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Challenging the Validity of EU Sanctions Imposed on Individuals: Lessons from the Case Law of the CJEU

'CASE STUDY OF THE EU'S RESTRICTIVE MEASURES IN RESPONSE TO THE UKRAINE CRISIS

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PREFACE

This LLM paper was written within the remit of EU law. During my master program (UGent, 2015–2017), I developed an interest in the EU's external relations with its eastern partners like Ukraine and Russia. As a result of this growing interest, I completed an internship in Ukraine at the Embassy of Belgium in Kyiv (Spring 2018), ahead of my postgraduate studies. This internship – under the supervision of Ambassador Mr. Luc Jacobs – provided me with valuable experience and practical knowledge of various aspects regarding the complex relations between the EU and its eastern partners. The turbulent nature of these relations resulted in the current EU sanctions, or in legal terms, the "restrictive measures within the meaning of Art. 215 TFEU" that have been imposed on individuals in response to Russia's violent intervention in Eastern Ukraine and the destabilization of the country that began in 2014.

As the LLM paper was the keystone of my specialization in international and European law, it created a unique opportunity to write about this subject with a supervisor who is an authority in this field, i.e., Prof. dr. Peter Van Elsuwege to whom I am grateful for the advice on realizing this dissertation in a thorough manner. In addition, I would like to thank both Prof. dr. Peter Van Elsuwege and Em. Prof. Marc Maresceau for introducing me to the world of external relations with the EU's eastern partners. Also, a special thanks to Mrs. Svitlana Berezehna (LLM Programmes Officer) who was always there for us LLM students.

Furthermore, I would like to thank my beloved mother, for giving me the opportunity and supporting me through me in all of my journeys, including this one. Besides, thanks to all other loved ones who stayed by my side during this intensive academic year.

Dear all, thank you very much for your support and faith in my abilities!

Finally, A special thanks must be given to Mrs. Maja Lester QC (a senior barrister –Queen's Counsel– at Brick Court Chambers) to broaden the privileged access to her website www.europeansanctions.com. This website was very useful during my research as it gave me a better understanding of the CJEU's judgments on the EU sanctions.

– Willebroek, August 19, 2019

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ABSTRACT

With the introduction of the Treaty of Lisbon in 2007, the EU currently has the possibility to impose EU sanctions of a CFSP nature as part of its external action. The EU has been relying on such sanctions with regard to the Ukraine crisis from the first year [2014]. Accordingly, we are living in an era of sanctions in response to the Ukraine crisis for five years now with all its consequences.

Andriy Portnov, Mykola and Oleksii Azarov, Sergey Klyuyev, Sergey Aburzov and Edward Stavytskyi are all Ukrainian politicians and first survivors of challenging the EU sanctions before the CJEU imposed on them as a result of this crisisven one month ago, the Court declared the invalidity of the EU sanctions imposed on former President Viktor Yanukovych of Ukraine. It should be noted that it was already the third case brought before the Court by the former President. As they say, "third time's a charm", since the GC annulled the EU sanctions this time. Besides, the GC [2018] upheld EU sanctions imposed on several companies with significant state participation in Russia. However, it ruled in those cases only after a first preliminary ruling of the Court [2017] occurred on the validity of the EU restrictive measures in response to the Ukraine Crisis.

This essay discusses the role of the CJEU in reviewing the legality of the EU sanctions imposed on individuals in response to the Ukraine Crisis. The sanctions are adopted as part of the EU external action. By bringing cases before the EU Courts in this regard, the Court's jurisdiction over CFSP is challenged, an area which the CJEU is supposed not to touch. Moreover, the EU courts are facing a very difficult and complex task as they have to strike a balance between the CFSP objective on the one hand, and fundamental rights–from procedural rights to substantive rights–and general principles of EU law on the other hand.

From such analysis it can be deduced to what extent individuals are most likely to be able to overcome their economic constraints in connection with their involvement in the Ukrainian crisis.

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ABBREVIATIONS

A. General Abbreviations

AA	Association Agreement
AFSJ	Area of Freedom, Security and Justice
AG	Advocate General
AP	Additional Protocol
CFSP	Common Foreign and Security Policy
CJEU/ Court	Court of Justice of the European Union (General Court & Court of Justice)
CoE	Council of Europe is an organization of European countries that seeks to protect democracy and human rights and to promote European unity by fostering cooperation on legal, cultural, and social issues[1]; Note that the Council of Europe is not a EU institution
CoJ	Court of Justice (Appeal and Preliminary ruling procedures)
Commission	European Commission
EC/Council	European Council
ECSC	European Coal and Steel Community
ECtHR	European Court of Human Rights
ECtHR	European Court of Human Rights
EP	European Parliament
EU	European Union
EU sanctions	Restrictive measures in the context of Art. 215 TFEU
FR(s)	Fundamental right(s)
GC	General Court of the EU (first instance)
Incl.	including
MS(s)	Member State(s) of the EU

[1] <https://www.britannica.com/topic/Council-of-Europe> last accessed 8 August 2019

OJ	Official Journal of the European Union
OUP	Oxford University Press
Para. or §	Paragraph
Paras. or §§	Paragraphs
PFRs-test	Procedural Fundamental Rights-test
RoL	Rule of Law
Third-country/countries	The non-EU countries

B. Legislation and Case Law

ECHR	European Convention for the Protection of Human Rights and Fundamental Rights (adopted 4 November 1950, entered into force 3 September 1953)
EUCFR	Charter of Fundamental Rights of the European Union [2012] *OJ C* 326
Explanations to the EUCFR	Explanations relating to the Charter of Fundamental Rights [2007] *OJ C* 303/02
January 2015 decisions	Decision 2015/143 and Regulation No 201/138
March 2014 decisions	Decision 2014/119 and Regulation No 208/119
PCA	Agreement on partnership and cooperation establishing a partnership between the European Communities and their Member States, of one part, and the Russian Federation, of the other part [1997] *OJ* EC L327/3
TEC	Treaty establishing the European Community [2002] OJ C325
TEU	Consolidated Version of the Treaty on European Union [2016] OJ C326
TFEU	Consolidated Version of the Treaty on the Functioning of the European Union [2016] OJ C326
Treaty of Amsterdam	Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts [1997] OJ C340 115
Treaty of Lisbon	Treaty of Lisbon amending the Treaty on EU and the Treaty establishing the EC [2007] OJ C306/01
Treaty of Maastricht	Treaty on European Union 7 February 1992, OJ C325/5

C. CJEU Cases

Kadi II	Joined Cases C–584/10 P, C–593/10 P & C–595/10 P *Commission et al. v. Yassin Abdullah Kadi* [18 July 2013]
M. Azarov I	Case T–331/14 *Mykola Azarov v. EC* [28 January 2016]
M. Azarov II	Case T–215/15 *Mykola Azarov v. EC* [7 July 2017]
M. Azarov III	Case T–190/16 *Mykola Azarov v. EC* [26 April 2018]
M. Azarov IV	Case T–247/17 *Mykola Azarov v. EC* [13 December 2018]
M. Azarov V	C–530/17 P *Mykola Azarov v. EC* [19 December 2018]
O. Azarov I	Case T–332/14 *Oleksii Azarov v. EC* [28 January 2016]
OMPI	*Organisation des Modjahedines du peuple d'Iran*
O. Yanukovych I	Case T–348/14 *Oleksandr Yanukovych* v. EC [15 September 2016]
O. *Yanukovych II*	Case C–599/16 P *Oleksandr Yanukovych v. EC* [19 October 2017]
Opinion 2/13	Opinion 2/13 of the CJEU on the EU Accession to the ECHR [18 December 2014]
Opinion of AG Wathelet	*Rosneft I*, Opinion of AG Wathelet [31 May 2016]
Portnov	Case T–290/14 *Andriy Portnov v. EC* [26 October 2015]
Rosneft I	Case C–72/15 *Rosneft* [28 March 2017]
Rosneft II	Case T–715/14 *Rosneft et al. v. EC* [13 September 2018]
Segi	Case C–355/04 P Segi et al. EC [27 February 2007]
SNUPAT	Société nouvelle des usines de Pontlieue
Stavytskyi I	Case T–486/14 *Edward Stavytskyi v. EC* [28 January 2016]
UPA	Unión de Pequeños Agricultores
V. Yanukovych I	Case T–346/14 *Viktor Yanukovych* v. EC [15 September 2016]
V. Yanukovych II	Case C–598/16 P *Viktor Yanukovych v. EC* [19 October 2017]

A. Books

"Judicial Review of the EU's CFSP: Lessons from the Rosneft case"	Peter van Elsuwege, "Judicial Review of the EU's CFSP: Lessons from the Rosneft case" (Verfassungsblog, 6 April 2017) <https://verfassungsblog.de/judicial-review-of-the-eus-common-foreign-and-security-policy-lessons-from-the-rosneft-case/> last accessed 8 August 2019
"Post–Crimean Twister: Russia, the EU & the Law of Sanctions"	Paul Kalinichenko, "Post–Crimean Twister: Russia, the EU & the Law of Sanctions" [2017] Russian Law Journal
"The Role of the European Court of Justice in the Field of CFSP After the Treaty of Lisbon"	Maja Brkan, "The Role of the European Court of Justice in the Field of CFSP After the Treaty of Lisbon: New Challenges for the Future" in *EU External Relations law & Policy in the Post–Lisbon Era* (Paul Japes Cardwell, T.M.C. Asser Press 2012)
The Commentary to the EU Treaties and the ECFR	Manuel Kellerbauer, Marcus Klamert & Jonathan Tomkin, *The EU Treaties & The Charter of Fundamental Rights: A Commentary* (OUP 2019) 1637

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PRELIMINARY REMARKS

The EU sanctions examined in this essay pertain the restrictive measures within the meaning of Art 215 TFEU. 'Wide-ranging' because the EU counts a vast array of sanction regimes in the world.[2] Besides, the CJEU developed more jurisprudence on sanctions than on any other aspect of CFSP,[3] and much has been published about EU sanctions by academics[4]. In addition, the EU institutions designed a framework on the EU sanctions in order to improve their effectiveness.[5] However, a comprehensive analysis of the validity of EU sanctions imposed on individuals in the wake of the Ukrainian crisis is still in its infancy.[6]

This essay pays special attention to the CJEU's case law on the validity of the EU sanctions that are challenged by the affected individuals before the CJEU, either via an action of annulment (Art. 263(4) TFEU), either via a preliminary question (Art. 267 (1)(b) TFEU), This paper hence examines the three following issues.

Firstly, can individuals challenge the EU sanctions before the EU Courts in order to review their legality, and if so, to what extent?

This issue relates to the CJEU's jurisdiction on reviewing the validity of the EU sanctions imposed on individuals adopted in the context of CFSP – which is a sensitive area for the MSs, as is later explained – when these sanctions are challenged by individuals affected by them.[7] In addition, this question relates to the legal standing (*locus standi*) of individuals when

[2] See: <www.sanctionsmap.eu> last accessed 16 August 2019

[3] Maja Lester QC & Michael O'Kane "EU Sanctions: Law, Practice & Guidance" <www.europeansanctions.com> last accessed 8 August 2019; This position is confirmed by Christina Eckes: Christina Eckes "The law & practice of EU sanctions" in *Research Handbook on the EU's CFSP* (Steven Blockmans & Panos Koutrakos, Edward Elgar 2018) 206

[4] *i.a.* Clara Portela, *European Union Sanctions & Foreign Policy: When & why do they work?* (Routledge 2010); Francesco Giumelli, "How EU Sanctions Work: A New Narrative" [2013] <https://www.iss.europa.eu/sites/default/files/EUISSFiles/Chaillot_129.pdf>; Charlotte Beaucillon, *les mesures restrictives de l'Union européenne* (Larcier, Bruylant 2014); Christina Eckes, "EU restrictive measures against natural & legal persons: from counterterrorist to third country sanctions" [2014] <https://dare.uva.nl/search?identifier=8ddda906-b6a5-4774-8435-33f851d1b4bf> last accessed 3 July 2019

[5] i.a. EC, "Basis Principles on The Use of Restrictive Measures (Sanctions)" (7 June 2004); "Sanctions: how & when the EU adopts restrictive sanctions" (7 March 2019); "guidelines on the implementation & evaluation of restrictive measures" (4 May 2018) & "EU Best Practices for the effective implementation of restrictive measures" (4 May 2018) available at <www.consilium.europa.eu/> last accessed 13 August 2019

[6] See i.a. Graham Butler, "The Coming of Age of the Court's Jurisdiction in the CFSP" [2017] European Constitutional Law Review 673; Judicial Review of the EU's CFSP: Lessons from the Rosneft case; Post-Crimean Twister: Russia, the EU & the Law of Sanctions" 9 ; Panos Koutrakos, "Judicial Review in the EU's CFSP" [2018] International & Comparative Law Quarterly 1

[7] *infra* Chapter 3

challenging the validity on the basis of direct action before the CJEU, as enshrined in Art. 263 (4) TFEU[8], and the admissibility criteria in the context of indirect action pursuant to Art. 267(1)(b) TFEU.[9]

Secondly, which standards does the CJEU consider in order to rule on the validity of the EU sanctions?

When the CJEU determines the merits of the case, it must decide on the validity of the EU sanctions challenged by the individual concerned. Therefore, this paper examines which parameters the CJEU considers when ruling the validity of the EU sanctions. In addition, these parameters enable us to see which of these parameters lead to greater chances of surviving one individual's challenge before the CJEU. [10]

Thirdly, what are the lessons from the CJEU's case law? To what extent does such a procedure enable the injured parties to have the EU sanctions annulled?

After the in-depth analysis of the CJEU's case law on the validity of the EU sanctions in response to the Ukraine Crisis, we can determine which lessons can be learned thereof and to what extent challenging those sanctions before the CJEU– either via direct or indirect action – enables an injured party to have them annulled. This question is relevant for future individuals affected by the restrictive measures in response to the Ukrainian crisis to determine the extent to which those measures will be determined to be invalid in their cases.

It should be stressed that to answer all these questions requires a critical analysis of the case law of the CJEU with regard to the restrictive measures. Therefore, A thorough analysis requires a precise delineation. Thus, the following demarcations are necessary.

Firstly, the paper is limited to a case-study of the restrictive measures with regard to individuals in response to the Ukrainian crisis (EU sanctions in response to the Ukraine crisis). So far, limited research has been conducted on the validity of EU sanctions in the context of the Ukrainian-Russian conflict.[11] However, this does not detract from the possibility of carrying out a comparative analysis.

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[8] *infra* Chapter 4

[9] *infra* Chapter 5, point A.

[10] *infra* Chapter 4, point B & Chapter 5, point B

[11] Graham Butler, "A question of jurisdiction: Art. 267 TFEU Preliminary References of a CFSP Nature" [2017] European Papers 201; Post–Crimean Twister: Russia, the EU & the Law of Sanctions 9

Secondly, the LLM paper only examines the EU sanctions imposed on individuals, provided in Art. 215, para. 1 TFEU. Pursuant to Art. 215 TFEU, the restrictive measures can be imposed on third countries (para. 1) or natural and legal persons (individuals) of those countries (para. 2).

Considering the CJEU's *Tay Za v. EC* judgment [2012] individuals can be included on the EU sanctions list only when there is a sufficient link between that individual and the third country against which the EU sanctions have been adopted.[12] Three categories of individuals can be distinguished: the leaders of a third country; the persons associated or controlled by those rulers and, individuals who meet the CFSP designation criteria and violate the CFSP objective of the restrictive measures.[13] The EU can include leaders and individuals related to them, such as their family members.[14] Therefore, EU sanctions were imposed on former Ukrainian president Viktor Yanukovych but also his son. Both challenged their sanctions, which results in several cases.[15]

Before addressing the research questions, this paper briefly mentions how the EU reached the stage of imposing sanctions after years of partnership with Russia and Ukraine (Chapter 1). Furthermore, an understanding is required of the legal framework with regard to the EU sanctions (Chapter 2). After conveying this understanding, we examine the judicial review of the CJEU on the validity of the EU sanctions as questioned by individuals before both the GC and CoJ with regard to the Ukrainian crisis (Chapters 3-5). Finally, we finalize this research with the lessons that can be drawn from the discussed case law (Chapter 6) and a conclusion.

In order to carry out a sophisticated investigation into the case law in response to the Ukrainian crisis, a database is created and added in the annex to this essay.

