



DUE PROCESS RIGHTS IN EU RESTRICTIVE MEASURES: A DOCTRINAL REASSESSMENT OF THE CJEU'S STANDARDS OF EVIDENCE, REASONING, AND JUDICIAL REVIEW

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ABSTRACT

This paper examines the evolution of due process rights in the European Union's (EU) sanctions regime following Russia's 2022 invasion of Ukraine, focusing on the Court of Justice of the European Union's (CJEU) approach to evidence, reasoning, and judicial review. Using a doctrinal legal methodology, the study analyzes the EU legal framework governing restrictive measures, traces the development of judicial standards from the Kadi jurisprudence to recent practice, and assesses whether the Court has maintained or adapted its standards in response to geopolitical pressures.

The analysis demonstrates that while the CJEU formally adheres to core due process principles, recent practice reflects greater tolerance for indirect evidence, generalized reasoning, and deference to the EU's strategic discretion, illustrating the tension between strategic autonomy in foreign policy and constitutional rights protection during periods of geopolitical crisis.

Keywords: CFSP, Due process, EU restrictive measures, Judicial review, Fundamental rights

1. INTRODUCTION

The full-scale invasion of Ukraine by Russia in February 2022 did not merely reconfigure the security architecture of the European continent; it fundamentally initiated a transformation within the legal order of the European Union (EU). While the Union has employed restrictive measures, or sanctions, as a primary instrument of its Common Foreign and Security Policy (CFSP) for decades, the scale and velocity of the post-2022 regime represent a fundamental change. His-

torically, EU sanctions were designed as preventative and temporary instruments, intended to bring a specific target back to the negotiating table or to cease a specific violation of international law. The post-2022 measures, however, have evolved into a comprehensive mechanism of economic statecraft aimed at the systemic attrition of an aggressor's war-making capabilities. This transition from "sanctions as diplomacy" to "sanctions as economic warfare" has subjected the Union's constitutional framework, predicated on the rule of law and the strict protection of fundamental rights, to profound and unprecedented stress.¹

The EU's response to the aggression was immediate and massive. In a series of rapid legislative packages, the Council of the European Union targeted thousands of individuals, entities, and entire economic sectors. These measures included not only the freezing of assets and travel bans on the political and military elite but also extended to oligarchs, business executives, propagandists, and family members, as well as sectoral prohibitions on energy, transport, finance, and dual-use technologies. The speed of this adoption process was driven by a high degree of "emotional resonance," where the imperative to act in solidarity with Ukraine and to signal resolve to the international community arguably took precedence over the deliberative procedural norms that typically characterize EU administrative law.²

This phenomenon has created a tension between the effectiveness of the CFSP and the rights of the individual. The central legal problem arising from this era of "total sanctioning" is the preservation of due process rights for targeted individuals and entities amidst armed conflict. The sheer volume of listings executed often overnight based on intelligence assessments and open-source data has raised concerns regarding the evidentiary sufficiency and the individualization of reasons required by EU law. The European Union is a community of law; its external action, even when addressing existential threats, must remain subject to the principles of legality and fundamental rights protection.

Historically, the Court of Justice of the European Union (CJEU) has developed a robust jurisprudence concerning the protection of fundamental rights within the context of sanctions, especially through the landmark *Kadi* decisions. These cases established the constitutional principle that EU acts, even when implementing binding obligations under United Nations Security Council mandates, hold no immunity from judicial review if they violate the EU Charter of Fundamental Rights. The *Kadi* jurisprudence set a remarkably high bar for evidentiary justi-

¹ Sztulman, A., *EU Sanctions Litigation: Fundamental Rights and International Security*, Routledge, London, 2026, p. 1.

² Lonardo, L., *Challenging EU sanctions against Russia: The role of the Court, judicial protection, and Common Foreign and Security Policy*, Cambridge Yearbook of European Legal Studies, Vol. 25, 2023, p. 42.

fication, requiring the Council to provide specific, concrete evidence justifying the freezing of assets and rejecting the notion that executive discretion in foreign policy is absolute or immune from judicial scrutiny.³

However, the post-2022 landscape suggests a subtle but significant recalibration of these standards. Faced with a flood of annulment actions from Russian entities and individuals, the Court is navigating a difficult path between upholding the *Kadi* standards of full judicial review and respecting the Council's broad margin of appreciation in defining foreign policy objectives during a major conflict. There are indications of a potential trend where the necessity of maintaining a unified diplomatic front against aggression induces a form of judicial deference that may dilute the rigorous scrutiny standardized in earlier case law. There is a palpable risk that the «manifest error of assessment» test is being applied more leniently, allowing broad presumptions of connection to the Russian regime to substitute for concrete evidence of individual wrongdoing.⁴

