater guarantees of the targeted individuals’ rights. An answer could be provided in the Court’s future decisions regarding the current Russia sanctions regime, although the judgments issued to date seem to follow already established principles and do not contain any significant developments. It therefore remains to be seen whether the Court will continue to retain its position on limited substantive review of restrictive measures against individuals, or if it will find a way in the Treaties enabling it to widen its powers of scrutiny.

¹¹⁹ C-402/05 P and C-415/05 P *Kadi and Al Barakaat*, paras. 336-337 and 349.