[12] The sufficient link is discussed in the case law. See therefore: Case C–376/10 P *Tay Za v. EC* [13 March 2012], §§61–64; *The Commentary to the EU Treaties and the ECFR* 1637

[13] CoE, "EU : UN Sanctions" [2013] <https://www.coe.int/t/dlapil/cahdi/Source/un_sanctions/European%20Union_UN_Sanctions_2013_EN.pdf> last accessed 10 August 2019

[14] *The Commentary to the EU Treaties and the ECFR* 1637

[15] Case T–348/14 *Oleksandr Yanukovych v. EC* [15 September 2016]; Case T–346/14 *Viktor Yanukovych v. EC* [15 September 2016]; Joint Cases T–244/16 & T–285/17 *Yanukovych v. EC* [11 July 2019]; Case C–599/16 P *Oleksandr Yanukovych v. EC* [19 October 2017]; Case C–598/16 P *Viktor Yanukovych v. EC* [19 October 2017]

CHAPTER 1

FROM GOOD PARTNERSHIP TO AN ERA OF EU SANCTIONS

In this chapter, a brief overview is provided of the events that took place from the beginning the Ukrainian crisis (A) to the era of sanctions as the EU's primary tool in its external relations (B). This overview gives a better understanding of why the EU decided to impose EU sanctions after the outbreak of the Ukraine Crisis

A. Russia's Military Intervention in Eastern Ukraine

The Ukrainian crisis started with the Euromaidan protests in Kyiv on November 2013, resulting in many injured and dead people.[16] They were fuelled by the decision of the refusal of former Ukrainian president Viktor Yanukovych to sign the AA between Ukraine and the EU.[17] The AA was finally signed in June 2014 under the presidency of Petro Poroshenko and replaced the EU's PCA with Ukraine.[18]

Meanwhile, relations between Ukraine and Russia reached their lowest point in 2014 when Ukraine decided to set a European course. Russia responded with using force in Eastern Ukraine, annexing (unlawfully) the Autonomous Republic of Crimea and the city of Sevastopol. Besides, Ukraine lost control of certain eastern parts of its territory – incl. Crimea parts of the Donetsk and Luhansk regions –, since the beginning of the conflict.[19]

Subsequently, Russia's relations with the EU have also deteriorated, although their relationship has always been of a complex nature. Russia is the EU's largest eastern partner – with the PCA

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[16] EC, "EU relations with Ukraine" <https://www.consilium.europa.eu/en/policies/eastern-partnership/ukraine/> last accessed 3 July 2019; Ian Traynon, "Ukraine's bloodiest day: dozens of dead as Kiev protesters regain territory from police" (21 Februari 2014) <https://www.theguardian.com/world/2014/feb/20/ukraine-dead-protesters-police> last accessed 3 July 2019

[17] With this agreement, the EU aimed to forge closer ties between itself & its eastern partner, Ukraine, by promoting deeper political relationships, stronger economic links & respect for the EU's values (e.g., human rights, democracy & the RoL) between the EU & Ukraine

[18] AA between the European Union & its Member States, of the one part, & Ukraine, of the other part (21 March 2014), *OJ* L161/3

[19] In the beginning of this year former Ukrainian president Petro Poroshenko confirmed that currently 7% of the Ukraine's territory is occupied: UN Press, "Speakers Urge Peaceful Settlement to Conflict in Ukraine, Underline Support for Sovereignty, Territorial Integrity of Crimea, Donbas Region" <https://www.un.org/press/en/2019/ga12122.doc.htm>; EP "resolution on the implementation of the EU AA with Ukraine" (12 December 2018) <http://www.europarl.europa.eu/doceo/document/TA-8-2018-0518_EN.pdf> last accessed 3 July 2019

as its legal basis – and the EU's largest trading partner.[20] Due to Russia's use of force against, there has been a severe deterioration of the relations between Russia and the EU. Moreover, at present, the EU is undergoing an era of sanctions rather than one of partnership with Russia, as the EU's leaders have decided to impose political and economic sanctions among the EU's restrictive measures.[21]

B. The EU's Response to the Ukrainian Crisis: EU Sanctions

The EC circumscribes the sanctions as 'preventive' measures in order to respond swiftly to political challenges and developments that contradict the EU's objectives as enshrined in the TEU.[22] The EU can impose sanctions for reasons such as human rights violations, the annexation of a foreign territory, or the deliberate destabilization of a sovereign country.[23] Already before the EU launched its packages, in the context of the Ukraine crisis, the EC previously adopted sanctions against persons identified as responsible for the misappropriation of Ukrainian state funds. Through this way, the EU wants to support Ukraine in the fight against corruption, recognized by the CJEU as being part of the RoL.[24]

In accordance with the EC's conclusion, the EU – the EC – launched its **first package** of sanctions on 17 March 2014.[25] These sanctions comprise of travel restrictions and an asset freeze ([26]) imposed against individuals to prosecute Russia's aggression.[27] From this point, one

[20] In 2008, negotiations were launched to replace the PCA with a new agreement. Although considerable progress had been made, negotiations were officially frozen in 2014 as a consequence of Russia's unjustified activities in Ukraine; EP, "EU-Russia trade continuing despite sanctions" (November 2017) <www.europarl.europa.eu/RegData/etudes/ATAG/2017/608817/EPRS_ATA(2017)608817_EN.pdf> last accessed 10 July 2019

[21] i.a. economic & diplomatic sanctions. See therefore: EC, "Different types of sanctions" (6 June 2019) <https://www.consilium.europa.eu/en/policies/sanctions/different-types> last accessed on 10 July 2019

[22] See *infra* Chapter 4, point B, §1; ibid

[23] ibid

[24] EC Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities & bodies in view of the situation in Ukraine *OJ* L66, 26 & its Implementing Regulation (EU) 2018/326 of 5 March 2018 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities & bodies in view of the situation in Ukraine *OJ* L63, 5–6; Note that they are prolonged on a yearly base ever since, see therefore: EC, "Misappropriation of Ukrainian state funds: Council prolongs EU sanctions for one year" (4 March 2019) <https://www.consilium.europa.eu/en/press/press-releases/2019/03/04/misappropriation-of-ukrainian-state-funds-council-prolongs-eu-sanctions-for-one-year/> last accessed on 9 July 2019

[25] 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* L78, 16–21 & its Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty & independence of Ukraine *OJ* L78, 6–15

[26] When the EC decides to an asset freeze, it ensures that assets cannot be used by their owner 'the individual' anymore imposed

[27] (n25), rec. 4

can say that the sanctions are not only preventive but also of a 'subsequent' nature. This package was introduced as a result of specific individuals' roles in Russia's actions with regard to threatening the territorial integrity, sovereignty and independence of Ukraine in 2014 (e.g. EU sanctions against Russian propagandist Dimitrii Kiselev[28]).[29]

In May 2014, the EC agreed upon a **second package** of sanctions consisting of an expanded list of banned physical persons, incl. Crimean legal entities. This new set of sanctions was adopted in light of the events in Eastern Ukraine and the illegal confiscation of entities in Crimea.[30]

One can see that two first packages of EU sanctions, the EC did not make a reference to Russia as a country.

Furthermore, the **third package** of sanctions was approved by the EU and is divided into three groups of actions.

The first group of actions was adopted in June 2014.[31] The actions' restrictive measures concern goods originating in Crimea or Sevastopol and the provision, directly or indirectly, of financing or financial assistance, as well as insurance and reinsurance, related to the importing of such goods, in response to the illegal annexation of Crimea and Sevastopol.[32] In other words, the restrictions were applied to economic activities related to trade, incl. brokerage and insurance services, and development projects in Crimea and Sevastopol, incl. financial and technical assistance.[33]

Another group of actions of the third package – introduced one day before the final group – was intended to enhance the existing sanctions imposed in the first package, in reaction to the situation in Eastern Ukraine and the illegal annexation of Crimea. In particular, the third

[28] See *infra* Chapter 4, point B

[29] *supra* (n25)

[30] EC Decision 2014/265/CFSP of 12 May 2014 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty & independence of Ukraine *OJ* L137, 9–12 & its Regulation (EU) No 477/2014 of 12 May 2014 amending implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty & independence of Ukraine *OJ* L137, 3–5

[31] EC Decision 2014/386/CFSP of 23 June 2014 concerning restrictions on goods originating in Crimea or Sevastopol, in response to the illegal annexation of Crimea & Sevastopol *OJ* L183, 70–71 its EC Regulation (EU) No 692/2014 of 23 June 2014 concerning restrictions on the import into the Union of goods originating in Crimea or Sevastopol, in response to the illegal annexation of Crimea & Sevastopol *OJ* L183, 9–14

[32] recital 3, EC Regulation (EU) No 692/2014 of 23 June 2014,

[33] Post–Crimean Twister: Russia, the EU & the Law of Sanctions 18

package of sanctions expanded the existing list of travel bans.[34] The restrictive measures in response to the unlawful occupation of Crimea and Sevastopol by Russia are currently still in place; they were last renewed on March 2019 and will remain in effect for another year.[35]

The third group of actions was introduced on 31 July 2014, after the tragic MH17 crash of 17 July 2014.[36] The EC adopted a package of economic sanctions, incl. measures concerning trade with Russia in specific economic sectors.[37]

Since the sanctions are not of indefinite duration, they have to be periodically renewed. Over time, the EC has strengthened and reinforced them significantly. As a result of those amendments, the EU sanctions list has improved dramatically and therefore includes many different actors, such as government officials, natural persons, legal persons.[38] As we will see later, several of these individuals challenged their inclusion on the EU sanctions list before the GC via de action of annulment. Even, one individual – a legal entity "Rosneft" – requested the national court for submitting a preliminary ruling based on Art. 267 (1)(b) TFEU.[39]

[34] EC Decision 2014/508/CFSP of 30 July 2014 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty & independence of Ukraine *OJ* L226, 23–26 and its Implementing Regulation (EU) No 826/2014 of 30 July 2014 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty & independence of Ukraine *OJ* L226, 16–19

[35] EC Decision 2019/415/CFSP of 14 March 2019 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty & independence of Ukraine *OJ* L73, 110–116

[36] A civilian plane was shot down in the Donbas oblast. See therefore: UN News, "A civilian plane was shot down in the Donbas oblast, see for example: UN News, "UN chief notes 'with concern' report holding Russia liable for downing airliner" (25 May 2018) < https://news.un.org/en/story/2018/05/1010741>

[37] EC Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine *OJ* L229, 13–17 & EC Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine *OJ* L229, 1–11; EC, "Adoption of agreed restrictive measures in view of Russia's role in Eastern Ukraine" (31 July 2014) <https://www.consilium.europa.eu/media/22019/144205.pdf> last accessed 3 July 2019

[38] EC, "EU restrictive measures in response to the crisis in Ukraine" (1 July 2019) <https://www.consilium.europa.eu/en/policies/sanctions/ukraine-crisis/> last accessed 3 July 2019

[39] See following chapters

CHAPTER 2

EU SANCTIONS ON INDIVIDUALS: AN EXPLICIT LEGAL BASIS IN THE TREATY OF LISBON

Evidently, the EU faces severe situations – such as the Ukrainian crisis – that require strong responses. The restrictive measures are the EU's hardest tools in the framework of its CFSP due to its effective character.[40] One such measure consists of autonomous EU sanctions.[41]

With the EU sanctions, the EU aims to carry out the CFSP objectives as set out in Art. 21(2) TEU.[42] This set of principles and objectives as enshrined in this provision transcends the EU's external policies. For example, the EC, when adopting EU sanctions imposed on individuals in response to the Ukraine crisis, have to consolidate and support the RoL.[43] It should be noted that the RoL is one of the values considered as commonly accepted standards[44], stemming from constitutional traditions of the MS as they are enshrined in Art. 2 TEU. This provision contains values that have been developed earlier by the Court as general principles of law as later discussed.[45]

Furthermore, with these sanctions, the EU endeavor to bring about a change in the policy or conduct of specific individuals related to the Ukraine conflict by imposing sanctions on them. This is initiated by including them on the EU sanctions list.[46]

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[40] Leander Leenders "EU Sanctions: A Relevant Foreign Policy Tool?" [2014] 3 <https://www.coleurope.eu/research-paper/eu-sanctions-relevant-foreign-policy-tool> last accessed 3 July 2019

[41] The EU has different ways of imposing restrictive measures: EU sanctions as a result of the implementation of the sanctions imposed by the UN; EU sanctions as a reinforcement of the UN sanctions; Autonomous EU sanctions

[42] Art. 21(2) TEU: promoting peace, democracy & respect for the RoL, human rights & international law; EEAS, "Sanctions policy" (3 August 2016) <https://eeas.europa.eu/headquarters/headquarters-homepage/423/sanctions-policy_en>; EC, "Factsheet on the EU restrictive measures" (29 April 2014) <https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/135804.pdf> last accessed 3 July 2019

[43] See e.g. recital 2, EC Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities & bodies in view of the situation in Ukraine *OJ L*66, 26

[44] Commission Press Release, "RoL: Commission refers Poland to the CJEU to protect the independence of the Polish Supreme Court" (24 September 2018) < https://europa.eu/rapid/press-release_IP-18-5830_en.htm>; Communication from the Commission to the EP & the EC "A new EU Framework to strengthen the RoL" (11 March 2014) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52014DC0158> last accessed 11 August 2019

[45] Werner Schroeder, Strengthening the RoL in Europe: From a Common Concept to Mechanisms, (Bloomsbury Publishing 2016) 15

[46] EC, "Sanctions: how & when the EU adopts restrictive sanctions" (7 March 2019) <https://www.consilium.europa.eu/en/policies/sanctions/> last accessed 3 July 2019

A. Pre-Lisbon

The EU did not always have explicit legal grounds to impose sanctions on individuals. Before the Treaty of Lisbon [signed in 2007 and into force in 2009], such legal basis did not exist. However, despite the absence of an explicit legal basis in the Treaty of Maastricht [1992],[47] the EU imposed sanctions against individuals as a result of the UNSC's sanctions on individuals in the aftermath of 9/11. The EU's implementation of these sanctions resulted in the controversial Kadi judgment.[48] *In casu*, the CoJ confirmed that the imposition of EU sanctions on individuals is permissible if an additional legal basis exists.[49] Moreover, the CoJ ruled that the evidence to substantiate the individual' involvement in terrorist activities was poor and several procedural FRs such as the right to information and right to be heard where infringed.[50] It should be noted that, in its assessment of the evidence for the adoption of the EU sanctions vis-à-vis individuals, the CoJ's position has not eased its position in *Kadi I*, when ruling on the validity of the EU sanctions in response to the Ukrainian crisis due to the effective judicial protection enjoyed by the individuals on the sanction list.[51]

B. Post-Lisbon

Situations such as in *Kadi* can no longer occur, as the adoption of the Treaty of Lisbon introduced an explicit autonomous legal basis to allow the EU to impose sanctions on individuals. As for the TFEU provides two legal grounds on which to impose sanctions against individuals (Art. 75 TFEU and Art. 215 TFEU), a dispute on the correct legal basis occurred before the CJEU.[52] When searching through the CJEU's database, one can see that so far, the EU has relied only on Art. 215 TFEU to adopt sanctions *sensu lato* (i.e., EU sanctions both imposed on individuals and third countries).

[47] Francesco Giumelli, "How EU Sanctions Work: A New Narrative" [2013] <https://www.iss.europa.eu/sites/default/files/EUISSFiles/Chaillot_129.pdf> last accessed 3 July 2019

[48] The UNSC had adopted several resolutions aiming that all UN members had to freeze al funds or other financial resources which are controlled (directly or indirectly) by individuals associated with Usama bin Laden, the Al–Qaeda network or the Taliban. The EC has to adopt a regulation (EC Regulation No 881/2002 imposing certain specific restrictive measures directed against certain persons & entities associated with Usama bin Laden, the Al–Qaeda network & the Taliban [2002] *OJ* L139, 9–22) in order to implement those measures into the EU legal order as the EU has to respect international law in the establishment & implementation of restrictive measures, see therefore: *The Commentary to the EU Treaties and the ECFR* 1633.

[49] *Kadi I*, §154

[50] ibid, §346 et seq.

[51] See *infra* Chapter 4, point B, §3

[52] Case C–130/10 *EP v. EC* [19 July 2012]

The CJEU stated in *EP v. EC* [2012] that when adopting EU sanctions, a combination of both Art. 75 TFEU and Art. 215 TFEU is not allowed, as their scope differs.[53] Contrary to the sanctions in accordance with Art. 75 TFEU which are adopted in the context of AFSJ, those introduced pursuant to Art. 215 are part of the EU's external relations and of a CFSP nature.[54] Therefore, the CJEU confirmed that the correct legal basis is Art. 215 TFEU and not Art. 75 TEU when the EU adopts sanctions in order to combat and prevent terrorism as part of the EU's external actions.[55]As part of CFSP (Title V TFEU), the EU sanctions cannot be adopted in accordance with an ordinary legislative procedure within the meaning of Art. 294 TFEU. Therefore, a specific procedure must be followed.[56]

Firstly, a particular CFSP decision is required, as indicated by Art. 29 TFEU. This Decision is adopted in accordance with the procedure established in Art. 30 TFEU and Art. 31 TFEU.

Secondly, the High Representative and the Commission present a joint proposal for an EC Regulation, as stated in Art. 215 TFEU. This Regulation is adopted according to the recently introduced decision. Finally, the EC must approve this decision by a qualified majority and inform the EP about that decision.

As a result of their close affinity, the Decision and the regulation are adopted on the same day.[57] However, they are not identical in terms of content and form. The decision under Art. 215 TFEU stipulates the precise scope of the measures and details in order to implement them. Thus, the EC also mentions "implementing regulation" when adopting restrictive measures.[58] Furthermore, compared to the legal act passed under Art 29 TEU (decision), the decision is not of a CFSP nature. Both legal acts are of general application and are binding for any individual

[53] ibid, §49

[54] Cf. Art. 75 & Art. 215 TFEU

[55] Case C–130/10 *EP v. EC* [19 July 2012] §§61–65

[56] Art. 24(1) 2nd para. (first sentence) TEU; EC, "Adoption & review procedure for EU sanctions" (14 February 2019) <https://www.consilium.europa.eu/en/policies/sanctions/adoption-review-procedure/> last accessed 1 Augusts 2019

[57] considering the restrictive measures imposed in response to the Ukraine Crisis: EC Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty & independence of Ukraine *OJ L*78, 16–21 & EC Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty & independence of Ukraine *OJ L*78, 6–15

[58] E.g. EC Decision 2014/265/CFSP of 12 May 2014 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty & independence of Ukraine *OJ* L137, 9–12 & EC Regulation (EU) No 477/2014 of 12 May 2014 amending implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty & independence of Ukraine *OJ* L137, 3–5

or entity (economic operators, public authorities, etc.) within the EU.[59] The persons are individually affected by the legal acts because their names are listed in an annex attached to them: the so-called "EU sanctions list".

With regard to Art. 215 TFEU, a distinction must be made between restrictive measures in the first two paragraphs of that provision: in this essay, only the second paragraph of this provision is of relevance, as this concerns the restrictive measures imposed on natural and legal persons ("the individuals").

[59] *supra* (n56)

CHAPTER 3

THE ROLE OF THE CJEU IN REVIEWING THE VALIDITY OF EU SANCTIONS VIS-À-VIS INDIVIDUALS: "THE EXCEPTION TO THE EXCEPTION"

Before going into detail about the individual's possibilities to challenge the EU sanctions, first the question raises are to what extent the CJEU has competence over the issue. As will be explained in this chapter, the CJEU's role in the judicial review of the EU sanctions is quite complicated. As we will see the Court's jurisdiction is also assessed and confirmed in light of the EU sanctions in response to the Ukrainian crisis.

A. The Conferral of Jurisdiction to the CJEU in CFSP with the Genesis of the Treaty of Lisbon

In the pre-Lisbon era, the CJEU had no jurisdiction in the field of CFSP and hence had none with regard to EU sanctions.[60] This exclusion was maintained by the Treaty of Maastricht, notwithstanding the fact that CFSP was part of the formerly existing pillars. A few years later, after the Treaty of Maastricht entered into force, the CoJ confirmed this exclusion in *Grau Gomis* [1995].[61] With the Treaty of Lisbon, the role of the CJEU in CFSP matters was considerably reinforced by the introduction of two exceptions to the exclusion of CFSP matters from the CJEU's jurisdiction.[62] These exceptions are enshrined in Art. 24(1) para. 2 TEU in conjunction with Art. 275 para. 2 TFEU.[63] As a result, the CJEU has a limited role in judicial review in CFSP, the so-called "claw-back," according to AG Wathelet.[64]

Despite the Court's limited jurisdiction in CFSP, Art. 24 TEU and Art. 275 TFEU still explicitly stipulate the Court's lack of power in the area of CFSP,[65] or as AG Wathelet terms this, the

[60] "The Role of the European Court of Justice in the Field of CFSP After the Treaty of Lisbon" 99

[61] Case C–167/94 *Grau Gomis et al*. [7 April 1995]

[62] See *i.a.* "Judicial Review of the EU's CFSP: Lessons from the Rosneft case"

[63] The Court has the exceptional power to monitor in compliance with Art. 40 TEU and the ability to review the legality of the restrictive measures vis–à–vis individuals in accordance with Art. 263 TFEU.