This paper addresses the critical doctrinal question: To what extent has the CJEU maintained, modified, or eroded its standards regarding evidence, reasoning, and the intensity of judicial review in the wake of the 2022 invasion of Ukraine? Furthermore, does the current jurisprudential approach threaten to normalize a permanent “state of exception” within EU administrative law, where security imperatives permanently override procedural guarantees? To answer this, the research adopts a rigorous doctrinal legal methodology. It begins by reconstructing the pre-2022 doctrinal baseline, dissecting the applicable standard of proof. It then engages in a detailed analysis of the post-2022 sanctions architecture, specifically identifying the structural shifts in how sanctions are drafted, what the academic literature has termed the “de-targetization” of restrictive measures, and the role of the European Commission as primary drafter. Finally, through a detailed examination of recent judgments and the decentralized implementation landscape, the paper assesses whether the current regime remains compatible with the Charter of Fundamental Rights. Given the substantial volume of annulment actions brought by Russian individuals and entities since February 2022, the cases examined in this paper were selected on the basis of their direct and identifiable doctrinal contribution to the specific issues of evidence sufficiency, statement of reasons, and intensity of judicial review that form its analytical framework. Priority was given to judgments in which the CJEU or the General Court expressly addressed the

³ Zelyova, N., *Restrictive measures – sanctions compliance, implementation and judicial review challenges in the common foreign and security policy of the European Union*, ERA Forum, Vol. 22, 2021, pp. 17–29.

⁴ Terlinden, M., *Sanctions without scrutiny? The role of proportionality in the case law of the European Union courts*, Leuven Centre for Global Governance Studies Working Paper, No. 248, 2025, p. 6.

evidentiary threshold for listing, the burden of proof, the proportionality of individual designations, or the permissible scope of the “leading businessperson” criterion—that is, to cases that illuminate the contours of due process in the post-2022 sanctions regime rather than merely resolving the individual dispute.

2. THE LEGAL AND INSTITUTIONAL FRAMEWORK OF EU RESTRICTIVE MEASURES

The European Union’s competence to adopt restrictive measures operates within a unique legal architecture that bridges the intergovernmental nature of the Common Foreign and Security Policy (CFSP) and the supranational character of the internal market policies. This hybridity creates a specific legal system where political discretion upholds strict judicial oversight.

2.1. Treaty Provisions and the Dual Legal Basis

The legal foundation for EU sanctions involves a two-step procedure designed to reconcile the sovereignty of Member States in foreign policy with the uniformity of the internal market. This is not merely a procedural formality but a constitutional necessity to ensure the legality of acts that influence economic rights protected by the Charter.

The first step is the adoption of a Decision by the Council of the European Union under Article 29 of the Treaty on European Union (TEU). Article 29 TEU grants the Council the competence to define the Union’s position on a particular geographical or thematic issue. This act is purely intergovernmental and legally binds the Member States to align their national policies with the Union’s position.⁵ It provides the political mandate and the strategic definition of the sanction regime, identifying the targets and the criteria for listing.⁶ However, a CFSP Decision under Article 29 TEU lacks direct effect on private parties; it binds states but cannot, by itself, impose obligations on banks, corporations, or individuals to freeze assets.

A second step is required to give these measures economic effect within the EU legal order. To implement measures that interrupt or reduce economic relations with a third country or freeze the assets of individuals, the Council must adopt a Regulation under Article 215 of the Treaty on the Functioning of the European Union (TFEU). This article serves as the “bridge” between the CFSP and the TFEU. Once

⁵ Szép, V., *New intergovernmentalism meets EU sanctions policy: The European Council orchestrates the restrictive measures imposed against Russia*, *Journal of European Integration*, Vol. 42, No. 6, 2020, p. 858.

⁶ Sztulman, A., *op. cit.*, note 1, p. 6.

adopted by a qualified majority on a joint proposal from the High Representative and the Commission, this Regulation is directly applicable across all Member States. It bypasses national implementation and creates binding obligations for all natural and legal persons within the EU jurisdiction. The choice of legal basis is not merely procedural; it dictates the scope of judicial review. While the CJEU has traditionally had limited jurisdiction over CFSP Decisions, it has full jurisdiction over Regulations based on Article 215 TFEU, thereby subjecting the economic implementation of sanctions to standard judicial scrutiny regarding their legality.

Crucially, while Article 29 TEU enables the act, the values guiding the entire process are enshrined in Article 21 of the TEU. Article 21(1) TEU explicitly states that the Union's action on the international scene shall be guided by the principles which have inspired its own creation: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.⁷ This textual distinction is vital for judicial review; the Court evaluates the proportionality of sanctions not against the political will of the Council *per se*, but against the objectives of Article 21 TEU such as the preservation of peace and international security.

2.2. Fundamental Rights under the Charter of Fundamental Rights

The EU Charter of Fundamental Rights constitutes the primary normative check on the EU's sanctions power. Three provisions are central in the context of restrictive measures, forming the constitutional core of the defence for listed individuals.