[64] Opinion of AG Wathelet, §50

[65] Art. 24(1) 2nd para. (last sentence) TEU & Art. 275 1st para. TFEU

"carve-out," as it is an exception to the Court's general jurisdiction within the meaning of Art. 19 TEU.[66]

B. The Court's Exceptional Competence on the Validity of EU Sanctions Confirmed in the case law with Regard to the EU sanctions in Response to the Ukrainian Crisis

As a result of the CJEU's expanded competence with the Treaty of Lisbon, it became possible for an individual negatively affected by EU sanctions to challenge their validity before the CJEU regardless of their CFSP character. The Court's exceptional competence is also confirmed in this regard to the Court's case law on the EU sanctions in response to the Ukraine Crisis in a Notice of the EC (§1) and when it has to rule on an individual's adaptation of his/her claim before the Court in order to annul the EU sanctions (§2).

§ 1 The EC's Notice to the Individual Included on the EU Sanctions List

When the EC decides to include an individual's name on the EU sanctions list, it notifies the individual concerned of the possible ways to challenge the inclusion via a publication in the OJ. Through this Notice, the EC confirms the CJEU's jurisdiction to review the validity of the EU sanctions in accordance with Art. 275 para. 2 TFEU jo. Art. 263(4) TFEU.[67]

§ 2 The Statement of Modification

Despite the explicit legal basis in both the EU Treaties[68] and the aforementioned EC's Notice, the EC occasionally refutes the competence of the CJEU to rule on the validity of the EU sanctions in response to the Ukrainian crisis. Such plea of a lack of jurisdiction of the CJEU is raised by the EC in the context of a statement of modification. With this statement, the individual concerned seeks the extension of the scope of his/her action in accordance with Art. 263 TFEU ("additional action of annulment").[69] Despite the EC's plea, the Court, nonetheless, explicitly confirmed its jurisdiction regardless of the fact that the decision under Art. 29 TEU on which the EU sanctions were based is of a CFSP nature. Therefore, it refers to the derogation

[66] *Rosneft I*, Opinion of AG Wathelet, §41

[67] See for example: *Portnov*, §10; *Stavytskyi I*, §8; *O. Azarov I*, §9

[68] *supra* Chapter 2; Art. 24(1) 2nd para. TEU *jo.* Art. 275 2nd para. TFEU

[69] i.a. *O. Azarov I*, §56; Case T–348/14 *M. Azarov I*, §61; *Oleksandr Yanukovych v. EC* [15 September 2016], §56; Case T–346/14 *Viktor Yanukovych v. EC* [15 September 2016], §55

provision Art. 275, para. 2 TFEU.[70] In fact, the CJEU confirmed that such jurisdiction covers all of the decisions taken by the EC in a CFSP context and in relation to EU sanctions. This means that individuals can challenge a decision, whether it is of general or individual application within the meaning of Ar. 29 TEU.[71]

C. The Expansion of the CJEU's Limited Jurisdiction on Reviewing the Validity of the Expanded EU Sanctions

Besides the EU's expansion of the EU judicatures with the introduction of the Treaty of Lisbon, the EU goes a step further in its jurisprudence. However, the real breakthrough comes with *Rosneft I* [2017] as for the first time in a preliminary procedure, the CoJ had the opportunity to rule on the limitation of its jurisdiction when reviewing the legality of CFSP acts.

Rosneft I was not the Court's starting point for defining the limitations of its jurisdiction. The Court already dealt with such limitations in *Segi* [2007], a case before the entering into force of the Treaty of Lisbon.[72] *In casu,* the question arose to what extent preliminary questions (e.g., Art. 35[1] TEC) can be referred to the CoJ in the context of a CFSP Common Position. The CoJ ruled that in light of the necessity to ensure effective judicial protection as part of the RoL, exceptions to the preliminary reference procedure must be interpreted narrowly.[73] This reasoning was later confirmed in *Rosneft I.*[74] Almost ten years after the signature of the Treaty of Lisbon, the CoJ in *H v. EC* [2016] helped to clarify the CJEU's jurisdiction over CFSP in the context of an appeal procedure in the context of an annulment procedure.[75] However, the GC declared the case admissible because of the CFSP character of the contested acts, the CoJ,

[70] *M. Azarov I*, §59–62; *O. Azarov I*, §57–58; Case T–346/14 *Viktor Yanukovych v. EC* [15 September 2016], §57; Case T–348/14 *Oleksandr Yanukovych v. EC* [15 September 2016], §58–59.

[71] Case T–578/12 *National Iranian Oil Company v. EC* [16 July 2014] §§92–93 confirmed in *i.a. M. Azarov I*, §59–62; Case T–346/14 *Viktor Fedorovych Yanukovych v. EC* [15 September 2016], §57; Case T–348/14 *Oleksandr Yanukovych v. EC* [15 September 2016], §§58–59.

[72] *Segi,* §§52–54; Graham Butler, "The Coming of Age of the Court's Jurisdiction in the Common Foreign & Security Policy" [2017] European Constitutional Law Review 681

[73] ibid

[74] *Segi*, §53 confirmed in *Rosneft I*, §74–75

[75] C–455/14 P *H v. EC* [19 July 2016]; Stian Øby Johansen, "H. v. Council et Al. – A Minor Expansion of the CJEU's Jurisdiction Over the CFSP" (7 October 2016) <http://www.europeanpapers.eu/en/system/files/pdf_version/EP_EF_2016_H_025_Stian_Oby_Johansen_0.pdf> last accessed 16 August 2019

upholds its ruling in *Segi* and, subsequently, reversed the case.[76] In addition, the Court emphasized that its competence is not necessarily excluded in CFSP.[77]

The issue of delineation of the CJEU's judicial review under Art. 275 para. 2 TFEU was also raised in the context of fundamental human rights in the Court's famous Opinion 2/13.[78] As implicitly confirmed by AG Wathelet[79], despite such an opportunity Opinion 2/13 did not settle the question of competence pursuant to Art. 267 TFEU in a CFSP context.[80]

So far, no case has mentioned anything about the possibility of national courts referring preliminary questions on CFSP acts to the Court, neither on the EU sanctions in particular.

Finally, with *Rosneft I*, the Court had another and 'bigger' opportunity to rule on its limitations regarding CFSP acts since it had the opportunity to do so in the context of a preliminary reference procedure. The preliminary reference procedure was prompted by the EU sanctions adopted in response to the Ukrainian crisis. PJSC Rosneft Oil Company (Rosneft) was one of the companies negatively affected by those sanctions and seeking the invalidity of them before the CoJ via its indirect action.[81] *In casu*, the Court had to examine whether one of the aforementioned exceptions to its limited jurisdiction was applicable, as the EU sanctions were adopted under Art. 215 TFEU.[82] This implies that the CoJ had to ascertain whether it had jurisdiction to examine the EC's compliance with Decision 2014/512/EC (one of the legal acts on which the EU sanctions are adopted) with Art. 40 TEU[83] and whether it could conduct a judicial review of such CFSP acts, not only in the context of an annulment procedure but also via a preliminary reference procedure.[84] In this context, only the second question is relevant.

The CoJ in *Rosneft I* confirmed its both cases – *Segi* and *H. v. EC* –. It began its reasoning by emphasizing the necessity of scrutinizing a CFSP decision on which the EU sanctions are adopted there with a single assessment in light of the non-CFSP act, the CoJ would be unable to provide an adequate answer to the question on the validity of the contested EU sanctions.[85]

[76] *Segi,* §§52–54 confirmed in C–455/14 P *H v. EC* [19 July 2016], §40–43
[77] C–455/14 P *H v. EC* [19 July 2016], §43
[78] Opinion 2/13
[79] Opinion of AG Wathelet, §40
[80] Opinion 2/13, §§251–258
[81] *Rosneft I*, §§30–31; see *infra* Chapter 5
[82] See *supra* point A
[83] *Rosneft I*, §61
[84] ibid, §§61 & 64
[85] Rosneft I, §53

One can see that in *Rosneft I*, the Court followed AG Wathelet's advisory opinion to the case. Both the Court and the AG referred to the Court's established case law concerning the importance of a complete system of judicial protection for individuals, including the opportunity for them to challenge the validity of these acts before the CoJ via a preliminary reference procedure in the sense of Art. 267(1)(b) TFEU and that such judicial review is entrusted to the CJEU.[86] The CJEU – and thus not the national courts – has the sole authority to declare EU acts like invalid.[87] The CoJ affirmed its earlier cases that exceptions to the Court's general jurisdictions need to be interpreted *sensu stricto* given the need to ensure effective judicial protection as part of the RoL.[88]

In light of the above, it is not surprising that the CoJ in *Rosneft I* affirmatively answered the preliminary question concerning the CJEU's competence in preliminary ruling procedures with regard to the EU sanctions imposed on individuals in a CFSP context: *Rosneft I* added that such judicial protection is stretched to the judicial review of CFSP acts.[89] The same applies to the validity of the underlying contested CFSP acts upon which the EU sanctions are based.[90] Besides, the Court emphasizes its earlier case law that CFSP is an integral part of the EU legal order which can be derived from a combined reading of arts 23 TEU, 21 TEU and 2 TEU.[91] Subsequently, individuals have the possibility to challenge the validity of their sanctions before the CoJ via the indirect action.[92]

However, despite the fact that the CJEU accepts the possibility of individuals challenging the validity of EU sanctions indirectly via Art. 267 (1)(b) TFEU, no open door is created for individuals to start 'action shopping'.[93] When the individual did not rely on the direct action within the prescribed time-limit, he/she cannot longer obtain the invalidity via an 'indirect

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[86] Case 294/83 *Les Verts v. EP* [23 April 1986], §23; Case C–50/00 P *UPA v. EC* [25 July 2002], §40 & Case C–583/11 P *Inuit v. EP & EC* [3 October 2013], §92 confirmed in *Rosneft I*, §66; Case C–239/99 *Nachi Europe GmbH v. Hauptzollamt Krefeld* [15 February 2001], §§35–36, Case C–550/09 *E & F* [2010], §§45 & 46 confirmed in *Rosneft I*, §67; Opinion of AG Wathelet, §38

[87] Case 314/85 *Foto–Frost* [22 October 1987] §17 Case C–362/14 *Schrems* [6 October 2015], §62 Case C–344/04 *IATA & ELFAA* [10 January 2006] §27 confirmed in *Rosneft I*, §78 and also confirmed by the Opinion of AG Wathelet, §63

[88] *Segi*, §53; Case C–658/11, *EP v. EC* [2014], §70 affirmed in *Rosneft I*, §74–75; Art. 2 TEU jo. Art. 19 TEU and Art. 47 EUCFR

[89] *Rosneft I*, §69; Opinion of AG Wathelet, §62

[90] ibid, §23 confirmed in Rosneft I, §§71

[91] "Judicial Review of the EU's CFSP: Lessons from the Rosneft case"; C–455/14 P *H v. EC* [19 July 2016], §41 confirmed in *Rosneft I*, §72

[92] C–188/92 TWD *Textilwerke Deggendorf GmbH* [9 March 1994]

[93] See *infra* Chapter 5, point A

action' pursuant to Art. 267 (1)(b) TFEU.[94] Besides, in the Court's case on the convergence of Art. 263 and 267 TFEU it stated that when an individual has the possibility to challenge the validity of an EU act pursuant to Art. 263(4) TFEU, he/she can no longer claim the invalidity of this act via an indirect action before the national courts under Art. 267 (1)(b) TFEU.[95]

D. Rosneft I: A Supplement to The Current EU Law or A Back Door for The CJEU's Competence in CFSP?

On the one hand, we can say that the CJEU, indeed, can be commended for avoiding a legal lacuna with its *Rosneft I*.[96] Besides, the Court avoided divergent and even erroneous interpretations concerning its jurisdiction with regard to CFSP acts such as the EU sanctions. Both the Court and the AG themselves confirmed the unity of the EU and the uniform interpretation of EU law in the context of CFSP could otherwise be impaired by national jurisdictions.[97]

Nonetheless, on the other hand, the question remains whether the CJEU did find a back door to usurp competence in CFSP? One can see that the present TEU and TFEU (EU Treaties) are quite ambiguous regarding the CJEU's competence on preliminary ruling procedures in CFSP matters due to the lack of explicit legal basis in this regard. From this point of view the judgment can be criticized.

Firstly, as BRKAN rightly indicates, the competence on CFSP matters cannot be assumed implicitly since nowhere in the EU Treaties (either the TFEU or the TEU) is there any provision that provides the Court with the competence to rule on the validity of the EU sanctions on the legal basis of Art. 267 (1)(b) TFEU. Such a significant shift must only be established with a review of the EU treaties, instead of through expanding the competence with a ruling by the CJEU.[98]

Secondly, when considering the EU Treaties *sensu stricto*, one can say that with such a ruling, the purpose of the currently explicit legal basis could be bypassed since the only goal of

[94] Case C–239/99 *Nachi Europe GmbH v. Hauptzollamt Krefeld* [15 February 2001], §§35–36 & Case C–550/09 *E & F* [2010], §§45–46 confirmed in *Rosneft I*, §67

[95] C–188/92 TWD *Textilwerke Deggendorf GmbH* [9 March 1994]

[96] Graham Butler, "A question of jurisdiction: Art. 267 TFEU Preliminary References of a CFSP Nature" [2017] European Papers 206 <http://www.europeanpapers.eu/en/system/files/pdf_version/EP_EF_2017_I_027_Graham_Butler_0.pdf> last accessed 16 August 2019

[97] *Rosneft I*, §80; Opinion of AG Wathelet, §63

[98] "The Role of the European Court of Justice in the Field of CFSP After the Treaty of Lisbon" 111

the exceptions created in the EU Treaties was to provide the possibility of individuals to challenge the validity of the EU sanctions via a direct action based on Art. 263(4) TFEU and hence, not to give a general review to the CJEU

CHAPTER 4

CHALLENGING THE VALIDITY OF THE EU SANCTIONS IMPOSED ON INDIVIDUALS: "TO ANNUL OR NOT TO ANNUL?"

Now that we have assessed the competence, it is clear that the individual can challenge the validity of their sanctions through a direct (Art. 263(4) TFEU) or indirect action (Art. 267 (1)(b) TFEU).

In this chapter, we discuss the individual's possibility of challenging the validity of the EU sanctions in response to the Ukrainian crisis or the so-called "direct action". Before the Court can rule on the merits of the individual's case, the Court firstly must assess whether the *locus standi* criteria for the applicant/individual concerned are fulfilled (A). If so, afterward, the GC (in first instance) or the CoJ (appeal) will debate about the validity of the sanctions and whether they have to be annulled or not (B).

A. Always *Locus Standi* for the Individual?

When the individual concerned questions the validity of the EU sanctions, he/she want them to be lifted in so far as it concerns him/her. Therefore, in accordance with Article 263(4) TFEU, his/her legal standing (*locus standi*) must be proved. If the applicant cannot demonstrate legal standing, the CJEU simply does not have jurisdiction to decide the validity of the EU sanctions, regardless of the consequence for the individual concerned.

§ 1 Qualification Criterion

i. THE REQUIREMENT OF DIRECTLY AND/OR INDIVIDUALLY CONCERNED IN CFSP ACTS

When an individual challenges the EU sanctions before the CJEU in the first instance (meaning the GC), the Court must firstly decide on the identification of the parties. In other words, the Court must establish whether the individual is eligible to claim the annulment of a specific EU legal act

According to Art. 263(4) TFEU, any natural or legal person has *locus standi* when satisfying the admissibility criteria as laid down in Art 263 (1) jo. (4) TFEU. This implies that the individual can only challenge the EU sanctions before the EU courts when he/she is directly

and individually concerned by the act on which the sanctions have been imposed.[99] This condition raises the question of whether the EU sanctions could not under any circumstances fall within the category of EU regulations within the meaning of the first paragraph of Art. 288 TFEU. If this question is answered in the affirmative, Art. 263(4) TFEU prescribes that in such case, it is sufficient for the individual to show merely that he/she is directly concerned by the EU sanctions (and not individual as well).

According to BRKAN [2012], it is not sufficient to merely show that the applicant is directly concerned since the EU sanctions in response to the Ukrainian crisis are of an economic nature.[100] However, in *Rosneft II*, the opposite was proven.[101] Contrary to the EC's allegations, the applicant was able to demonstrate that the sanctions related to the export restrictions fell within the category of a regulatory act without implementing measures.[102] Also in the preliminary ruling procedure of Rosneft (*Rosneft I*) the Court confirmed such an approach.[103] In *Inuit Tapiriit,* the CoJ explained that an individual is directly concerned by an act when it affects his/her legal situation directly and, further, no discretion is left to its addressees, who are entrusted with the task of implementing the act.[104] In *Rosneft II*, the national authorities did not leave any margin of discretion, notwithstanding the prior authorization system. Therefore, Rosneft merely had to show that it was directly (and not individually) concerned by the imposed sanctions.[105]

ii. THE ALTERATION OF THE CURRENT ACTION FOR ANNULMENT

The *locus standi* as enshrined in Art. 263 TFEU requirements are not extensively discussed in the CJEU's case law on EU sanctions in response to the Ukrainian crisis. The reasons, therefore, are the individual who lodges an Art. 263 TFEU procedure in this context is included in the attached annex to the legal acts on which the sanctions are based. Due to the individual's inclusion on the EU sanctions list, there is, in principle, no doubt that he/she is negatively affected and thus has proven his/her *locus standi*.

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[99] Art. 263(4) TFEU

[100] "The Role of the European Court of Justice in the Field of CFSP After the Treaty of Lisbon" 110

[101] (Rosneft II).

[102] ibid: *In casu* the GC makes a distinction between the provisions on access to the capital market (§§64–77) & the provisions (§§78–91); see also *infra* Chapter 5

[103] See therefore *Rosneft I,* §102 et seq.; see also *infra* Chapter 5

[104] Case C–583/11 P *Inuit Tapiriit Kanatami v. EP & EC* [3 October 2013], §16

[105] *Rosneft II*, §§82–86.

Nonetheless, the requirements for legal standing have been contested in the context of when a statement modifying the form of order sought (the additional action for annulment) took place during an annulment procedure. In these cases, the applicants extended the scope of their actions based on Art. 263(4) TFEU, as they alleged, they were adversely affected by the amendments to the EU sanctions that they initially appealed (the current action for annulment) [106]:

In *M. Azarov I*, the applicant lodged two requests to annul the inclusion of his/her name on the EU sanctions list. In this judgment, the *locus standi* requirement in relation to the individual's additional action for annulment (January 2015 decisions) to his/her current action (March 2014 decisions) was discussed by the GC.[107] The GC declared itself inadmissible with regard to the January 2015 decisions, as M. Azarov, did not satisfy the *locus standi* requirements for the following reasons[108]:

Firstly, M. Azarov did not have legal standing because the contested Decision did not explicitly designate the applicant's name nor had, it been adopted following a complete review of the lists of persons subject to EU sanctions.

Secondly, the January 2015 decisions only cover a general listing of criteria applicable to objectively determinate situations. They have legal effect in relation to categories of persons and entities envisaged in a general and abstract manner and not, in particular, the inclusion of an applicant's name on the sanctions list. In addition, the GC has stated that the amendments made to the general listing criterion by the Regulation and Decision (which resulted in an additional action for annulment) are not relevant for assessing the legality of the addition of the applicant's name on the EU sanctions list in accordance with the criteria prescribed in the contested Decision.[109]

As a result, the contested amended legal acts were of neither of nor individual concern to M. Azarov, as required in Art. 263(4) TFEU and, subsequently, the GC declared the case on this issue inadmissible.[110] The GC came to an identical conclusion in future cases with regard to the

[106] First cases: *M. Azarov I*, §§60–67; *O. Azarov I*, §§55–62

[107] *M. Azarov I*, §60: "In the statement modifying the form of order sought, the applicant also seeks annulment of Decision 2015/143 & Regulation 2015/138, essentially in so far as they amend Art. 1(1) of Decision 2014/119 & Art. 3 of Regulation No 208/2014, respectively."

[108] M. Azarov I, §§64–67

[109] M. Azarov I, §66

[110] *M. Azarov I*, §65: "declare the action inadmissible in so far as it is directed against Decision 2015/143 & Regulation 2015/138"

EU sanctions in response to the Ukrainian crisis.[111] It can be derived from the *Yanukovych* cases before the CoJ that despite the negative outcome, the *locus standi* criteria were no longer disputed in the case of an appeal against the decision of the GC with regard to the additional action for annulment.[112]

Note that this is not the first time that the Court ruled in such a way about the applicant's lack of legal standing with regard to the EU sanctions imposed on individuals. The ruling in *M. Azarov I* is found on an earlier and similar case that was brought before the GC – *Bank Refah Kargaran v. EC* [2013], which concerned the EU sanctions regime in view of the situation in Iran –. *In casu*, the sanctions were imposed on individuals involved in nuclear proliferation-sensitive activities and the development of nuclear weapon delivery systems.[113] Nonetheless, the Court considers that when a decision or a regulation directly and individually concerns an individual who is replaced during the proceedings by another measure with the same object, a new element is created in the case. For this reason, the applicant should have the opportunity to adapt their claims and pleas in law.[114]

§ 2 Continuation of the Interest in the Annulment

In addition to the aforementioned *locus standi* criteria, the applicant must also demonstrate interest with regard to the annulment if he/she wants to be granted an annulment for the contested act within the meaning of Art. 263 TFEU. According to established case law, in order for such an interest to be present, the annulment of the contested act must in itself be capable of having legal consequences and the action must be liable, if successful, to produce an advantage for the party who has brought it.[115] If such interest cannot be proven at the stage of lodging an action, the CJEU must declare the case inadmissible.[116]

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[111] i.a. *O. Azarov I*, §§55–62 (no *locus standi* in relation to Decision 2015/143 & Regulation 2015/138); Case T–346/14 *Viktor Yanukovych v. EC* [15 September 2016], §61 (*no locus standi* in relation to Regulation 2015/138); Case T–348/14 *Oleksandr Yanukovych v. EC* [15 September 2016], §§61–63 (no *locus standi* in relation to Regulation 2015/138).

[112] Case C–598/16 P *Viktor Yanukovych v. EC* [19 October 2017], para.36; Case C–599/16 P *Oleksandr Yanukovych v. EC* [19 October 2017], §340. Note that in the Appeal procedure lodged by Mykola Azarov there is even not a word mentioned about the *locus standi* requirements. See therefore: *M. Azarov V*

[113] Case T–24/11, *Bank Refah Kargaran v. EC* [6 September 2013], §§46–50

[114] ibid, §47

[115] i.a. Case 53/85 *AKZO Chemie v. Commission* [24 June 1986], §21, Joined Cases T–480/93 & T–483/93 *Antillean Rice Mills & Others v. Commission* [14 September 1995], §§59 & 60; Case T–188/99 *Euroalliages v. Commission* [20 June 2001], §26; Case C–174/99 P *EP v. Richard* [13 July 2000] E, §33, & Case C–50/00 P *Unión de Pequeños Agricultores v. EC* [25 July 2002], §21

[116] Koen Lenaerts, Ignace Maselis, Kathleen Gutman, *EU Procedural Law* (Janek Tomasz Nowak, OUP 2014) 7.138.

Accordingly, the question arises as (i) to what extent there is still a continuation of interest when the applicant requests the annulment of an act that has not been brought into force at a particular moment in time and (ii) whether the right to reputation implies a continuation of the interest.

i. Subjection at a Certain Point in Time

Having an interest implies that the applicant wishes the sanctions to be annulled for a certain period of time, which means that he/she must be effectively subjected to those sanctions at that point in time.[117]

In the *Yanukovych* cases before the GC, both former Ukrainian president Viktor Yanukovych and his son Oleksandr brought legal proceedings based on Art. 263 TFEU against the EU sanctions of March 2014 and of January and March 2015 for the inclusion of their names. The applicants wanted the acts on which the EU sanctions of March 2014 were based to be declared invalid for the period starting from the entry into force of the EU sanctions of January 2015 until the entry into force of the EU sanctions of March 2015 insofar as they concerned their name in response to the Ukraine crisis. The applicants in question wishes to be declared invalid: the March 2014 acts on which the EU sanctions of March 2014 were grounded for the period starting from the entry into force of the EU sanctions of January 2015 until the entry into force of the EU sanctions of March 2015 in so far as they concerned their names.[118] The GC stated that the EU sanctions of March 2014 had been replaced by the sanctions of January and March 2015. Subsequently, the Yanukovyches were not subject to the EU sanctions of March 2014 for the period of January to March 2015, those sanctions could not be declared invalid by the GC.[119]

Thus, the annulment of the EU sanctions based on Art. 263 TFEU could not be proclaimed, or as the GC stated, there was no need to give a ruling with regard to such a claim, in which the criterion of "subjection in time" had not been fulfilled.[120]

[117] Case T–346/14 *Viktor Yanukovych v. EC* [15 September 2016], §51; Case T–348/14 *Oleksandr Yanukovych v. EC* [15 September 2016], §52

[118] ibid

[119] ibid

[120] ibid

ii. The Right to Reputation: A Ground for Asserting a Continuing Interest?

In the first cases before the CJEU on the EU sanctions in response to the Ukrainian crisis, the continuation of the applicants' interest was debatable.

For example, continuing interest was discussed in cases where the individual's name had already been removed before the GC had provided a judgment, but after the individual had challenged the EU sanctions. Such interest was also discussed when the contested acts that led to EU sanctions imposed on individuals were amended or replaced by the EC before a ruling had been made by the CJEU. In such cases, the CJEU must rule on the question of whether the applicant a continuing interest must bring legal proceedings before the Court.

On the one hand, established case law states that the interest of the individual concerned should be maintained until the Court's final decision,[121] while on the other hand, the Court understands the individuals' concern that it is relevant for them to recognize the illegality of the inclusion of their names on the basis of the contested legal acts, due to their involvement in political life, such as in the cases of *Andriy Portnov* [2015][122] and *Mykola Azarov* [2016][123].[124] The designation on the EU sanctions list refers to the pending criminal proceedings against those individuals with regard to the misappropriation of assets. Therefore, such recognition of illegality is essential for the individual included on the sanctions list to restore the reputation of the individual concerned.[125] Furthermore, such identification can constitute the basis for subsequent actions to seek compensation for the damages suffered due to the inclusion of the individual's name.[126]

As a result of this reasoning, the GC ruled that, contrary to the view of the EC (supported by the Commission), the individuals who challenge the validity of the EU sanctions imposed on them based on Art. 263(4) TFEU retain their interest, regardless of whether the EC (a) has

[121] Case 53/85 AKZO *Chemie v. Commission* [1986], §21; Case C–19/93 P *Rendo NV et al. v. Commission* [19 October 1995], §13; Case C–174/99 P *EP v. Richard* [13 July 2000], §33; Case C–362/05 P *Wunenburger v. Commission* [7 June 2007], §42 confirmed in *Portnov*, §29

[122] Former advisor of the Ukrainian former president Viktor Yanukovych

[123] Former Prime Minister of Ukraine (From 11 March 2010 until 24 January 2014)

[124] Portnov, §30; M. Azarov I, Stavytskyi I, §26; O. Azarov I, §27; Case T–341/14 Sergiy Klyuyev v. EC [28 January 2016] §38

[125] *Portnov*, §31; Case T–331/14 *Mykola Azarov v. EC* [28 January 2016], para.27–28; *Stavytskyi I*, §§25–26; *O. Azarov I*, §§26–27; Case T–341/14 *Sergiy Klyuyev v. EC* [28 January 2016] §§27–28

[126] M. Azarov I, §30; Stavytskyi I, §28

revoked the individual's name from the EU sanctions list[127] or (b) has amended/replaced the inclusion criterion or the reasons for the inclusion of the individual's name on this list. With regard to the latter, it should be noted that an amendment of the contested act does not constitute the recognition of the illegality of the inclusion of the individual's name on the sanctions list, contrary to the annulment under Art. 263 TFEU.[128]

As we can see the CJEU needs to strike a balance between the right to reputation – such as of politicians – on the one hand, and the EU external action – the EU sanctions – on the other hand, in the context of the *locus standi* requirements. Later we will see that the right to reputation is not always highly valued in the context of the EU sanctions in response to the Ukraine crisis, in particular when deciding on the validity of the sanctions itself.[129]

B. Balancing the Foreign Policy Objective with Fundamental Rights and General Principles of EU Law: 'to annul or not to annul'?

Once the CJEU the action of annulment is declared admissible, the first step toward annulling is achieved.[130] The second step, discussed in this chapter, is for the Court to decide to annul the sanctions or not the annul the sanctions.

Art. 21(1) TEU provides an obligation to the EU and its institutions to abide by several FRs in its external action context.[131] This was earlier confirmed in *H v. EC* [2016].[132] Pursuant to Art. 23 TEU, 21 TEU jo. 2 TEU, this entails that the EC must comply with several FRs when it was adopting the EU sanctions against individuals in response to the Ukraine crisis. Accordingly, the CJEU must face a tough challenge: the assessment of the EU sanctions in light of FRs and general principles.[133] Note that such evaluations must be carried out *in concreto*.

Firstly, the CJEU must strike a balance between the foreign policy objective ('CFSP objective') on the one hand, and FRs as enshrined in the EUCFR and ECHR on the other

[127] Portnov & O. Azarov I

[128] *M. Azarov I; Stavytskyi I; Sergiy Klyuyev v. EC* [28 January 2016]

[129] See *infra* Chapter 4, point B, §2, ii

[130] See *supra* point A.

[131] Art. 21(1) TEU: […] shall be guided by the principles […] democracy, the rule of law, human rights and fundamental freedoms, respect for human dignity, etc.

[132] C–455/14 P *H v. EC* [19 July 2016], §58

[133] "Judicial Review of the EU's CFSP: Lessons from the Rosneft case"; see also *supra* Chapter 3, point C

hand.[134] Although the EU has no specific competence in FRs – unlike the CoE– they play a vital role in the EU legal order.[135]

The CJEU's *Kadi* judgments, which occurred before the Treaty of Lisbon, emphasize the importance of thoroughly reviewing the lawfulness of all EU acts in light of procedural FRs as covered by the EU, 'the PFRs-test'.[136] It is noteworthy that this case law-principle is used by the CJEU in today's case with regard to EU sanctions in response to the Ukrainian crisis.[137]

With the introduction of the Treaty of Lisbon, the ECFR has received a formal status as they are integrated into primary EU law. This is also confirmed in the Court's case law in the context of the Ukraine crisis.[138] Pursuant to the EUCFR, all acts adopted at the level of the EU must respect FRs as enshrined in the EU Treaties.[139] This implies that when FRs are at stake, the CJEU can refer to the EUCFR in its legal reasoning on the validity of the EU sanctions.[140] Furthermore, the Treaty of Lisbon introduced a substantial nexus between the EU and the CoE. Art. 6(3) TEU confirms that the FRs enshrined in ECHR has a status of general principles of EU law as they are the result of the constitutional traditions common to all the MS.[141] Although the MSs are not yet bound by the ECHR,[142] the CoE's treaty must be read together with the explanations of the EUCFR.[143] In addition, while the CJEU can refer to or apply the ECtHR's case law, it is not bound by it as the EU has not yet acceded to the ECHR despite its preparations.[144]

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[134] Art. 21(2) TEU, see *infra* Chapter 4, point B, §1

[135] Art 6(1), 2nd para. TEU: "The provisions of the ECHR shall not extend in any way the competences of the Union as defined in the Treaties"

[136] *Kadi I*, §326–327 *Kadi II*, §97; see also Christina Eckes, "EU restrictive measures against natural & legal persons: from counterterrorist to third country sanctions" [2014] Common Market Law Review 891 <https://dare.uva.nl/search?identifier=8ddda906-b6a5-4774-8435-33f851d1b4bf>

[137] i.a. *V. Yanukovych,* §100; Rosneft II, §106; *Azarov V*, §20; Case T–290/17 *Edward Stavytskyi v. EC* [30 January 2019], §71; *infra* Chapter 4, point B; §3

[138] This is also confirmed in several cases in the context of the Ukraine crisis when talking about FRs. See i.a. *Rotenberg*, §143; *Kiselev*, §66; *M. Azarov II*, §38

[139] Art. 51(1) EUCFR: "[…] They shall therefore respect the rights, observe the principles & promote the application thereof in accordance with their respective powers & respecting the limits of the powers of the Union as conferred on it in the Treaties"

[140] "The Role of the European Court of Justice in the Field of CFSP After the Treaty of Lisbon" 111

[141] Art. 6(3) TEU

[142] The EU did not accede yet to the ECHR

[143] Art. 52(3) EUCFR

[144] Art. 6(2) TEU

Secondly, EU institutions, like the EC, have to give full effectiveness to the general principles of EU law when adopting EU acts. The Court itself designed these principles. They unify the law, fill in gaps, and give weight and legitimacy to the EU legal order as a whole.[145] The general principles that the CJEU must evaluate in the context of the EU sanctions in response to the Ukrainian crisis (including in *Rosneft I*) compromise are: FRs,[146] the principle of legal certainty[147] and proportionality.[148]

Henceforth, an overview of the CJEU's parameters that led to the (in)validity of the EU sanctions in response to the Ukrainian crisis is presented.

§ 1 EC's Compliance with the foreign policy objective (Art. 21 TEU)

Firstly, the CJEU must assess the EC's compliance with the CFSP objective. The EC in adopting sanctions must comply with the CFSP objective as enshrined in Art. 21 TEU. If not, the sanctions can be declared invalid due to a violation of the Art. 21 TEU.

With the introduction of the Treaty of Lisbon, the CFSP became part of the EU's external action.[149] Accordingly, the CFSP objective is based on a set of common principles and objectives as defined in Art. 21 TEU.[150] One can see that Art. 21 TEU is based on Art. 3(5) TEU, in which the latter provision refers to the promotion of the EU values and interests in the EU's relationship with the 'wider world' meaning the 'external context'.[151] This implies that

[145] Armin Cuyvers, "General Principles of EU Law" in *East African Community Law: Institutional, Substantive & Comparative EU Aspects*, (Armin Cuyvers et al., 2017) 217 <https://core.ac.uk/download/pdf/151302098.pdf> last accessed 11 August 2019

[146] It should be noted that the FR are not only a formal status but they also part of the general principles of EU law. FR received the status as general principle in 1969. First recognised by the CJEU in Case 29–69 *Erich Stauder v. City of Ulm* [12 November 1969]

[147] First recognised by the CJEU in Joined Cases 42 & 49/59 SNUPAT *v. High Authority of the ECSC* [22 March 1961]

[148] First recognised by the CJEU in Case 8–55 *Fédération Charbonnière de Belgique v. High Authority of the ECSC* [16 July 1956]

[149] CFSP was already established with the Treaty of Maastricht, i.e., the TEU, as the second pillar of its three–pillar structure [1993] but has changed with the Treaty of Lisbon. Although the Treaty of Lisbon abolished the pillar structure. The Treaty of Lisbon changed CFSP; EP, "CFSP" (March 2016) <http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/579065/EPRS_BRI%282016%29579065_EN.pdf>; EP, "Factsheet on the Foreign Policy: Aims, Instruments & Achievements" (2019) < http://www.europarl.europa.eu/ftu/pdf/en/FTU_5.1.1.pdf > last accessed 11 August 2019

[150] See *supra* Chapter 2

[151] Art. 3(5) TEU: "In its relations with the wider world, the Union shall uphold & promote its values & interests […]. It shall contribute to peace, security, the sustainable development of the Earth, solidarity & mutual respect among peoples, […] the protection of human rights, […] to the strict observance & the development of international law, including respect for the principles of the UN–Charter."

the CFSP objective must be related to preserving peace, preventing conflicts and strengthening international security in accordance with international law and international principles..

The EU sanctions as part of the EU's external tool must be introduced with a view to promoting the CFSP objective.[152] Therefore, when the EC designates an individual as responsible, e.g., for the misappropriation of Ukrainian state funds or his/her involvement in the acts of aggression in eastern Ukraine, it can only list his/her name in light of these objectives. Considering the EU sanctions in response to the Ukraine crisis, the inclusion of individuals for the misappropriation of public funds occurred with a view of consolidating and supporting the RoL and respect for human rights. These objectives can be found back in the first paragraph of Art. 21(1) TEU. The CFSP objective is clearly stated in the underlying decision of the EU sanctions.[153]

Now, what in case if an injured individual alleges that the EC did not comply with the prescribed CFSP objectives? Therefore, the Court has assessed whether the inclusion of an individual's name in the EU sanctions list is conform with the specified CFSP objective in Art. 21 TEU, in light of the principle of proportionality.[154]

In the case law relating to the Ukrainian crisis, the GC was faced with such a question for the first time in the *Yanukovych* cases [2016].[155] To survive their challenge, former president Viktor and son Oleksandr Yanukovych relied on the argument that the inclusion of their names was disproportionate as the EC failed to comply with the two declared objectives, namely consolidating and supporting the RoL and ensuring respect for human rights in Ukraine, nor did it comply with the other CFSP objectives as stated in Art. 21(2)(b)TEU.[156] Nonetheless, *in casu*, the Court ruled that there was no violation of the proportionality principle as the aim to include the Yanukovyches name was compatible with the CFSP objectives prescribed.[157]

Firstly, the Court confirmed that the EC added their names solely in light of promoting the RoL as prescribed in the contested act. Therefore, it is not necessary for the EC to consider

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[152] EP, "CFSP" (March 2016) <http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/579065/EPRS_BRI%282016%29579065_EN.pdf > last accessed 10 August 2019

[153] See for example: Decision 2014/119, rec. 2: "On 3 March 2014, the EC agreed to focus restrictive measures on the freezing & recovery of assets of persons identified as responsible for the misappropriation of Ukrainian State funds & persons responsible for human rights violations, with a view to consolidating & supporting the RoL & respect for human rights in Ukraine"

[154] *V. Yanukovych I,* §§88; *O. Yanukovych I*, §§89

[155] *V. Yanukovych I*, §§85–101*; O. Yanukovych I*, §§86–102

[156] *V. Yanukovych I*, §86; *O. Yanukovych I*, §87

[157] *V. Yanukovych I*, §101; *O. Yanukovych I*, §102

all of the CFSP objectives, as stated in Art. 21(2)(b) TEU.[158] Subsequently, the Yanukovyches' argument must be refuted.