Article 47 – Right to an Effective Remedy and a Fair Trial: This provision guarantees access to justice and the ability to obtain a review before an independent tribunal. In sanctions cases, Article 47 is central to assessing whether individuals can contest listings effectively. The CJEU considers Article 47 to be self-standing, requiring no additional specification by Union or national law to confer rights. It serves as the basis for the Court's jurisdiction to annul listings where the Council has failed to provide evidence or reasons, ensuring that no EU act affecting individual rights remains beyond judicial reach.⁸

Article 41 – Right to Good Administration: This article codifies the procedural obligations of the EU institutions. It includes the right of every person to be heard before any individual measure which would affect him or her adversely is taken,

⁷ *Ibid.*

⁸ Matuška, P., *Constitutional implications of EU sanctions against the EU citizens*, European Studies – The Review of European Law, Economics and Politics, Vol. 10, No. 2, 2023, p. 46.

and the obligation of the administration to give reasons for its decisions. In the context of sanctions, this translates into the Council's duty to provide specific and concrete reasons for a listing, enabling the target to understand the case against them and to exercise their right of defense effectively.⁹ The doctrinal roots of this duty in EU sanctions practice predate the Kadi jurisprudence. In *Organisation des Modjahedines du peuple d'Iran v Council* (OMPI, Case T-228/02), the General Court held for the first time that listed parties must be notified of the grounds for their listing and afforded a genuine opportunity to challenge the evidence against them—a procedural requirement that the subsequent Kadi jurisprudence elevated into a constitutional principle of EU law.¹⁰

Article 17 – Right to Property: Sanctions measures, particularly asset freezes, constitute a significant interference with the peaceful enjoyment of possessions. Article 17 requires that any such interference be lawful, proportionate, and justified by a general interest objective. The Court must balance the individual's property rights against the essential public interest of maintaining international peace and security. While the Court generally accepts that sanctions are necessary, the proportionality analysis under Article 17 requires that the measures do not impair the very substance of the right, for instance, by becoming a *de facto* permanent confiscation without trial.¹¹

2.3. The Role of the Commission as Sanctions Drafter

While the Treaty framework places the Council as the primary vessel of the CFSP, the operational reality post-2022 has seen a significant shift towards the European Commission. The complexity of modern economic warfare involving complex financial restrictions, dual-use technology bans, and energy embargoes, requires technical expertise that the Council Secretariat and the European External Action Service (EEAS) often lack. Consequently, the Commission, particularly its Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA), has emerged as the *de facto* primary drafter of the sanctions packages.

This institutional evolution means that while the Council formally adopts the decisions, the *substance* is increasingly drafted by the Commission. This centralization has facilitated the speed and uniformity of the sanctions, but it also blurs the lines of the intergovernmental CFSP process. It raises questions about the trans-

⁹ Matusiak-Frączzak, M., *The EU's sanctions against Russia in the context of the Russian aggression on Ukraine, and their judicial control*, Acta Universitatis Lodzensis. Folia Iuridica, Vol. 106, 2024, p. 172.

¹⁰ Case T-228/02, *Organisation des Modjahedines du peuple d'Iran v Council*, ECLI:EU:T:2006:384, para. 126.

¹¹ Lonardo, L., *op. cit.*, note 2, p. 55.

parency of the drafting phase and whether the «emotional resonance» of the Commission's political leadership influences the legal strictness of the listing criteria.¹²

3. THE PRE-2022 DOCTRINAL BASELINE: THE KADI LEGACY

To evaluate the evolution of judicial standards post-2022, of great importance is establishing the doctrinal baseline set by the Court in the preceding decade. This era was defined by the struggle to reconcile the supremacy of UN Security Council resolutions with the internal autonomy of the EU legal order.

3.1. The “Kadi” Standard and Full Judicial Review

The cornerstone of EU sanctions jurisprudence is the *Kadi* case law. In *Kadi I* and *Kadi II*, the Court strongly rejected the notion that CFSP acts implementing UN resolutions are immune from judicial review. The Court held that the review of the lawfulness of grounds for listing must be “full” and not merely marginal or limited to checking for manifest errors. The EU judiciary must ensure that the decision, which affects the person individually, is taken on a sufficiently solid factual basis.¹³¹⁴

This meant that the Council could not rely solely on diplomatic secrecy; it had to produce evidence capable of substantiating the reasons for listing. The *Kadi* standard shifted the burden of proof squarely onto the EU institutions. It established that judicial review extends to the verification of the facts alleged in the statement of reasons. As stated in *Bank Mellat* (Case C-176/13 P), it is for the Council to prove that the allegations are well-founded, not for the applicant to provide negative proof that they are not involved in the proscribed conduct.¹⁵ This allocation of the burden of proof was a critical safeguard for listed entities. The practical force of this principle was demonstrated in *Council v Fulmen and Mahmoudian* (Case C-280/12 P), where the Court of Justice annulled the listing of an Iranian entity solely because the Council was unable to produce any evidence capable of substantiating its claims before the Court. The judgment confirmed that bare as-

¹² Lepeu, J., *Ukraine, the de-targetization of EU sanctions, and the rise of the European commission as architect of EU foreign policy*, International Politics, Advance online publication, 2025, p. 977.

¹³ Joined Cases C-402/05 P and C-415/05 P, *Kadi and Al Barakaat International Foundation v Council and Commission*, EU:C:2008:461, para. 326.

¹⁴ Joined Cases C-584/10 P, C-593/10 P and C-595/10 P, *Commission and Others v Kadi*, ECLI:EU:C:2013:518, para. 97.