Secondly, the EC complies with the prescribed CFSP objectives as enshrined in the contested decision as the Court states that the inclusion of the Yanukovyches' name on the EU sanctions list which that led to the freezing of their assets, is based on offenses that constitute misappropriation of public funds. In addition, the inclusion of their names on the EU sanctions list is based on a legal framework and on the pursuit of the relevant CFSP objective as prescribed in that framework, namely the consolidation and support of the RoL in Ukraine.[159] In addition, we can remark when looking at the Commission's Communication that the RoL can be interpreted quite broad there it involves the principle of legality principles of legality, the prohibition of arbitrary exercise of power by the executive, effective judicial review and equality before the law–.[160] In its reasoning, the Court referred to three judgments that were ruled on, a few months before the *Yanukovych* judgments.[161] Those three judgments were ruled on in the context of similar EU sanctions adopted against individuals in view of the situations in Tunisia and Egypt.[162] The Court states that these sanctions which established the freezing of the assets of individuals accused of the misappropriation of public funds in those countries, comply with the CFSP objectives as prescribed in the contested decision.[163] However, it should be noted that not all conduct of the individual concerned involving the misappropriation of public funds in third countries such as Ukraine, Tunisia or Egypt, justifies an EU external action based on a CFSP objective. It is necessary that the individual's act(s) of misappropriation of public funds are undermining the legal and institutional foundations of the country concerned, *in casu* Ukraine. This implies that when the listing criteria meet the 'higher rules' – meaning

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[158] *V. Yanukovych I,* §§92–93; *O. Yanukovych I*, §94

[159] *V. Yanukovych I,* §96; *O. Yanukovych I,* §97

[160] The essence of the RoL was established by the Commission in its RoL Framework Communication. See therefore: *supra* (n 44); See also: Hermann-Josef Blanke, *The Treaty on European Union (TEU): A Commentary* (Hermann–Josef Blanke & Stelio Mangiameli, Springer, 2013), 132 & 168

[161] Case T–187/11 *Trabelsi et al. v. EC* [28 May 2013]; Case T–256/11 *Ezz et al. v. EC* [27 February 2014], §44; Case T–200/14 *Ben Ali v. EC* [14 April 2016]

[162] In case of Tunisia & Egypt: the EU sanctions also covers the freezing of funds: for example, in Case T–187/11 *Trabelsi et al. v. EC* [28 May 2013]: the action for annulment of the EC Implementing Decision 2011/79/CFSP of 4 February 2011 implementing Decision 2011/72/CFSP concerning restrictive measures directed against certain persons & entities in view of the situation in Tunisia [2011] *OJ L*31 40; In case of Syria: Aleksi Pursiainen, "Targeted EU Sanctions & FRs" [2017] 8 <https://um.fi/documents/35732/48132/eu_targeted_sanctions_and_fundamental_rights/14ce3228-19c3-a1ca-e66f-192cad8be8de?t=1525645980751> last accessed 10 August 2019

[163] Case T–187/11 *Trabelsi et al. v. EC* [28 May 2013], §92; Case T–256/11 *Ezz et al. v. EC* [27 February 2014], §44; Case T–200/14 *Ben Ali v. EC* [14 April 2016], §68 confirmed in case *V. Yanukovych I*, §§94–95 & *O. Yanukovych I*, §96

the CFSP objective – the sanctions are 'proportionate' and, subsequently, the EC complies with the Art. 21 TEU.[164]

With regard to the foregoing, it is no surprise that the GC in the *Yanukovych* cases confirms the validity of their EU sanctions. The inclusion of their names on the EU sanction list consisted solely in preventing the misappropriation of public funds in Ukraine by those men. The aim of such external action was supporting and consolidating the Ukrainian RoL. Therefore, the GC finds that the EC sanctions in question are compatible with the envisioned CFSP objectives.[165]

Though, questions can be marked by the required evidence in order to decide to the compliance with the CFSP objective. In the appeal procedures against the Yanukovyches [2017], the CoJ states that a pre-investigation (instead of judicial proceedings) conducted by the authorities of the third country *in casu* was sufficient for the inclusion. From this view, one can see that the threshold to meet the CFSP objective is not really high due to the 'poor supporting evidence' that needs to be delivered by the EC for imposing 'valid' EU sanctions. Subsequently, the individual's procedural FRs come into play.[166] The CoJ confirms the GC's decision by stating that the EC did comply with the CFSP objective.[167] In the event, the addition would depend on a criminal investigation, the effectiveness of the EU sanctions against that person, meaning the freezing of his/her assets would be impaired.[168]

§ 2 The interest of foreign policy objectives: an expeditious justification ground to deviate from substantive fundamental rights?

When the EC includes an individual's name on the EU sanctions list, the questions whether the EC can set aside substantive FRs as enshrined in the EUCFR and the ECHR arises.

Art. 52(1) EUCFR deals with the arrangements for the limitation of its included FRs. Such limitations are allowed only if there is a legal basis; they do not infringe upon the essence of those FRs; respect the principle of proportionality; only if less arduous measures are not possible and if there is a genuine objective of general interest recognized by the EU (or the need

[164] V. Yanukovych I, §§99–100; *O. Yanukovych I*, §§100–101

[165] *V. Yanukovych I,* §101; *O. Yanukovych I*, §102

[166] See *infra* Chapter 4, point B, §3

[167] *V. Yanukovych,* §§61–64*;* O. *Yanukovych II*, §§58–62 *()*

[168] The individual concerned would have enough time to transfer the assets to another country and, subsequently, undermine the purpose of the external action meaning supporting the third country. See therefore: *V. Yanukovych II* §63*;* O. *Yanukovych II*, §59

to protect others FRs). [169] Considering the CJEU's case law on the Ukraine crisis, the Court had to deal with the issue of the restrictions on several FRs quite often.

Henceforth, special attention is given to the (i) freedom of expression; (ii) right to reputation and (iii) the right to property as a discussion of all would exceed the limits of this essay. However, note that for example, in *Rotenberg* [2017] the right to respect private life[170]; the right to property[171] and freedom to conduct business[172] were debated. The GC *in casu* assessed the EC's compliance with those rights at the same time and in the light of the proportionality principle.[173] Despite the fundamental character of those rights, the Russian individual Arkady Rotenberg failed to survive his challenge as the EC respected all those rights when including Rotenberg on the EU sanctions list.[174]

i. FREEDOM OF EXPRESSION (ART. 11 EUCFR; ART.10 ECHR)

In light of the EU sanctions in response to the Ukraine crisis, *Kiselev* [2017] is the only case so far where the CJEU has to face the challenge of striking a balance between the EU's external action on the one hand, and the right to freedom of expression on the other hand. In addition, the Court must decide whether Kiselev had engaged in propaganda.[175]

Remarkably, *Kiselev* was not the first case where the Court had to deal with EU sanctions imposed on journalists/propagandists. In *Mikhalchanka* [2016], a Belarusian journalist successfully challenged the EU sanctions related to Belarus as he was affected. Nevertheless, the GC annulled the EU sanctions on the basis of an error of assessment. In comparing with *Kiselev*, the Court in *Mikhalchanka* was not confronted with the nexus between EU sanctions and freedom of expression.[176]

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[169] Art. 52(1) EUCFR

[170] Art. 7 EUCFR corresponds to Art. 8 ECHR

[171] See *infra* (i)

[172] Art. 7 EUCFR; Does not have a corresponding right in the ECHR as it is a right developed by the CJEU's case law. This right exists of two rights: 1) freedom to exercise an economic or commercial activity (see i.a. Case 4/73 *Nold KG v. Commission* [14 May 1974], §14) & 2) freedom of contract (see i.a. Case C–151/78 *Sukkerfabriken Nykøbing Limiteret v. Ministry of Agriculture* [16 January 1979], §19). See therefore Art 7 EUCFR under the Explanations to the EUCFR; Right to freedom to conduct business is also discussed in *M. Azarov II*, §§88–95

[173] See *infra* (i) & Case T–720/14 *Arkady Rotenberg v. EC* [30 November 2016], §§164–187 (*Rotenberg*)

[174] *Rotenberg*, §186: "[…] the restrictions of the applicant's fundamental rights which flow from the restrictive measures at issue are not disproportionate & cannot lead to the annulment of the other contested acts."

[175] Case T–262/15 *Dmitrii Kiselev v. EC* [5 June 2017] (*Kiselev*)

[176] Case T–693/13 *Aliaksei Mikhalchanka v. EC* [10 May 2016]; Yuliya Miadzvetskaya, "How to draw a line between journalism & propaganda in the information wars era?" [2018] <https://www.coleurope.eu/fr/research-paper/how-draw-line-between-journalism-and-propaganda-information-wars-era> last accessed 8 August 2019

In *Kiselev,* the individual concerned – a State-appointed Russian propaganda official[177] – was subjected to the EU sanctions belonging to the first package.[178] The EC inclusion criterion was broader than in *Mikhalchanka* their the official's name in *Kiselev* was added for 'actively' supporting the deployment of Russian troops in Ukraine.[179] Subsequently, the question arises as to whether such restrictions jeopardize the listed individual's right to freedom of expression.

The right to freedom of expression is embodied in both the EUCFR (Art. 11) and ECHR (Art. 10). Since they are corresponding rights[180], both provisions must be read in conjunction with Art. 52 EUCFR and the explanations to the EUCFR, pursuant to Art. 6(1) third paragraph.[181] Art. 52 EUCFR provides the scope of the rights and principles as laid down in the EUCFR and establishes the rules for their interpretation. Art. 52(3) EUCFR alludes to the ECHR and is intended to ensure the necessary consistency between the corresponding rights of the two legal instruments.[182] According to Art. 52 (1), (2) and (3) EUCFR, the same rule applies to Art. 11 EUCFR.

In this vein, the EC must comply with three cumulative conditions as laid down in Art. 10(2) ECHR, when adopting sanctions: there must be a legal basis present; the restrictions must be necessary to achieve a general interest objective and they must be in accordance with the proportionality principle. *In casu,* the CJEU has considered these criteria when ruling on the validity of the EU sanctions imposed on Kiselev in light of the freedom of expression.

At first sight, the legal basis is clear as the EU sanctions imposed on him are adopted in accordance with Art. 215 TFEU. However, the specific provision on which Kiselev is included in the sanctions list is somewhat controversial as the contested act does not define the requirement of "active support".[183] The GC interprets the scope of this term on its own.[184] Subsequently, the GC states that Kiselev falls within the ambit of " providing active support"

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[177] Head of the Russian Federal State news agency "Rossiya Segodnya (translation: Russia Today)"

[178] See supra (n 56)

[179] *Kiselev*, §3: Kiselev is listed based on the following: "Central figure of the government propaganda supporting the deployment of Russian forces in Ukraine"

[180] Art. 11 EUCFR corresponds to Art. 10 ECHR. See therefore: Art. 11 EUCFR under the Explanations to the EUCFR

[181] See therefore: Art. 11 EUCFR under the Explanations to the EUCFR

[182] Steve Peers, Tamara Hervey, Jeff Kenner & Angela Ward, *The EU Charter of Fundamental Rights: A Commentary* (Hart Publishing 2014), 1491–1503

[183] *Kiselev*, §73

[184] The GC interpreted the term by itself & stated that to fall within the scope it is sufficient to provide support for the actions by Russia. The individual does not have to be responsible for the actions. In addition, it states that forms of support which contribute to the continuance of its actions by their quantitative or qualitative significance. See therefore: *Kiselev*, §§73–75

by referring to the importance of the audio-visual media in society nowadays and the large-scale support provided of persons like him[185], through the media (such as the supper through a popular television-programs), for the actions and policies of the Russian Government destabilizing Ukraine.[186] *In casu* the GC did not refer to its own case law but to that of the ECtHR for this aspect of its reasoning.[187] As stated before, the CJEU can refer to or apply the ECtHR's case law.[188]

Furthermore, the GC asserts that the objective of 'putting pressure on the Russian authorities' is an objective of general interest recognized by the EU. This objective is considered by the GC to be in line with the CFSP objectives set out in Art. 21 TEU.[189]

The criteria where the restriction on the freedom of expression must be proportional and necessary is somewhat more complex than the aforementioned criteria.

The Court begins its legal reasoning with recalling the definition of the principle of proportionality and, refers to its own case law concerning that principle,[190] as well as the case law of the ECtHR on the limitations on the freedom of expression[191]. However, the Court only applies these criteria in so far as they are relevant to solve the question of validity with regard to the EU sanctions against Kiselev in light of the freedom of expression.[192]

In terms of its own case law, the Court emphasizes the fundamental character of the principle of proportionality as it is one of the general principles of EU law and explains, that EU measures may not go beyond what is appropriate and necessary to achieve the legitimate aim/objective.[193] In addition, the EU legislature's (*in casu* the EC) wide margin of discretion in areas that involve political, economic, and social choices is stressed.[194]

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[185] He was appointed as head of a press agency in Russia by President Putin & in addition, he had given active media support by illustrating the events in Ukraine in a light that was favorable to the Russian government

[186] *Kiselev*, §76

[187] With regard to "In view of the important role played by the media, in particular the audio–visual media, in modern society" the CJEU refers to *Manole et al. v. Moldova* Application no. 13936/02 (ECtHR, 17 September 2009), §97 & *Delfi v. Estonia* Application no. 64569/09 (ECtHR, 16 June 2016), §13

[188] Art. 6(2) TEU; see *supra* introduction of Chapter 4, point B

[189] *Kiselev,* §§80–83

[190] Case T–273/13 *Sarafraz v. EC* [4 December 2015]

[191] *Perinçek v. Switzerland* Application no. 27510/08 (ECtHR, 15 October 2015) (herafter: *Perinçek)*

[192] *Kiselev*, §93

[193] ibid, §87

[194] ibid, §88

Further, the GC refers to *Perinçek v. Switzerland* [2015]. *In casu* the ECtHR stresses the essential character of the freedom of expression[195]; the special status of politicians with regard to the freedom of expression[196] and the existence of a pressing social need for the limitation[197]. Subsequently, the Court does not see any violation of this principle by the EC when adopting the sanctions.

Considering the *Kiselev* case, the GC states that alternative or less strict sanctions, such as a system of prior authorization or an obligation to justify *a posteriori* the use of the means transferred, are less effective in achieving the objectives.[198] Besides the question of necessity and proportionality with regard to Kislev is somewhat complicated as it went along with the question of whether Kiselev's activities can constitute propaganda.[199] Today, there is no such EU definition of what propaganda is. To solve this matter, the GC refers to findings of Lithuania and Latvia (two MSs) and apply them to the present case. In addition, it concludes that the activity of Kiselev constitutes propaganda.[200]The GC in *Kiselev* decides that the inclusion of his name on the EU sanctions list was necessary and not disproportionate.[201]

After assessing all the limitation criteria, according to the Court, the EC's attainment of all the conditions stated in Art. 10(2) ECHR when adopting the EU sanctions against Kiselev, the CJEU could not declare them invalid on that particular point.[202] We can see that the restriction by the EC of an individual's fundamental right to freedom of expression in the interest of the foreign policy objectives can be considered as a justification for the Council to deviate from substantive FRs.

ii. Right to Reputation (Art. 10(2) ECHR)

In the set of case law in response to the Ukraine crisis, the right to reputation is only invoked by individuals a few times, including by Oleksandr Klymenko[203] and Sergiy and Andriy

[195] ibid, §90: […] it has held that freedom of expression is one of the essential foundations of a democratic society & one of the basic conditions for its progress & for each individual's self–fulfilment, […]

[196] *Perinçek* cited in *Kiselev*, §92: "broad protection of statements relating to political statements or issues of general interest"

[197] *Kiselev*, §92

[198] ibid, §87

[199] Yuliya Miadzvetskaya, "How to draw a line between journalism & propaganda in the information wars era?" [2018] <https://www.coleurope.eu/fr/research-paper/how-draw-line-between-journalism-and-propaganda-information-wars-era> last accessed 8 August 2019

[200] *Kiselev*, 100 et seq.

[201] ibid, §121

[202] As a matter of fact, the action for the annulment of Kiselev did not survive the challenge as a whole

[203] Ukrainian Minister for Revenue & Duties

Klyuyev[204].[205] They challenged the validity of the inclusion of their names on the EU sanction list based on the fact that the restriction on this right was an unjustified and disproportionate restriction.[206]

Firstly, it can be seen that the EUCFR does not provide for a right to reputation, contrary to the ECHR. The CoE has introduced such right in Art. 10(2) ECHR, under the freedom of expression. Therefore, the corresponding character between Art. 11 EUCFR and Art. 10 ECHR must be recalled.[207] Through Art. 10(2) ECHR and the case law of the ECtHR, the right to reputation is recognized as a FR and even overriding the right to freedom of expression when the prescribed conditions laid down in that provision are fulfilled.[208] In several cases, the ECtHR ruled over the right to reputation in the context of Art. 10(2) ECHR.[209]

In all the judgments with regard to the EU sanctions in response to Ukraine, the Court confirms the fundamental character of the ECHR's right to reputation but also recognizes that it is not an absolute right.[210] In addition, in another case against Andriy Klyuyev[211], in the context of the restriction of the right to property, the GC holds that the EU sanctions do not include an adjudication of guilt in respect of the acts of which he is accused of. Therefore, his right to reputation is not endangered.[212]

Subsequently, in all the aforementioned cases, the FRs had to yield to the EU sanctions as the consequences of the detriment of the individuals' reputation is not manifestly disproportionate in relation to the objectives pursued.[213] With such reasoning, the Court has followed its established case law, particularly in the context of the EU's Iranian[214] and Syrian[215] sanctions.

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[204] Sergiy Klyuyev, is a Ukrainian businessman & brother of Andriy Klyuyev; Andriy Klyuyev was the former Head of Administration of the former Ukrainian President Yanukovych

[205] Case T–245/15 Oleksandr *Klymenko v. EC* [8 November 2017], §§193–216; Case T–731/15 *Sergiy Klyuyev v. EC* [21 February 2018], §§167–190; Case T–240/16 *Andriy Klyuyev v. EC* [11 July 2018], §§163–183

[206] ibid

[207] See *supra* Chapter 4, point B, §2 (i); Art. 11 EUCFR under the Explanations to the EUCFR

[208] Art. 10(2) ECHR: […] Legal basis & necessary in a democratic society

[209] See therefore: ECtHR, "Factsheet on the right to reputation" [2019] <https://www.echr.coe.int/Documents/FS_Reputation_ENG.pdf> last accessed 8 August 2019

[210] *supra* (n 204)

[211] *In casu* the right to reputation was only briefly mentioned by the GC

[212] Case T–340/14 *Andriy Klyuyev v. EC* [15 September 2016], §135

[213] T–245/15 Oleksandr *Klymenko v. EC* [8 November 2017], §216; Case T–731/15 *Sergiy Klyuyev v. EC* [21 February 2018], §190; Case T–240/16 *Andriy Klyuyev v. EC* [11 July 2018], §183

[214] e.g. unsuccessfully challenge by the Iranian Central Bank: Case T–563/12 *Central Bank of Iran v. EC* [25 March 2015], §§115–120

[215] e.g. unsuccessfully challenges by Rami Makhlouf: Case T–410/16 *Makhlouf v. EC* [18 May 2017], §19 & Case T–409/16 *Makhlouf v. EC* [12 December 2018], §125

i. Right to Property (Art. 17(1) EUCFR; Art.1 First AP to the ECHR)

Since the 1990s, particularly with its famous *Bospherus* [1996], the CJEU has recognized that the right to property is affected when the EU is imposing sanctions on individuals.[216] Freezing an individual's property, irrespective its temporary character, remains a deprivation of his/her property. Later, in the famous *Kadi I* judgment, the Court stressed that such restriction has an 'unintentionally' character when freezing measures targeting an individual are applied as part of the EU's external action.[217]

In principle, such a restriction pertains to a violation of Art. 17(1) EUCFR and the related Art. 1 of the first AP to the ECHR.[218] However, 'in principle' since the right to property – along with the right to freedom of expression and reputation – is not absolute. Therefore, it can be subjected to limitations if it meets the prescribed conditions in the EUCFR.[219] Subsequently, the CJEU again must assess whether the EU's external action outweigh the restrictions on the right to property of an individual included in the EU sanctions list.[220] The Court examines the restriction on the right to property in the light of the principle of proportionality, legality, and legitimacy, in order to decide on the validity of the EU sanctions on this point.[221]

Remarkable, the criterion of paying compensation is inherent to the right to property, there the right to freedom of expression or reputation does not include such a requirement. However, the CJEU does not evaluate this criterion in the context of EU sanctions, it merely mentions this criterion when talking about the restrictions. It can be assumed that the CJEU does not deem it necessary because it is a measure of a temporary and of a preventive nature.[222]

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[216] Case C–84/95 *Bosphorus* [30 July 1996], §22: "Any measure imposing sanctions has, by definition, consequences which affect the right to property […] thereby causing harm to persons who are in no way responsible for the situation which led to the adoption of the sanctions"

[217] *Kadi I*, §358: That freezing measure constitutes […] not supposed to deprive those persons of their property. It does, however, undeniably entail a restriction of the exercise of Mr Kadi's right to property that must […]

[218] Art. 17 EUCFR is based on the Art. 1 of the AP no.1 to the ECHR. the meaning & scope of the right are the same as those of the right guaranteed by the ECHR & the limitations may not exceed those provided for there. See therefore: Art. 17 EUCFR under the Explanations to the EUCFR.

[219] See therefore: Art. 17(1) EUCFR jo. Art. 52 (1) EUCFR: the restriction of the right to property has to be provided by a legal basis; proportional & in accordance with an objective of general interest. Discussed through the case law in the context of the Ukraine Crisis; relative character of the right to property is recognized in the case law in response to Ukraine; i.a. *Rotenberg*, §168; *M. Azarov II*, §78; Case T–240/16 *Andriy Klyuyev v. EC* [11 July 2018], §170

[220] Art. 17(1) EUCFR: "[…] under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest."

[221] ibid

[222] See *supra* Chapter 1

Paying compensation in the context of sanctions would undermine the sanctions' purpose of freezing the assets. Nevertheless, the CJEU should have clarified on this point, instead of avoiding this criterion since it is one of the essential criteria to allow a restriction on one individual's fundamental property right.

Considering the EU sanctions in response to the Ukraine crisis, one can see that more individuals whose assets are frozen (as a result of those sanctions) are relying on the infringement of the right to property rather than on the other substantive FRs.[223] Moreover, it can be observed that neither the right to property, nor any other substantive FRs are invoked before the CJEU in its latest cases[224] or during an appeal procedure[225]. In fact, the applicant, in those cases[226], is relying on procedural safeguards.[227]

While the CJEU confirms the depriving nature of the right to property and recalling the value of the proportionality principle([228]) in all those cases, on the one hand, it recognizes the overriding general interest such as the EU's support in destabilization of the unlawful Russian activities in Ukraine[229] or the EU's support for Ukraine to promote both the economic and political stability of the country[230] (depending of the nature of the sanctions), provided for by such sanctions on the other hand.[231]

In order to refute the disproportionate character invoked by the individuals in the context of the Ukraine crisis, the Court refers to the EC's 'difficult to impossible task' of limiting the number of frozen funds in practice. Therefore, it rejects the individual's claim that the frozen assets are not in accordance with the values of the assets allegedly misappropriated by

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[223] *Viktor Yanukovych I,* §§160–170; *O. Yanukovych I,* §§160–170; Case T–340/14 *Andriy Klyuyev v. EC* [15 September 2016], §§125–136; *Rotenberg,* §§163–186; Case T–221/15 *Sergej Arbuzov v. EC* [7 July 2017], §§162–177; *M. Azarov II,* §§71–86; Case T–245/15 *Oleksandr Klymenko v. EC* [8 November 2017], §§193–211; Case T–731/15 *Sergiy Klyuyev v. EC* [21 February 2018], §§167–185; *M. Azarov III,* §§45–62; Case T–210/16 *Olena Lukash v. EC* [6 June 2018], §§212–232; Case T–240/16 *Andriy Klyuyev v. EC* [11 July 2018], §§163–178 *M. Azarov IV,* §§47–62;

[224] Case T–290/17 *Edward Stavytskyi v. EC* [30 January 2019]; Case T–305/18 *Andriy Klyuyev v. EC* [11 July 2019]; Joint Cases T–244/16 & T–285/17 *Yanukovych v. EC* [11 July2019]

[225] Case C–599/16 P *Oleksandr Yanukovych v. EC* [19 October 2017]; Case C–598/16 P *Viktor Yanukovych v. EC* [19 October 2017]; *M. Azarov V*;

[226] See *supra* (n222-223)

[227] See *infra* Chapter 4, point B, §3

[228] being a principle of general EU law

[229] *Rotenberg*, §176

[230] See e.g. Case T–240/16 *Andriy Klyuyev v. EC* [11 July 2018], §174

[231] This overriding importance constitutes a CFSP objective a thus an objective of general interest. See *supra* Chapter 4, point B, §1

him/her.[232] In addition, the Court refers to the as we call it 'soft' and 'adjustable' nature of such freeze.[233]These are classified as 'soft' because they are temporary, revisable, they do not touch the essential content of the individual's right to property, and they are periodically reviewed by the EC and 'adjustable' as a derogation from such sanctions is possible in cases of basic needs, legal costs, or extraordinary expenses for the individuals.[234]

One can see similarities with the Syrian actions where the Court applied the same legal reasoning, whereby the individual's right to property (and the right to private life) was not unjustifiably restricted given the overriding general interest of a CFSP nature. However, in the context of the Syrian sanctions there is a slight difference In comparing with the sanctions related to the Ukraine crisis, there the general interest compromises the protection of civilian populations in Syria and the possible derogations on those sanctions.[235]

In the context of the fundamental right to property, we can note the EC's wide discretion in adopting sanctions against individuals on the one hand, and the limited opportunity for individuals to successfully challenge the validity of the sanctions based on this right on the other.

§ 3 Deficiencies in procedural safeguards when adopting EU sanctions: CFSP objective remains an overriding interest?

From what has been presented to this point, it is fair to say that the sanctions in response to the Ukraine crisis, have a profound impact on the listed individuals' life.[236] Despite this impact, the CJEU in all its cases relating to EU sanctions in the context of Ukraine had nevertheless ascertained that the CFSP objectives remain an overriding interest to deviate from substantive FRs.[237] Does the individual concerned have a higher chance of surviving his/her challenge based on procedural flaws when the EC was adopting sanctions or does the CJEU give the EC 'again' free rein to do so?

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[232] e.g. Case T–340/14 *Andriy Klyuyev v. EC* [15 September 2016], §§133–134; *Viktor Yanukovych I,* §168; *O. Yanukovych I,* §68; Case T–240/16 *Andriy Klyuyev v. EC* [11 July 2018]; §177

[233] E.g. M. Azarov II, §85

[234] Case T–340/14 *Andriy Klyuyev v. EC* [15 September 2016], §134; Case T–240/16 Andriy Klyuyev v. EC [11 July 2018], §176

[235] Case T–202/12 *Bouchra Al Assad v. EC* [12 March 2014], §§107–121; See also GC Press Release, "The GC confirms the entry of Ms Bushra al–Assad, sister of the Syrian President Bashar al–Assad, on the list of persons subject to restrictive measures taken against Syria", (12 March 2014) <http://europa.eu/rapid/press-release_CJE-14-33_en.pdf> last accessed 9 August 2019;

[236] i.a. economic disruption; financial hardship; economic/financial relations with others

[237] See *supra* Chapter 4, point B, §2

i. EU INSTITUTIONS' DUTY TOWARDS PROCEDURAL SAFEGUARDS

First of all, procedural FRs (or i.e., procedural safeguards) are partly covered by the general principles of EU law and partly by the EU Treaties.[238]With regard the general principles of EU law, the principle of legal certainty; legality and legitimate expectations are relevant when adopting EU sanctions.When referring to the procedural FRs provided by the EU Treaties, the duty of the EU institutions to abide with the individual's right to defence[239]; good administration[240] (such a fair hearing[241] and access to files[242]); judicial review[243] (incl. the effective judicial protection[244]) and the obligation to state reasons[245]are relevant in that context.

Both the general principles as the provisions in the Treaties are falling under the EU's umbrella principle of the RoL.[246] Accordingly, it is evident that the EC when adopting EU sanctions on individuals, must adhere to all those rights. If the EC could arbitrarily include individuals on the list without being obliged to state 'sufficient' reasons or could found or based on dubious evidence all those rights come into play, including individuals' fundamental judicial protection as guaranteed in the EU Treaties in general.[247]

The vitality of compliance with procedural safeguards by EU institutions(such as the EC) when adopting legal acts, was stressed in *Germany* v. *Commission* [1963] and has become established case law over the years.[248] Procedural safeguards do not merely enable the CJEU itself to exercise its power of judicial review, they also provide the individual affected by the institution's decision with the reasons for the adoption of that measure in order to defend his/her rights and ascertain whether or not the decision was well-founded.[249] This legal reasoning is confirmed in the Court's *OMPI* judgment [2006], where the individual challenged the Iranian

[238] *The Commentary to the EU Treaties and the ECFR* 1637–1639;
[239] Art. 48 EUCFR
[240] Art. 41(1) EUCFR
[241] Art. 41 (1)(a) EUCFR
[242] Art. 41 (2)(b) EUCFR
[243] Art. 2 TEU, Art. 19 TEU jo. Art. 47 EUCFR
[244] Art. 47 EUCFR
[245] Art. 296 TFEU, 2nd para. jo. Art. 41 (2)(c) EUCFR
[246] RoL: Art. 2 TEU & can be found back in the Preamble of the EUCFR; *supra* (n 52)
[247] *See supra* (n238)
[248] Case 24/62 *Germany v. Commission* [4 July 1963], §69; Case C–400/99 *Italy v. Commission* [10 May 2005], §22; Joined Cases T–346/02 & T–347/02 *Cableuropa et al. v. Commission* [2003], §225
[249] ibid

sanctions.[250] Even though there is a CFSP objective, the EC must respect procedural guarantees when establishing sanctions.[251]

The raises the question of whether the same approach, which is in favor of the individual, could be extended to the case law on the EU sanctions in the context of the Ukrainian crisis? In other words, does the Court also attach great importance to procedural FRs when assessing the EU sanctions imposed by the Council as a result of the Ukrainian crisis?

After an in-depth examination of all the cases that have arisen in response to the Ukrainian crisis and whatever the success rate for the individual, we can conclude that the question must be approached from two angles, namely from a bright(ii) and a pessimistic(iii) perspective.

ii. Bright Perspective: The Individual's Fruitful Challenge Based on Procedural Flaws

Almost half of the cases brought before the CJEU in the Ukrainian context were successfully challenged by the individual concerned based on Art. 263(4) TFEU.[252] In fact, adding the cases where the Court decided on a partial annulment of their contested sanctions, it can even be said that the majority of the cases were successfully annulled.[253] Common in all those cases is that the individuals' success relies on the invocation of procedural flaws, particularly the EC's insufficient investigation of the information on which the inclusion or maintenance of individuals' names to the sanctions list is based, i.e., the EC's supporting evidence.[254]

In the CJEU's first six cases ever, the EC was censured, notwithstanding the reiteration of its broad discretion in this context, for not complying with Art. 47 EUCFR.[255] The effective judicial protection embodied in that provision was not respected due to the lack of sufficient solid factual basis when the EC was imposing or prolonging sanctions. The sufficient solid factual basis relates to the credibility of the evidence for the inclusion and maintenance of the

[250] Case T–228/02 *Organisation des Modjahedines du peuple d'Iran v. EC* [12 December 2006]

[251] ibid, §89

[252] See Annex B

[253] See Annex C

[254] e.g. Case T–246/15 *Yuriy Ivanyushchenko v. EC* [8 November 2017], §153. *In casu*, the EC made a manifest error in assessment due to the lack of investigation.

[255] *Portnov*, §38 et seq.; *M. Azarov I,* §38 et seq.; *Stavytskyi I*, §37 et seq.; *O. Azarov I*, §36 et seq.; Case T–341/14 *Sergiy Klyuyev v. EC* [28 January 2016], §38 et seq.; Case T–434/14 *Sergej Arbuzov v. EC* [28 January 2016], §31 et seq.

individual's name on the sanctions list. Therefore, the EC must verify or, i.e., investigate the precise reasons or factual allegations why the individual is listed.[256]

In all six cases, the Ukrainian Public Prosecutor's Office's letter on which the inclusion of the six individuals([257]) was found, did not provide any details or the alleged facts with regard to their inclusion. Therefore, the letter – being the sole evidence at hand – does not satisfy the criterion of sufficient solid legal basis. Subsequently, the CJEU confirmed the invalidity of the EU sanctions based on the EC's neglecting to conduct an independent inquiry.[258] The Court came to the same conclusion with the letters in cases where the Court partial annulled the action such as in the *Yanukovych* cases.[259] In all these cases, insuch as one of the *Kadi* judgments, *Kadi II*, the Court emphasized that is for the EU authorities such as the EC and not the injured individual should provide the evidence that the inclusion was well-founded.[260] This burden of proof is emphasized across the case law in the context of the Ukraine crisis, regardless of whether the individual's challenge has been successful.[261]

Considering, the CJEU's latest cases [July 2019], the GC had to assess the validity of the EU sanctions based on the sole evidence of a letter provided by the authorities of the third country, as in the first six cases. However, this time, it concerned the extension of the sanctions against seven individuals([262]).[263]

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[256] ibid

[257] Andriy Portnov, Mykola and Oleksii Azarov, Sergey Klyuyev, Sergey Aburzov, Edward Stavytskyi

[258] *Portnov*, §38 et seq.; *M. Azarov I,* §38 et seq.; *Stavytskyi I*, §37 et seq.; *O. Azarov I*, §36 et seq.; Case T–341/14 *Sergiy Klyuyev v. EC* [28 January 2016], §38 et seq.; Case T–434/14 *Sergej Arbuzov v. EC* [28 January 2016], §31 et seq.; see also GC Press Release, "The General Court sets aside the freeze on the funds of Andriy Portnov, one–time adviser to the former Ukrainian President Viktor Yanukovych" (26 October 2015) <https://curia.europa.eu/jcms/upload/docs/application/pdf/2015-10/cp150129en.pdf>; GC Press Release "The GC annuls the freezing of the assets of five Ukrainians, incl. Mykola Yanuvych Azarov and Sergej Arbuzov, former Prime Ministers of Ukraine, for the period from 6 March 2014 to 5 March 2015" <https://curia.europa.eu/jcms/upload/docs/application/pdf/2016-01/cp160007en.pdf> last accessed 10 August 2019

[259] EU sanctions annulled against the Yanukovyches with regard to those based on the Decision 2014/119 See. i.a. *V. Yanukovych I*, §49; O. Yanukovych I, §50.