¹⁵ Case C-176/13 P, *Council v Bank Mellat*, EU:C:2016:96, para. 109.

sertion, even if based on classified information that could not be disclosed, cannot satisfy the burden of proof where no other verifiable material is adduced.¹⁶

This rigorous approach to judicial scrutiny did not develop in a vacuum but was the result of a prolonged constitutional struggle over the very nature of EU restrictive measures. The EU's initial pivot towards "targeted" sanctions in the early 2000s was explicitly designed to minimize collateral humanitarian damage, thereby distinguishing EU practice from blunt, conventional embargoes.¹⁷ However, this individualization of sanctions inevitably triggered profound fundamental rights concerns. The CJEU's jurisprudence, beginning with the *Kadi* cases, effectively constitutionalized the CFSP by refusing to allow the intergovernmental nature of foreign policy to act as a legal lacuna for individual rights.¹⁸ The constitutional implications of this turn were widely debated in the academic literature. De Búrca has argued that the *Kadi* judgments reflected a deliberate choice by the Court to treat the EU as an autonomous constitutional order whose fundamental rights commitments cannot be overridden by external obligations, a choice that established the template for the subsequent evolution of judicial review in CFSP matters.¹⁹

In the post-Lisbon era, the Court progressively dismantled the remaining barriers to judicial review within the CFSP, culminating in landmark decisions such as *Rosneft*²⁰. The CJEU systematically engaged in a "gap-filling" exercise, interpreting the jurisdictional carve-outs of Article 24(1) TEU and Article 275 TFEU as narrowly as possible to preserve the coherence of the EU legal order.²¹ The right to effective judicial protection, enshrined in Article 47 of the Charter, served as a "transformative force", compelling the Council to significantly improve its evidentiary standards and statement of reasons in the years preceding the 2022 invasion.²² It is precisely against this backdrop of heightened judicial vigilance and established scholarly consensus that the Court's post-2022 pragmatic deference must be critically evaluated.

¹⁶ Case C-280/12 P, *Council v Fulmen and Mahmoudian*, ECLI:EU:C:2013:775, paras. 58–72.

¹⁷ Portela, C., *Are European Union sanctions "targeted"?*, Cambridge Review of International Affairs, Vol. 29, No.3, 2016, p. 914.

¹⁸ Eckes, C., *EU restrictive measures against natural and legal persons: From counterterrorism to third country sanctions*, Common Market Law Review, Vol. 51, No. 3, 2014, p. 870.

¹⁹ De Búrca, G., *The European Court of Justice and the International Legal Order After Kadi*, Harvard International Law Journal, Vol. 51, No. 1, 2010, pp. 1–49.

²⁰ Case C-72/15, *PJSC Rosneft Oil Company v Her Majesty's Treasury*, EU:C:2017:236, para. 88.

²¹ Van Elsuwege, P., *Judicial review and the Common Foreign and Security Policy: Limits to the gap-filling role of the Court of Justice*, Common Market Law Review, Vol. 58, No. 6, 2021, p. 1735.

²² Poli, S., *The right to effective judicial protection with respect to acts imposing restrictive measures and its transformative force for the Common Foreign and Security Policy*, Common Market Law Review, Vol. 59, No. 4, 2022, p. 1055.

3.2. Specificity of Evidence and the “Tay Za” Standard

In addition to the burden of proof, the Court established strict standards regarding the *quality* of the link required between the individual and the sanctioned regime. In *Pye Phyo Tay Za v Council* (Case C-376/10 P), dealing with sanctions on Myanmar, the Court struck down a listing that relied solely on a family connection. The Court held that restrictive measures must be directed only against the leaders of such countries and the persons associated with them. It rejected the presumption that a family connection alone was sufficient to establish that an individual benefited from the regime’s policies.²³

This judgment reinforced the requirement that listings be grounded in factual specificity rather than broad assumptions or “guilt by association.” The Court required a tangible link, active support or specific benefit, rather than a mere status-based connection. This jurisprudence created a high bar for the Council, demanding individualized evidence files for each listing that demonstrated a direct connection to the wrongful conduct of the targeted state.²⁴

3.3. The “Manifest Error” in Complex Assessments

While *Kadi* promised a full review of facts, the Court also acknowledged the Council’s broad discretion in defining foreign policy objectives. In cases like *Rosneft*, regarding the 2014 sectoral sanctions against Russia, the Court confirmed that the Council has a wide margin of appreciation in determining the “necessary measures” to achieve CFSP objectives.²⁵ The Court’s role is not to substitute its policy judgment for that of the Council but to ensure the measure is not manifestly inappropriate to the objective. This doctrinal distinction creates a dual-track system: deference on the macro-policy level (e.g., whether to sanction the oil sector), but rigorous, fact-based scrutiny on the micro-level of individual designations to ensure innocent individuals are not collateral damage.²⁶

This pre-2022 baseline established a system where the EU courts acted as a robust filter, striking down listings that lacked specific evidence or relied on broad, unsupported presumptions. The question that remains is whether this filter has held up against the volume of wartime sanctions.

²³ Case C-376/10 P, *Pye Phyo Tay Za v Council*, EU:C:2012:138, para. 66.

²⁴ Lonardo, L., *op. cit.*, note 2, p. 54.

²⁵ *Rosneft*, *op. cit.*, note 20, para. 88.

²⁶ Zelyova, N., *op. cit.*, note 3, p. 20.

4. THE POST-2022 SANCTIONS REGIME: DE-TARGETIZATION AND NEW ARCHITECTURE

The Russian invasion of Ukraine in February 2022 did not merely increase the quantitative volume of restrictive measures; it fundamentally altered the teleological and structural nature of the EU's sanctions regime. The transition from the pre-2022 sanctions to the current strategy of comprehensive economic erosion has introduced new legal concepts and institutional dynamics that challenge the established *Kadi* safeguards.

4.1. The Rise of the Commission as Sanctions Drafter

A critical, yet often under-analyzed, structural shift in the post-2022 era is the re-engineering of the institutional balance within the sanctions adoption process. Traditionally, pursuant to Article 29 TEU, sanctions were the exclusive domain of the Council, driven by Member States and the EEAS, operating through the unclear machinery of the RELEX and COEST working groups. This intergovernmental dominance reflected the sovereign sensitivity of foreign policy. However, the post-2022 reality reveals a profound institutional migration of power.

The sheer technical complexity of the measures adopted against Russia, ranging from SWIFT disconnections and central bank asset immobilizations to complex prohibitions on dual-use technology exports, exceeded the technical capacity of foreign ministries. Consequently, as noted in Section 2.3, DG FISMA emerged as the primary drafter of the sanctions packages.²⁷

This shift has significant legal implications for due process. While the formal legal adoption remains with the Council (preserving the intergovernmental structure of Article 29 TEU), the *substance* is increasingly technocratic and centralized within the Commission. This centralization facilitated the unprecedented speed of adoption, allowing the EU to act in «real-time» with the unfolding aggression. However, it also bypassed the traditional, although slower, deliberative checks inherent in the Council's diplomatic process. The result was the proliferation of «template-based» reasoning in individual listings, where the administrative rationale for sanctioning individuals was often standardized rather than individualized, creating a tension with the *Bank Mellat* requirement for specific, concrete evidence.

4.2. De-targetization: From Surgical to Comprehensive

The defining doctrinal feature of the post-2022 regime is the phenomenon of “de-targetization.” The philosophy of “smart sanctions,” dominant since the late

²⁷ Lepeu, J., *op. cit.*, note 12, p. 977.

1990s, was predicated on the distinction between the regime leadership (the target) and the general population (to be spared). It is argued that the post-2022 Russia sanctions have effectively abandoned this distinction in favor of measures that approximate a comprehensive embargo, blurring the lines between individual culpability and collective economic punishment.²⁸ The theoretical foundations of the smart sanctions paradigm and the conditions under which targeted EU sanctions produce behavioural change were extensively analysed by Portela, whose foundational study demonstrated that effectiveness hinges precisely on the individualized precision that the post-2022 regime has substantially diluted.²⁹

Legally, this “de-targetization” manifests in the exponential broadening of listing criteria. The Council amended Council Regulation (EU) No 269/2014 to allow for the listing not just of those directly responsible for the aggression, but of “leading businesspersons” operating in economic sectors providing a substantial source of revenue to the Russian Federation (Article 3(1)(g)). This amendment marks a transition from *conduct-based* liability (sanctioned for what you *did*) to *status-based* liability (sanctioned for who you *are*).³⁰

By defining entire sectors, energy, finance, transport, defense, as critical to the regime, the EU legal order now operates under the presumption that any individual achieving economic prominence within these sectors is a contributor to the Russian state’s war economy. This structural shift directly challenges the *Tay Za*³¹ doctrine, which prohibited the presumption of support based solely on status or association. Under the current regime, the «individualized assessment» required by *Kadi*³² judgements frequently satisfied by merely proving the individual’s economic status, rather than any specific act of support for the war.

5. DOCTRINAL ANALYSIS OF POST-2022 CASE LAW

The Court of Justice has been flooded with annulment actions from Russian oligarchs, family members, and corporate entities challenging these new measures. Analysis of recent judgments reveals a judiciary attempting to navigate the tension between the strict evidentiary standards of the *Kadi* era and the geopolitical necessity of the current moment.

²⁸ *Ibid.*

²⁹ Portela, C., *European Union Sanctions and Foreign Policy: When and Why Do They Work?*, Routledge, London, 2010.

³⁰ Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

³¹ *Pye Phyö Tay Za v Council*, *op. cit.*, note 23, para. 66.

³² *Kadi and Al Barakat International Foundation v Council and Commission*, *op. cit.*, note 13, para. 326.

5.1. The “Leading Businessperson” Criterion and the Rebuttable Presumption

The central legal battleground in the post-2022 litigation has been the interpretation of the “leading businessperson” criterion. In a series of judgments, including *Shulgin v Council* (Case T-364/22), *Pumpyansky v Council* (T-270/22), and *Gennady Nikolayevich Timchenko and Elena Petrovna Timchenko v Council of the European Union* (T-644/22), the General Court has largely upheld the Council’s broad discretionary power.³³

The Court has accepted a logic of “implied support.” It reasoned that in a state-capitalist system such as that of the Russian Federation, maintaining a dominant market position or managing a major company is fundamentally linked to regime support. Therefore, the Council does not need to prove a direct link between the individual and the military aggression in Ukraine. It is sufficient for the Council to demonstrate that the individual is a “leading businessperson” in a relevant sector. Once this status is established, a presumption arises that the individual provides support to, or benefits from, the Russian government.³⁴

This constitutes a significant reversal of the burden of proof. While formally the burden remains on the Council, in practice, the burden shifts to the applicant to demonstrate that they are *not* supporting the regime, a *probatio diabolica* in a non-transparent authoritarian system where public dissent carries the risk of imprisonment or asset seizure by the Russian state. The Court has generally dismissed arguments that the «leading businessperson» criterion is disproportionate or lacks a causal link to the war, deferring to the Council’s assessment that eroding the Russian economic base is a necessary component of the CFSP objective to restore peace. Lonardo has observed that this line of reasoning effectively places Russia-related sanctions litigation in a *sui generis* category, where the procedural safeguards of EU administrative law are recalibrated to accommodate the systemic logic of state-capitalist complicity, rather than requiring proof of individual wrongdoing in the conventional sense.