[260] *Kadi II*, §§120–121

[261] i.a. *V. Yanukovych I*, §48; *O. Yanukovych I*, §49; Case T–255/15 *Almaz–Antey v. EC* [25 January 2017]; §128 Case T–262/15 *Dmitrii Kiselev v. EC* [5 June 2017], §63;

[262] Edward Stavytskyi; Andriy Klyuyev; Viktor Yanukovych; Oleksandr Klymenko; Sergej Arbuzov; Viktor and Artem Pshonka

[263] Case T–290/17 *Edward Stavytskyi v. EC* [30 January 2019]; Case T–305/18 *Andriy Klyuyev v. EC* [11 July 2019]; Joint Cases T–244/16 & T–285/17 *Viktor Yanukovych v. EC* [11 July 2019]; Case T–274/18 *Oleksandr Klymenko v. EC* [11 July 2019]; Case T–284/18 *Sergej Arbuzov v. EC* [11 July 2019]; Case T–285/18 *Viktor Pshonka v. EC* 11 July 2019]; Case T–289/18 *Artem Pshonka v. EC* [11 July 2019];

To demonstrate the procedural flaws by the EC in all those cases, the GC used the abovementioned PFRs-test.[264] In particular, the GC assessed two procedural FRs: the right to defense[265] and effective judicial protection[266]. In fact, the PFRs-test was not for the first time applied in these latest cases. One year before these cases, in particular in the appeal procedure of M. Azarov [2018]. [267] *In casu,* the CoJ reversed the GC's ruling stating that the EC was not obliged to verify whether the right to defense and effective judicial protection were respected with regard to an act issued by the authorities of the third countries and used by the EC for the adoption of the EU sanctions against a particular individual. Therefore, M. Azarov successfully appealed against the GC's decision in '*Azarov II'*.[268]

This PFRs-test implies that before the EC is relying on a third-country's decision for the adoption/extension of the EU sanctions, it must assess whether the two FRs were respected by the authorities when adopting such decision. The GC states that the letter does not indicate compliance with these FRs by the authorities of the third country; nor does the statement of reasons by the EC indicate that it had verified the compliance with these FRs.[269] Furthermore, in these cases, the EC was obliged to verify whether those FRs were considered regardless of any evidence put forward by the individuals concerned. Furthermore, the GC stated that the judicial decisions of the third countries alone are not sufficient to conclude that there was compliance with FRs regardless of the EC being obligated to verify such compliance based on these decisions. Subsequently, the GC found that the EU sanctions imposed in all those cases were invalid as the EC did not pass the PFRs-test.[270]

iii. Alternative Perspective: Foreign Policy Objective Nevertheless Prevails

However, considering a different view on the aforementioned newest case, we have to admit that the success rate of the annulled cases may not be overrated. After the successful challenge all the individuals, except for Andriy Klyuyev are still on the sanctions list because these

[264] i.a. Case T–290/17 *Edward Stavytskyi v. EC* [30 January 2019], §71; Joint Cases T–244/16 & T–285/17 *Viktor Yanukovych v. EC* [11 July 2019], §73; See also *supra* (n 139)
[265] Art. 48(2) EUCFR
[266] Art. 47 EUCFR
[267] Azarov V, §41
[268] ibid
[269] s*upra* (n 264)
[270] ibid

challenges did not cover their most recent re-listings.[271] Note that also Stavytskyi is still listed despite of the successful annulment of his prolonged sanctions at the beginning of this year.[272]

Moreover, almost half the cases brought before the CJEU for annulling the EC sanctions were dismissed.[273] If the cases for which the Court decided to partially annul their contested sanctions are added to this, it can even be said that the majority of the cases were unsuccessfully for the individuals.[274] From the three appeal procedures that have been occurred to date, Mykola Azarov was the only one who survived his challenge.[275]

In all of the cases in response to the Ukraine crisis, irrespective of whether they are won by the individual concerned, several times the procedures FRs were set aside by the CJEU.[276] The failing of the procedural pleas can be attributed to Court's sometimes poor judicial review and the – at the same time –EC's relaxed position given by the CJEU with regard to providing evidence or conducting an investigation in order to list the individual. In addition, the EC has wide discretion in stating the reasons for including an individual.[277]

Firstly, the Court can be criticized for its sometimes 'poor' judicial review. While the GC recognizes the full effectiveness of the EU Courts' judicial review when reviewing the lawfulness of the grounds on which the EC has adopted or prolonged the EU sanctions or, i.e., a sufficiently solid factual basis, the threshold tends to be quite low with regard to its examination of whether the EC's has provided sufficient evidence to include an individual to the sanctions list.[278]

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[271] Michael O'Kane "EU extends Ukraine misappropriation sanctions for 1 year" (4 March 2019), <https://www.europeansanctions.com/2019/03/eu-extends-ukraine-misappropriation-sanctions-for-1-year/> last accessed 12 August 2019

[272] Case T–290/17 *Edward Stavytskyi v. EC* [30 January 2019]: Stavytskyi's sanctions were annulled based on a lack of investigation by the EC. *T*he EC did not request the Ukrainian authorities for more information about to what extent the criminal investigation was completed. See also: < https://www.europeansanctions.com/2019/02/eu-court-annuls-edward-stavytskyis-2017-ukraine-sanctions-listing/> last accessed 18 August 2019

[273] See Annex D

[274] See Annex C

[275] See therefore: *M. Azarov V*; In contrast, the Yanukovyches did not survive their appeal procedure, see therefore: Case C–599/16 P *Oleksandr Yanukovych v. EC* [19 October 2017]; Case C–598/16 P *Viktor Yanukovych v. EC* [19 October 2017]

[276] i.a. pleas in law alleging infringement of the rights of the defence and of the right to effective judicial protection and the obligation to state reasons all rejected by the CJEU in *O. Yanukovych I;* Joint Cases T–244/16 & T–285/17 & *Viktor Yanukovych v. EC* [11 July 2019]; Case T–215/15 Mykola Azarov v. EC [7 July 2017]; *Rosneft II*; Case T–515/15 *Almaz–Antey v. EC* [13 September 2018]

[277] Statement of reasons discussed in Chapter 5, point B, §2, i

[278] See e.g. *Portnov*, §38; Case T–486/14 Edward Stavytskyi v. EC [28 January 2016], §38: The EC when adopting EU sanctions against a certain person, it has to underpin them with a verification of the factual allegations in order that the individual is aware of his inclusion. The Court must examine whether the reasons, or at least one of these

Besides, considering the judicial review of the CoJ, one can observe that during an appeal procedure the CoJ 'in principle' will not re-assess the facts and evidence adduced by the EC before the GC, however poor the credibility of such facts and evidence might be. It will only do so on an exceptional basis if the individual concerned can demonstrate a distortion of the facts or evidence, which is very difficult to prove for the individual concerned.[279] This exception has not yet been applied in the cases in the Ukrainian context.[280]

Secondly, the EC's relaxed position on the evidence presented appears visibly in the *Yanukovych* cases.[281] The CoJ stated that the very early stage of an investigation conducted by the authorities of the third country is sufficient for the EC to include individuals to the list, in the context of the misappropriation of funds. If it was the case that a criminal proceeding was the threshold, the ultimate goal of the sanctions (freezing of assets) would be undermined. Only in exceptional circumstances, the EC must conduct an additional examination of the allegations made against that person. One can see that other procedural FRs come into play. Although the Court's reasoning in the *Yanukovych* cases can be understood, questions can be put after the procedural FR of presumption of innocence guaranteed in Art. 48 EUCFR. One may not forget the impact of the names on the published sanction list of the EC as earlier discussed.[282]

After a throughout investigation of all the cases in the Ukrainian context, we can see that the Court, has provided the EC a vast discretion with regard to the obligation to state reasons when including individuals. The low level of evidence added by the EC is also in the obligation reflected.[283]

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reasons, can be considered sufficient in itself to substantiate this decision, are supported by sufficiently concrete and concrete evidence.

279 Note that this is very hard to prove, according to Rules of procedure the individuals has to 1) indicate exactly the evidence 2) show the error of appraisal in the Court's view that led to the distortion, see therefore: Consolidated version of the Rules of Procedure of the CoJ [2012] <https://curia.europa.eu/jcms/upload/docs/application/pdf/2012-10/rp_en.pdf> last accessed 15 August 2019

280 Case C–599/16 P *Oleksandr Yanukovych v. EC* [19 October 2017]; Case C–598/16 P *Viktor Yanukovych v. EC* [19 October 2017]

281 Case C–599/16 P *Oleksandr Yanukovych v. EC* [19 October 2017]; Case C–598/16 P *Viktor Yanukovych v. EC* [19 October 2017]

282 See supra Chapter 4, point B

283 Dismissed cases: *V. Yanukovych I,* §§75–83; *O. Yanukovych I,* §§76–84; successful cases: i.a. Case T–258/17 *Sergej Arbuzov v. EC* [6 June 2018], §42–54; Case T–290/17 *Edward Stavytskyi v. EC* [30 January 2019], §49–59

CHAPTER 5

CHALLENGING THE VALIDITY OF THE EU SANCTIONS IMPOSED ON INDIVIDUALS: A PRELIMINARY QUESTION OF VALIDITY BEFORE THE COJ

A. *Locus Standi* for the Individual Under Art. 267 TEU

As previously outlined, the EU provides an individual with the possibility to challenge the validity of their EU sanctions via an indirect action pursuant to Art. 267(b) TFEU.[284] 'Indirect' because the individual requires a national jurisdiction (the referring body) to do so. The latter subsequently refer that question to the CoJ in accordance with the requirements laid down in Art. 267 TFEU.[285] However, it is within the margin of that national court's discretion to grant the individual's request. In the case that the national jurisdiction decides to grant this request, it does not resolve the question of validity by itself but refers the matter to the CoJ. Subsequently, if the referring body's request is upheld by the CoJ, the national proceedings before the referring court are suspended until the Court has provided a preliminary ruling on the validity of the contested EU act.[286] Such a ruling is merely binding for the referring court and those national courts that are in a similar domestic procedure. However, it does not have a binding precedent character that can be the basis for other cases on a national and European level. Furthermore, the ruling provides further clarification of the Court's position on certain EU issues. Therefore, we can say that such ruling is interesting for both the European and national judges. This is why several similar cases before the GC were temporarily suspended when Rosneft sought a preliminary ruling via the UK High Court before the CoJ concerning the validity of the EU sanctions.[287] This preliminary question resulted in the Court's today's *Rosneft I* judgment[2017].

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[284] See *supra* Chapter 3, point C

[285] Admissibility criteria: 1) proceedings must (still) be pending before the national jurisdiction (3th para); 2) referring body must be a court or tribunal (2nd para.); 3) acts of the institutions, bodies, offices or agencies of the Union (1st para. (b)); Criteria for being a court or tribunal see: Case C–61/65 *Vaassen–Goebbels v. Beambtenfonds voor het Mijnbedrijf* [30 June 1966] affirmed in i.a. Case C–394/11 *Belov* [31 January 2013], §11; With regard to the admissibility question see also: Nils Wahl & Luca Prete "The gatekeepers of Article 267 TFEU on jurisdiction and admissibility of references for preliminary rulings" Common Market Law Review [2018] 511–547

[286] The EU "The reference for a preliminary ruling" <http://publications.europa.eu/resource/cellar/6859de85-3469-4846-b6bb-1ada54d45cd1.0005.02/DOC_3> last accessed 8 August 2019

[287] Case T–715/14 *Rosneft et al. v. EC* [13 September 2018] ; Case T–732/14 *Sberbank of Russia OAO v. EC* [13 September 2018]; Case T–798/14 *DenizBank A.Ş. v. EC* [13 September 2018]; Case T–737/14 *Vnesheconombank*

B. Assessing the Validity of The EU Sanctions under a Preliminary Question with *Rosneft I*

In Rosneft I, the CoJ again had to determine the validity of the EU sanctions in response to the Ukraine crisis, with similar parameters as in the action of annulment procedure.[288] This time, Rosneft's sanctions were related to restrictions on certain financial transactions and the export of certain sensitive goods and technologies, limited access to the capital market and prohibition with regard to services required for certain oil transactions. In this way, the EC aimed to increase Russia's cost for its actions in Ukraine.

§ 1 The EC's Compliance with the Foreign Policy Objective

It should be recalled that the external action objective, as set out in Art. 21 TEU – 'the CFSP objective' – is an essential criterion for the EC to ensure the lawfulness of the sanctions. As in the previously discussed action for annulment , the Court had to assess the EC's compliance with the CFSP objective also in the preliminary ruling.[289]

i. CFSP Objective in Light of a Bilateral Agreement

Firstly, the CoJ evaluated the validity of the sanctions in light of the PCA, a bilateral agreement that lays down the relations between the EU and Russia.[290] This was not the first time since the GC already had to carry out such an examination in *Kiselev*.[291] In the preliminary ruling procedure, the CoJ rejected this argument for the same reasons as in *Kislev*.[292]

With its preliminary ruling, the Court again recognized the EC's discretion in adopting sanctions. When the EC deems it necessary to adopt EU sanctions for the protection of the EU's essential security interests and preservation of the peace and international security as enshrined

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v. EC [13 September 2018] ; Case T–739/14 PSC *Prominvestbank, Joint–Stock Commercial Industrial and Investment Bank v. EC* [13 September 2018]; Case T–735/14 and Case T–799/14 *Gazprom Neft v. EC* [13 September 2018]

[288] See *supra* Chapter 4, point B

[289] see *supra* Chapter 4, point B, §1

[290] *Rosneft I*, §107 et seq.

[291] see *supra* Chapter 4, point B, §; 1 *Kiselev*, §§28–35: The GC stated that the PCA itself stipulates that in situations of essential security interests and to preserve peace and international security. Therefore, it is possible to deviate from the rights/provisions in this agreement such as the free movement of capital in favor of the EC's sanction regime.

[292] *Rosneft I*, §§113:

in Art. 99 of the PCA[293], it can set aside other provisions of that same agreement. The Court stated that events occurring in one of the EU's neighboring countries, i.e., the Russian aggression in Ukraine, meant that EU sanctions fell within the scope of that provision. This implied that in the PCA itself, justified grounds were created for the EU's external action and, in addition, were in accordance with the CFSP objective.[294]

ii. The EC's Objective of a CFSP Nature

Secondly, the Court confirmed that the EC's sole goal in imposing sanctions was to increase the cost of Russia's actions in undermining Ukraine's territorial integrity, sovereignty and independence on the one hand, and to promote a peaceful settlement of the crisis on the other.[295] These objectives can be found back in Art. 21(1) TEU. Hence, the Court confirmed the EC's compliance with the CFSP objective when imposing the sanctions in the context of Rosneft. Moreover, the Court confirmed its previous case law with regard to Russia's aggression in Ukraine.[296]

§ 2 Question of Compliance with Fundamental Rights and General Principles of EU Law

In the context of a question of validity in the sense of Art. 267 TFEU, the Court must again strike a balance between FRs and the general principles of EU law on the one hand and the CFSP objective as pursued by the EC on the other hand.[297]

i. Procedural FRs

Firstly, the validity of the sanctions is examined in the light of the same procedural FRs as in the annulment procedures, i.a. the obligation to state reasons, the right to defense, the right to effective judicial protection.[298]

[293] Art. 99 PCA: "[…]: in the event of serious internal disturbances affecting the maintenance of law and order, in time of war or serious international tension constituting threat of war or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security […]

[294] ibid, §111–113; By adding *Rosneft I* to the sanction list, the EC wants to increase Russia's cost for its actions in Ukraine

[295] ibid §§134–137

[296] See *supra* Chapter 4, point B, §1

[297] See *supra* Chapter 4, point B (introducing part)

[298] *Rosneft I*, §§118–130; see *supra* (n239–245)

To assess the obligation to state reasons, the Court adhered to its established case law and the cases related to the EU sanctions in response to the Ukrainian crisis:[299] the extent of stating reasons depended on the nature of the acts in question and the context in which the sanctions were adopted. This did not mean that the EC had to examine all the relevant facts and points of laws, but the sanctions had to be adopted in a context that was known to the individual and in which he understood why he/she was enlisted.[300] Accordingly, the CoJ in *Rosneft I* made a distinction between the sanctions based on an act of general application (e.g., the sanctions related to the oil sector) and those that affected individuals (the other sanctions).[301] With regard to the sanctions related to the oil sector, the EC only had to indicate the general situation that led to the adoption of those measures and its pursued objective. For the sanctions that affected Rosneft in particular, the obligation to state reasons would only have been satisfied if the EC had notified Rosneft of the evidence brought against it that led to the adoption of those sanctions.[302] If the EC had not provided such evidence, it would have breached not only Art. 296 TFEU jo. Art. 41 (2)(c) EUCFR but also effective judicial protection and the right to defense.[303] When applying this reasoning, the Court stated that it was impossible for a company like Rosneft to be unaware of the reasons why the EC had imposed sanctions on it due to its position (as a Russian state company and a major player in the Russian oil sector) and the political background of the sanctions (increasing the cost for Russia for its aggression in Ukraine).[304] In the annulment procedures, the CJEU did not establish a violation of the EC's obligation to state reasons.[305]

Besides, the CoJ did not see any violation of the other procedural FRs. After Rosneft's broadly formulated requests, the EC provided access to his files with regard to documents related to the sanctions.[306]

Therefore, the CoJ concluded that the sanctions could not be declared invalid with regard to the procedural FRs.[307]

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[299] ibid, §120 et seq.; *O. Yanukovych*, §§78-79; *Kiselev*, §§39-41
[300] ibid
[301] *Rosneft I*, §§120-121
[302]ibid §§ 119-121; Art. 48 & 47 EUCFR
[303] ibid §§ 119-123; Art 2 TEU jo. Art. 48 & 47 EUCFR
[304] ibid §124
[305] See *supra* Chapter 4, point B, §3
[306] *Rosneft I*, §126-130
[307] ibid § 130

ii. SUBSTANTIVE FRS

Secondly, the Court had to scrutinize again substantive FRs, such as the right to property (Art. 17(1) EUCFR) and the freedom to conduct business (Art. 7 ECR). The Court examined them together in light of the fundamental principle of proportionality.[308] Also, in this context, the Court reiterates the EC's broad discretion in areas which involve political, economic and social choices.[309] In the preliminary ruling, the Court, as in the previously discussed case with regard to substantive FRs in the annulment procedure, did not perceive the disproportionate character of the sanctions in light of the EC's objective. Therefore, again, the CFSP objective prevailed above the substantive FRs, as they are not of an absolute nature.[310]

However, unlike in the annulment proceedings, Rosneft raised the FR of equal treatment, for which the EC only targets companies that are active in the oil sector. This FR is anchored in several provisions in the EU treaties.[311] In this context, the CoJ again recalled the EC's discretion with regard to adopting sanctions. In addition, it refers to the objective of the sanctions enshrined in Art. 215(1) TFEU([312]). When the EC deems the imposition of such sanctions necessary for a specific sector of the Russian economy, such as the oil sector it can simply target that sector. Therefore, the principle of equality was not endangered.[313]

In light of the foregoing assessment of the substantive FRs, the Court did not find that the EC violated the substantive FRs.[314]

iii. GENERAL PRINCIPLES OF EU LAW

In addition to the principle of proportionality, the Court had to deal with the principles of legal certainty, which includes the *lex-certa* principle.[315] Unlike the principle of proportionality, the other two principles were raised by way of a question of interpretation by the national court within that same preliminary procedure.[316] The Court answered this question in a way that was contrary to Rosneft's statement. In particular, the Court did not agree with Rosneft's argument that certain key terms in the contested Regulation on which the EU sanctions relied lacked the

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[308] ibid, §§ 143–151
[309] ibid. §146
[310] See *supra* Chapter 4, point B, §2; ibid §151
[311] Art. 2 TEU; Art. 3 (3) TEU; preamble and Title III EUCFR
[312] Partial or complete economic/financial restrictions of the relations with the third country, in particular Russia
[313] *Rosneft I*, §132
[314]ibid §133 (principle of equal treatment) & §150 (right to property and to the freedom to conduct business)
[315] *The Commentary to the EU Treaties and the ECFR* 1637
[316] ibid §§ 152–168

necessary legal precision and certainty and that therefore the MSs could not impose criminal penalties. According to the Court, such terms may be subjected to clarification, gradually and subsequently, before the Court, but this does not prevent MSs from imposing penalties on the basis of that Regulation.[317]

[317] ibid; see also EC, "information note with regard to Rosneft I" (6 April 2017) <http://data.consilium.europa.eu/doc/document/ST-8083-2017-INIT/en/pdf> last accessed 16 August 2019

CHAPTER 6

'LESSONS FROM THE CASE LAW OF THE CJEU'

After an in-depth analysis of the CJEU's case law in light of the individuals' challenges before the GC and CoJ (CJEU) in response to the Ukraine crisis, several lessons can be learned.