5.2. Evidence Standards and the “Prigozhina” Correction

Despite the general trend of deference regarding listing criteria, the Court has maintained a degree of vigilance regarding the quality and temporality of evidence. Unlike the carefully curated intelligence report in UN counter-terrorism

³³ Case T-364/22, *Shulgin v Council*, ECLI:EU:T:2023:503.; Case T-270/22, *Pumpyansky v Council*, ECLI:EU:T:2023:757.; Case T-644/22, *Timchenko and Timchenko v Council*, ECLI:EU:T:2024:258.

³⁴ Matusiak-Frączczak, M., *op. cit.*, note 9, p. 170.

cases, EU listings often rely on “press packs”, compilations of news articles, Wikipedia entries etc.

The limits of this approach were exposed in the case of *Violetta Prigozhina* (Case T-212/22). The General Court annulled the listing of the mother of Yevgeny Prigozhin, the late leader of the Wagner Group. The Council had justified her listing on the grounds that she was the owner of companies linked to her son. However, the Court found that the evidence relied upon by the Council was outdated; at the time of the contested acts, she had ceased to be the owner of the relevant entities. The Court held that a family link alone, without evidence of continued economic association at the time of the listing, was insufficient to justify the restrictive measure.³⁵³⁶

The *Prigozhina* judgment serves as a critical doctrinal corrective. It reaffirms that even in the context of war, the Council cannot be insufficiently rigorous in its evidentiary approach. The facts must be accurate, reliable, and crucially, contemporaneous. The Court refused to allow the general notoriety of the son to cure the evidentiary defects regarding the mother, thereby upholding the principle that sanctions are not instruments of collective family punishment but measures based on individual conduct or specific economic links.

5.3. Proportionality and the “Security Exception”: The RT France Case

The tension between fundamental rights and security imperatives reached its peak in the *RT France* judgment (Case T-125/22). The Council imposed a ban on the broadcasting activities of RT France, a Russian state-funded media outlet, arguing it was an instrument of information warfare and destabilization. RT France challenged the ban as a violation of the freedom of expression enshrined in Article 11 of the Charter.³⁷

The Grand Chamber of the General Court upheld the ban, applying a proportionality test that heavily weighted the “threat to the Union’s public order and security” posed by hybrid warfare. The Court reasoned that the essence of the right to freedom of expression was not impaired because the measure was temporary and reversible. Furthermore, the Court accepted that the Council could take such measures without providing a prior hearing, citing the “extreme urgency” of the situation immediately following the invasion.³⁸

³⁵ Case T-212/22, *Violetta Prigozhina v. Council of the European Union*, ECLI:EU:T:2023:104.

³⁶ Lonardo, L., *op. cit.*, note 2, p. 57.

³⁷ Case T-125/22, *RT France v Council*, ECLI:EU:T:2022:483.

³⁸ Matusiak-Frączzak, M., *op. cit.*, note 9, p. 179.

This judgment signals a doctrinal shift towards what might be termed a “security exception” within the proportionality analysis. While the restriction on property in *Rosneft*³⁹ was justified by strategic sectoral targeting, the restriction on expression in *RT France* was justified by the cognitive dimension of warfare. The Court displayed a willingness to defer to the Council’s assessment of what constitutes a threat to public order, suggesting that in times of existential crisis, the balance of proportionality tilts decisively in favor of security. Critics argue that relying on the «temporary» nature of sanctions is theoretically flawed given the complex nature of the conflict, potentially leaving rights suspended indefinitely.⁴⁰

5.4. The Standard of Review: Manifest Error vs. Full Review

While formally maintaining the “full review” standard established in *Kadi*, the post-2022 jurisprudence reveals a dichotomy in the Court’s approach. When reviewing facts (e.g., did Person X own Company Y on Date Z?), the Court exercises full scrutiny. However, when reviewing the complex economic and political assessments (e.g., does sanctioning the fertilizer sector contribute to peace?), the Court applies the “manifest error of assessment” test.

As established in *Rosneft*, the Court acknowledges the Council’s wide margin of appreciation in determining the measures necessary to maintain international peace and security.⁴¹ In the post-2022 cases, this deference has allowed the Council to target the “inner circle” of the Russian economy based on broad presumptions of influence. The Court essentially checks whether the individual fits the criteria of the strategy, rather than questioning the efficacy of the strategy itself. This deference is pragmatic, recognizing the judiciary’s lack of competence in foreign policy, but it risks isolating the substantive logic of “total sanctioning” from rigorous legal challenge. Terlinden’s analysis of proportionality in the EU courts’ sanctions case law reinforces this concern: while the Court formally conducts a three-stage proportionality review, the “manifestly inappropriate” threshold applied at the level of strategic policy assessment renders that review largely formal, effectively shielding the macro-design of the sanctions regime from substantive judicial scrutiny.

6. IMPLEMENTATION GAPS: THE “SCATTERED JUNGLE”

While the adoption of sanctions is centralized in Brussels and adjudicated in Luxembourg, their enforcement remains stubbornly national. This dichotomy creates

³⁹ Case C-72/15, *PJSC Rosneft Oil Company v Her Majesty’s Treasury*, EU:C:2017:236, para. 88.

⁴⁰ Matusiak-Frączak, M., *op. cit.*, note 9, p. 173.

⁴¹ Case C-72/15, *PJSC Rosneft Oil Company v Her Majesty’s Treasury*, EU:C:2017:236, para. 88.

a significant gap in the legal architecture of the sanctions regime. The implementation landscape has been aptly characterized in the academic literature as a “scattered jungle of national authorities.”⁴²

Across the 27 Member States, there are over 160 different competent authorities responsible for freezing assets, granting derogations for basic needs or legal fees, and enforcing penalties for evasion. This fragmentation leads to severe legal uncertainty. An individual might be granted a derogation to access frozen funds to pay defense counsel in France but denied the same derogation in Latvia, despite the governing EU Regulation being identical.

The right to effective judicial protection (Article 47) and the right to property (Article 17) are thus geographically contingent, depending on the administrative efficiency and political will of the national authority. This lack of uniformity undermines the primacy of EU law. If the nature of the EU sanction is unitary, its application must be uniform. The disparity in criminal penalties for sanctions violations, ranging from administrative fines in some states to prison sentences in others, led to the adoption of Directive (EU) 2024/1226 of the European Parliament and of the Council of 24 April 2024 on the definition of criminal offences and penalties for the violation of Union restrictive measures and amending Directive (EU) 2018/1673. This move towards harmonization constitutes an acknowledgment that the current “scattered” enforcement mechanism fails to guarantee both the effectiveness of the CFSP and the uniform protection of fundamental rights.⁴³

7. ASSESSMENT: COMPATIBILITY WITH CONSTITUTIONAL PRINCIPLES

The evolution of the CJEU’s jurisprudence post-2022 reflects a judiciary attempting to balance the imperatives of the Union’s security with the protection of the individual rights that define those values.

The right to effective judicial protection remains the strongest safeguard in the EU legal order. The annulments in cases like *Prigozhina* and the granting of interim measures in *Mazepin* (Case T-743/22 R) demonstrate that the Court does not

⁴² Olsen, K. B.; Kjeldsen, S. F., *Strict and uniform: Improving EU sanctions enforcement*, DGAP Policy Brief No. 29, German Council on Foreign Relations, Berlin, 2022, p. 5.

⁴³ Giumelli, F. et al., *The when, what, where and why of European Union sanctions*, European Security, Vol. 30, No. 1, 2021, p. 20. See also Directive (EU) 2024/1226 of the European Parliament and of the Council of 24 April 2024 on the definition of criminal offences and penalties for the violation of Union restrictive measures and amending Directive (EU) 2018/1673, OJ L, 2024/1226.

serve as a mere instrument of executive validation. However, the practical effectiveness of this right is hindered by the procedural tactic of “renewal.” Sanctions are typically renewed every six months.⁴⁴ By the time the General Court delivers a judgment annulling a listing, the Council may have already adopted a new decision with slightly modified reasons or updated evidence, re-listing the individual. This forces the applicant to initiate a new legal battle, creating an adversarial cycle that undermines the finality of the judicial remedy. Van Elsuwege has noted that this dynamic exposes a structural tension inherent in the CJEU’s gap-filling role: the more robustly the Court exercises jurisdiction over CFSP acts, the more the Council is incentivized to adapt its listings procedurally rather than substantively, undermining the transformative potential of judicial protection.⁴⁵

The quality of reasoning in Council decisions remains a persistent issue. The use of standardized templates for hundreds of listings weakens the individual nature of the administrative act required by Article 41 of the Charter. While the Court has accepted this somewhat standardized reasoning due to the “context” of the war, there is a doctrinal risk that this lowers the administrative standards for future, less urgent crises. Furthermore, the fragmented implementation landscape described in Section 6 as a “scattered jungle” complicates the right to good administration, as individuals face unclear and divergent administrative practices when seeking derogations.

The right to property has undergone the most significant stress. The acceptance of broad sectoral bans and status-based listings implies that property rights of “leading businesspersons” are increasingly viewed as subordinate to foreign policy goals. While the Court insists that asset freezes are temporary preservation measures and not confiscations, the prolonged nature of the conflict means that these “temporary” measures may last for years or decades. This approximates a *de facto* expropriation without the procedural safeguards of criminal law (such as a conviction). The longer the sanctions remain in place without a clear exit strategy or de-listing mechanism, the more fragile the proportionality justification becomes.⁴⁶

8. CONCLUSION AND RECOMMENDATIONS

The full-scale invasion of Ukraine by Russia in 2022 has served as a profound stress test for the European Union’s constitutional order, forcing a direct confrontation

⁴⁴ Case T-212/22, *Prigozhina v Council*, ECLI:EU:T:2023:104; Case T-743/22 R, *Mazepin v Council*, Order of the President of the General Court, 1 March 2023.