A. The CJEU's Jurisdiction When Challenging the EU Sanctions in Response to The Ukraine Crisis: A Step Too Far?

In the first place, the research demonstrates to us that at the current stage of the EU's integration process, individuals have the possibility to challenge the validity of EU sanctions through both a direct (Art. 263 (4) TFEU) and indirect (Art. 267 (1)(b) TFEU) action. With *Rosneft I*, the Court confirmed for the first time the opportunity for individuals to challenge their sanctions of a CFSP nature based on indirect action. However, this leading case has left us mixed feelings in this regard.

On the one hand, it seems as if the Court has disregarded the EU Treaties and entirely forfeited its exceptional jurisdiction in CFSP embodied in Art. 275 para. 2 TFEU *jo.* Art. 263(4) TFEU. Observing those provisions, one can see that no explicit legal basis is foreseen for the Court's jurisdiction to rule on EU sanctions in the context of Art. 267 TFEU. It should be recalled that national authorities wish to maintain the intergovernmental characteristic of CFSP, as they simply do not want to be forced by the EU's foreign policy, either through political pressure or rulings of the EU's judicatures. From this perspective, the expansion of the CJEU's competence in order to rule on the validity of the EU sanctions cannot be welcomed.

On the other hand, the Court can be condemned for its legal reasoning behind *Rosneft I* for the sake of the coherence of the EU's judicial system. Injured individuals like Rosneft must have the opportunity to challenge their sanctions before the CJEU *sensu lato*. If individuals do not have such a possibility, the individuals' sufficient judicial protection will be forfeited. Subsequently, the EU would infringe upon its own FRs embodied in the EU Treaties (Art. 2 and 19 TEU; Art. 47 EUCFR). Despite the CFSP area in which the sanctions are imposed, it is, nonetheless, desirable for the CJEU to rule on the validity of the EU sanctions, in order to avoid irreversible damage as a result of arbitrariness and/or misinterpretation of the sanctions. Although, the best way to grant such power to the Court is with an adaptation to the Treaties by the Masters of The EU Treaty.

As a result of this extended competence in CFSP matters, so far, 41 cases (instead of 40) have been brought before the CJEU following the EC's sanctions in response to the Ukraine crisis: 37 before the GC based on Art. 263(4) TFEU; three appeals before the CoJ (against the GC's decision); and merely one case before the CoJ in the context of Art. 267(1)(b) TFEU.[318] In all of those cases, the CJEU was asked the same question, namely whether the sanctions affecting the individual who challenged them were valid or not.

B. De Minimis Threshold for Satisfying the Locus Standi Criteria When Challenging the EU Sanctions in Response to the Ukraine Crisis

Secondly, with regard to the direct action, individuals' access to the CJEU in the Ukrainian context received particular attention in this research.

We conclude that in some of the cases, the individual who was negatively affected by the EU sanctions experienced complications when extending his or her direct action during the annulment procedure itself. Furthermore, the individual was only able to meet the *locus standi* criteria when he or she was effectively subject to the sanctions. This required that he or she was also subject to the sanctions in time. In addition, we can note the high level of adherence by the Court with the right to reputation for individuals with a specific status, such as the Ukrainian politicians in the context of the *locus standi* criteria. This right can be considered a justification ground for the 'continuing' nature of the interest as required pursuant to Art. 263 TFEU. In addition, special attention can be given to the *locus standi* criteria in both *Rosneft* cases. *In casu,* the CoJ emphasized the necessity of making a distinction between the EU sanctions based on the EC's decision of general application but without implementing measures on the one hand, and those with an individual scope on the other. Art. 263 (4) TFEU provides a less stringent threshold to meet the legal standing criteria for the individual with regard to the general decisions without implementing measures.

[318] See Annex A

C. Challenging The Validity of the EU Sanctions in Response of The Ukraine Crisis: One Step Forward to Fundamental Rights and General Principles of EU law?

Other lessons learned from the case law in response to the Ukraine crisis, is related to the wide discretion of the EC in several situations, in particular in the context of the EC's compliance with the CFSP objective and in light of the individual's substantive and procedural FRs.

Firstly, The CJEU deems it proportional when the EC adopts the sanctions in light of solely one specific CFSP objective as set out in Art. 21 TEU. This CFSP objective must be established in the underlying legal acts of the EU sanctions itself. In the context of the EU sanctions in response to the Ukraine crisis, one of the EC's CFSP objectives pertains the supporting and consolidating of the RoL in a third country in order to fight the misappropriation of state property. The EU sanctions were established by a decision and a regulation. In addition, we can note the vast nature of CFSP objectives like the RoL. [319] Subsequently, it is not difficult for the EC to meet the threshold of Art. 21(1) TEU'. Moreover, the case law reveals that the CFSP objective even is a justification ground to set aside the most fundamental treaties concluded in the external context, such as the PCA between the EU and Russia. Nevertheless, we have to say that there was a justification built into the PCA itself to deviate from the rights and freedoms contained in the PCA itself. However, there is no explicit reference to the CFSP objective in particular. Accordingly, it is quite hard for individuals to achieve the invalidity based on the non-compliance by the EC of the CFSP objective.

Secondly, the case law demonstrates to us that only a small margin is left for the individual's FRs. With regard to the substantive FRs, the Court takes an extremely generous attitude towards the EC is. Neither in the preliminary ruling procedure nor in the action for annulment, The Court declared the EC's sanctions in valid in the light of substantive FRs. Yet, this continues to linger while fundamental rights like the right to expression; reputation; equal treatment and even property were invoked. When taking a look at the *Kiselev* case, we see that the Court interpreted certain terms leading to the inclusion of the individual concerned on the sanction list, all by itself in favour of the EC. Moreover, we have to remind that in this case, the Court for the first time had to assess the limitations on the right to freedom of expression in the light

[319] The essence of the RoL was established by the Commission in its RoL Framework Communication; See also: Hermann–Josef Blanke, *The Treaty on European Union (TEU): A Commentary* (Hermann–Josef Blanke & Stelio Mangiameli, Springer, 2013), 132 & 168

of the sanctions. While it is true that there is a nexus between Kiselev and the activities of Russia, we can say that the Court may have gone too far by venturing on the demarcations between free journalism and propaganda on the sole basis of interpretations given by MSs in order to conclude to the validity of the sanctions in this regard.

We can see that in all the cases where a balance is made between the restrictions on the substantive FRs on the one hand, and the CFSP objective, on the other, we can remark the very flexible interpretation of the proportionality principle in favour of the EC. The question can be raised as to whether there is still the pursuit of the CFSP objective. After all, the intention of the EU with its external action tool was to increase the cost of Russia for its unlawful actions in and against Ukraine.

Contrary to the substantive FRs, there is a significantly higher chance of surviving the challenge when relying on the procedural deficiencies with regard to the EC's listing practices. We can even speak of a small 'breakthrough' after the analysis of the CJEU case law in response to the Ukraine crisis. In this set of cases, the Court has been applying the PFRs-test originating from the *Kadi* judgments in the GC's 7 newest cases and in one appeal procedure in the context of Art. 263 TFEU. Besides, other cases – including the first six cases ever – , which were won by the individual concerned, one can see that the Court significantly did not tolerate the EC's low standard of evidence or its lack of investigation on which the sanctions are established. Unfortunately, we can see that a lot of the individual's successfully challenged his sanctions were still listed or re-listed by the EC. One can see similarities with the Iranian and Syrian sanctions, there Mr. Chacko also indicates the successful process-oriented judicial review on the one hand and the practice of listing and re-listing on the other hand.[320] In the set of case law on the EU sanction in response to the Ukraine crisis the Court seems to accept that even if the investigation is still in a preliminary phase, the EC can impose sanctions on certain individuals like the Yanukovyches in the context of misappropriation of funds. One can see similarities with the Iranian sanctions where the Court also accepted the so-called 'risk-based designation' criteria. There, targeting an individual would not be based on their prior or ongoing

320 Elena Chachko, "Foreign Affairs in Court: Lessons from CJEU Targeted Sanctions Jurisprudence" [2019] <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3157255> last accessed 17 August 2019; Note that Chacko also makes a difference in perspective. She made a distinction between a pessimistic and a narrow view, however, the approach is different from this research.

actions or status, but merely on the serious risk of future reprehensible activities. However, in such cases, the Court referred to the importance of compliance with FRs.[321]

In conclusion, while the CJEU is not there yet with regard to FRs, we can see in this set of case law in the context of Art. 263 TFEU that a small success has been achieved, as the most recent cases have all been won by the individuals based on the PFR-test. It would be definitely a step forward to broaden this test in the future.

D. The implications of the *Rosneft I* judgment: *Rosneft II* et al.

Finally, we can say that in general lessons from learned from *Rosneft I* that nothing in this case that was adduced by Rosneft indicated that the sanctions were not in line with EU law. Hence, the Court declared the EU sanctions valid and, subsequently, send the case back to the referring court which is bound by the Court's decision. However, as Mr. Van Elsuwege said in his analysis of *Rosneft I*, the Court confirmed *in casu* that CFSP is part of the EU legal order. Therefore, procedural FRs such as the right to effective judicial protection and the EU's umbrella principle of the RoL have to be applied by the EC when adopting sanctions.[322] Although the importance of the EC's compliance with procedural FRs was recognized in the case law on the action of annulment procedures on sanctions, it was not yet confirmed in a preliminary reference procedure: a procedure with a significant impact for future issues on this aspect of EU law for both EU and national judicatures.

Finally, *Rosneft I* definitely left its mark on the suspended cases before the GC lodged by Rosneft and several other Russian state companies in the oil and gas sector and banks at that time.[323] One can see that *Rosneft II* and the other suspended cases are a reflection of *Rosneft I*. Therefore, it is no surprise that the GC in all of the cases dismissed the request to annul the contested EU sanctions by the individual concerned [2018].[324]

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[321] C–348/12 P *EC v. Kala Naft* [28 November 2013]; See therefore: Aleksi Pursiainen, "Targeted EU Sanctions & FRs" [2017] 9 <https://um.fi/documents/35732/48132/eu_targeted_sanctions_and_fundamental_rights/14ce3228-19c3-a1ca-e66f-192cad8be8de?t=1525645980751> last accessed 18 August 2019;

[322] "Judicial Review of the EU's CFSP: Lessons from the Rosneft case"

[323] The GC had awaited the CoJ's legal clarification on the validity of the EU sanctions related to the third package to rule on all those cases

[324] supra (n287)

Concluding Remarks

This essay focused on the far-reaching powers of the EC and the CJEU in one of the most politically sensitive areas –CFSP –.

After the outbreak of the Ukraine crisis, the EC, as part of its CFSP competence, started to impose sanctions on individuals related to the crisis. It did so in order to support Ukraine and to increase Russia's cost for its unlawful actions in a EU neighboring country. Subsequently, we have been living in an era of EU sanctions for the past five years now. In addition, so far, more than 40 cases have been brought before the EU Courts. This research demonstrated to us the extraordinary competence of the EU Courts as a consequence of the EU case law in response to the Ukraine crisis. Today, individuals do not only have the possibility of challenging his/her sanctions by bringing an action for annulment before one of the EU Courts (direct action), they can also implore the national court with a preliminary question of the validity of their sanctions (indirect action). Besides, we have seen how the CFSP competence of the EC significant override the individual's most fundamental rights.

As a final remark, we can say that the trend to challenge the validity of EU sanctions in response to the Ukraine crisis is unlikely to stop in the foreseeable future, not only because the EC has extended the sanctions against several individuals for at least one year, but also as long as the CJEU continues to favor the EC to the detriment of the legal position of the sanctioned persons in such cases

(Words: 23 613)

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Annex

A. Overview of the CJEU Cases About the EU Sanctions in Response to The Ukraine Crisis

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7. Case T–348/14 *Oleksandr Yanukovych v. EC* [15 September 2016]
8. Case T–346/14 *Viktor Yanukovych v. EC* [15 September 2016]
9. Case T–720/14 *Arkady Rotenberg v. EC* [30 November 2016]
10. Case T–255/15 *Almaz–Antey v. EC* [25 January 2017]
11. Case T–262/15 *Dmitrii Kiselev v. EC* [5 June 2017]
12. Case T–221/15 *Sergej Arbuzov v. EC* [7 July 2017]
13. Case T–215/15 *Mykola Azarov v. EC* [7 July 2017]
14. Case T–246/15 *Yuriy Ivanyushchenko v. EC* [8 November 2017]
15. Case T–245/15 *Oleksandr Klymenko v. EC* [8 November 2017]
16. Case T–731/15 *Sergiy Klyuyev v. EC* [21 February 2018]
17. Case T–242/16 *Edward Stavytskyi v. EC* [22 March 2018]
18. Case T–190/16 Mykola *Azarov v. EC* [26 April 2018]
19. Case T–258/17 *Sergej Arbuzov v. EC* [6 June 2018]
20. Case T–240/16 *Andriy Klyuyev v. EC* [11 July 2018]
21. Case T–715/14 *Rosneft et al. v. EC* [13 September 2018]
22. Case T–732/14 *Sberbank of Russia v. EC* [13 September 2018]
23. Case T–798/14 *DenizBank A.Ş. v. EC* [13 September 2018]
24. Case T–515/15 *Almaz–Antey v. EC* [13 September 2018]
25. Case T–734/14 *VTB Bank v. EC* [13 September 2018]
26. Case T–737/14 *Vnesheconombank v. EC* [13 September 2018]
27. Case T–739/14 PSC *Prominvestbank v. EC* [13 September 2018]
28. Case T–735/14 *Gazprom Neft v. EC* [13 September 2018
29. Case T–799/14 *Gazprom Neft v. EC* [13 September 2018]
30. Case T–247/17 *Mykola Azarov v. EC* [13 December 2018]
31. Case T–290/17 *Edward Stavytskyi v. EC* [30 January 2019]
32. Case T–305/18 *Andriy Klyuyev v. EC* [11 July 2019]
33. Joint Cases T–244/16 & T–285/17 *Yanukovych v. EC* [11 July 2019]
34. Case T–274/18 *Oleksandr Klymenko v. EC* [11 July 2019]
35. Case T–284/18 *Sergej Arbuzov v. EC* [11 July 2019]
36. Case T–285/18 *Viktor Pshonka v. EC* 11 July 2019]

37. Case T–289/18 *Artem Pshonka v. EC* [11 July 2019]

§ 2 Court of Justice

i. RULING ON THE ACTION FOR ANNULMENT (ART. 263 TFEU)

38. Case C–599/16 P *Oleksandr Yanukovych v. EC* [19 October 2017]
39. Case C–598/16 P *Viktor Yanukovych v. EC* [19 October 2017]
40. Case C–530/17 P *Mykola Azarov v. EC* [19 December 2018]

ii. PRELIMINARY RULING (ART. 267 TFEU)

41. Case C–72/15 *Rosneft* [28 March 2017]

B. Cases completely annulled

§ 1 General Court

1. Case T–290/14 *Andriy Portnov v. EC* [26 October 2015]
2. Case T–331/14 *Mykola Azarov v. EC* [28 January 2016]
3. Case T–486/14 *Edward Stavytskyi v. EC* [28 January 2016]
4. Case T–332/14 *Oleksii Azarov v. EC* [28 January 2016]
5. Case T–341/14 *Sergiy Klyuyev v. EC* [28 January 2016]
6. Case T–434/14 *Sergej Arbuzov v. EC* [28 January 2016]
7. Case T–246/15 *Yuriy Ivanyushchenko v. EC* [8 November 2017]
8. Case T–258/17 *Sergej Arbuzov v. EC* [6 June 2018]
9. Case T–290/17 *Edward Stavytskyi v. EC* [30 January 2019]
10. Case T–305/18 *Andriy Klyuyev v. EC* [11 July 2019]
11. Joint Cases T–244/16 & T–285/17 *Yanukovych v. EC* [11 July 2019]
12. Case T–274/18 *Oleksandr Klymenko v. EC* [11 July 2019]
13. Case T–284/18 *Sergej Arbuzov v. EC* [11 July 2019]
14. Case T–285/18 *Viktor Pshonka v. EC* 11 July 2019]
15. Case T–289/18 *Artem Pshonka v. EC* [11 July 2019]

§ 2 Court of Justice

16. Case C–530/17 P *Mykola Azarov v. EC* [19 December 2018][325]

C. CASES PARTIAL ANNULLED

§ 1 General Court

1. Case T–348/14 Oleksandr Yanukovych v. EC [15 September 2016]
2. Case T–346/14 *Viktor Yanukovych v. EC* [15 September 2016]
3. Case T–720/14 *Arkady Rotenberg v. EC* [30 November 2016]

325 annulled *M. Azarov II*

4. Case T–731/15 *Sergiy Klyuyev v. EC* [21 February 2018]
5. Case T–240/16 *Andriy Klyuyev v. EC* [11 July 2018]

§ 2 Court of Justice

None

D. Cases dismissed

§ 1 General Court

1. Case T–255/15 *Almaz–Antey v. EC* [25 January 2017]
2. Case T–262/15 *Dmitrii Kiselev v. EC* [5 June 2017]
3. Case T–221/15 *Sergej Arbuzov v. EC* [7 July 2017]
4. Case T–215/15 *Mykola Azarov v. EC* [7 July 2017]
5. Case T–242/16 *Edward Stavytskyi v. EC* [22 March 2018]
6. Case T–190/16 *Mykola Azarov v. EC* [26 April 2018]
7. Case T–715/14 *Rosneft et al. v. EC* [13 September 2018]
8. Case T–732/14 *Sberbank of Russia v. EC* [13 September 2018]
9. Case T–798/14 *DenizBank A.Ş. v. EC* [13 September 2018]
10. Case T–515/15 *Almaz–Antey v. EC* [13 September 2018]
11. Case T–734/14 *VTB Bank v. EC* [13 September 2018]
12. Case T–737/14 *Vnesheconombank v. EC* [13 September 2018]
13. Case T–739/14 *Prominvestbank v. EC* [13 September 2018]
14. Case T–735/14 *Gazprom Neft v. EC* [13 September 2018]
15. Case T–799/14 *Gazprom Neft v. EC* [13 September 2018] (not available at curia)
16. Case T–245/15 *Oleksandr Klymenko v. EC* [8 November 2017]
17. Case T–247/17 *Mykola Azarov v. EC* [13 December 2018]

§ 2 Court of Justice

18. Case C–599/16 P *Oleksandr Yanukovych v. EC* [19 October 2017][326]
19. Case C–598/16 P *Viktor Yanukovych v. EC* [19 October 2017][327]

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[326] CoJ rejected the annulment against Case T–348/14 Oleksandr Yanukovych v. EC [15 September 2016]

[327] CoJ rejected the annulment against Case T–346/14 *Viktor Yanukovych v. EC* [15 September 2016]