⁴⁵ Sztulman, A., *op. cit.*, note 1, p. 14.

⁴⁶ Zelyova, N., *op. cit.*, note 3, p. 18.

between the immediate, existential demands of geopolitical security and principles of the rule of law. The jurisprudential evolution observed in the aftermath of February 2022 represents not merely an intensification of existing practices, but a fundamental transformation in the legal character of EU restrictive measures. The transition from the pre-2022 paradigm of “surgical,” behavior-altering sanctions to a post-2022 strategy of “total” economic erosion has required a judicial recalibration that carries significant long-term risks for the Union’s legal integrity.

The doctrinal reassessment reveals that while the Court of Justice has formally adhered to the rigorous procedural shell established in the *Kadi* era demanding evidence, individual statements of reasons, and respect for the rights of the defense the substantive application of these standards has undergone a pragmatic, if not deferential, adaptation. The concept of “de-targetization” explains the jurisprudential shift from conduct-based liability to status-based liability. By accepting the Council’s logic that in a state-capitalist system, economic importance is equivalent to political support for the aggressor, the Court has effectively lowered the evidentiary threshold required for listing. The validation of the “leading businessperson” criterion creates a rebuttable presumption that borders on a *probatio diabolica*, requiring applicants to prove a negative that they do not support a totalitarian regime in order to regain their fundamental rights. While this judicial approach is understandable within the context of armed conflict, it sets a precarious precedent where the individualization of guilt—a cornerstone of EU administrative law—is sacrificed for the efficiency of collective economic measures.

Furthermore, a critical institutional migration of power has reshaped the sanctions landscape. The emergence of the European Commission as the *de facto* «architect» of the sanctions regime has centralized the drafting of restrictive measures, prioritizing speed and technical scope over the deliberative nuance of traditional CFSP decision-making. This centralization has streamlined the EU’s response to aggression but has also led to the proliferation of standardized, template-based reasoning in listings. The Court’s acceptance of such standardized reasoning, provided it is supported by open-source intelligence, indicates a willingness to accommodate the operational urgency of the Commission and Council, potentially at the expense of the rigorous scrutiny of facts mandated by *Bank Mellat*.

The tension between security and rights reaches its peak in the domain of fundamental freedoms. The judgment in *RT France* and the maintenance of massive sectoral bans signal the emergence of a «security exception» within the proportionality analysis. The Court now weighs the abstract «security of the Union» and the fight against «hybrid warfare» so heavily that severe restrictions on property rights (Article 17) and freedom of expression (Article 11) are considered propor-

tionate, provided they remain theoretically «temporary.» However, as the conflict extends, the «temporary» nature of asset freezes increasingly resembles permanent confiscation without criminal conviction, challenging the very essence of the right to property.

Moreover, the effectiveness of this entire legal regime is threatened by the fragmented implementation landscape described in Section 6 as a “scattered jungle.” The disconnect between the supranational adoption of sanctions and their fragmented national enforcement creates a landscape of legal uncertainty where the right to effective judicial protection is geographically conditioned. Without the harmonization of criminal penalties and centralized enforcement mechanisms, the EU risks a scenario where its foreign policy is unified in theory but divergent in practice, undermining both its geopolitical credibility and its duty to ensure equality before the law.

To ensure that the doctrinal evolution observed in the post-2022 landscape does not permanently erode the protective function of the Charter of Fundamental Rights, judicial review and standards of evidence, the following recommendations are proposed based on the identified legal gaps:

1. *Standardization of Evidence:* The current reliance on open-source intelligence and ad-hoc press clippings significantly weakens the “sufficiently solid factual basis” standard mandated by the CJEU in the *Bank Mellat* jurisprudence. To ensure legal certainty and mitigate the risk of mass annulments, the EU requires a formalized evidentiary mechanism within its existing constitutional architecture. Doctrinally, this oversight function should not be left in an institutional vacuum. Relying on Article 27(3) TEU, a specialized sanctions evidence and verification unit should be formally consolidated within the European External Action Service (EEAS), specifically building upon the existing capabilities of the EU Intelligence and Situation Centre (EU INTCEN). By centralizing the vetting of evidence under the High Representative before a proposal is submitted to the Council under Article 29 TEU, the Union would bridge the gap between national intelligence gathering and supranational legal accountability, ensuring that all listings strictly adhere to the procedural guarantees of Article 41 of the Charter.⁴⁷
2. *Clarification of De-listing Criteria:* The judicial acceptance of the “leading businessperson” criterion has unintentionally created a *probatio diabolica* for targeted individuals, effectively transforming a rebuttable presumption (*prae-sumptio iuris tantum*) into an indisputable one. To reconcile this status-based

⁴⁷ Olsen, K. B.; Kjeldsen, S. F., *op. cit.*, note 42, p. 9.

liability with the right to an effective remedy (Article 47 of the Charter), the Council must codify a clear legal test for de-listing. The regulatory framework should introduce a structured burden-shifting mechanism: once the Council establishes an individual's status within a strategic economic sector, the targeted person must be provided with an explicit, exhaustive set of justified criteria. This legal test should require the applicant to demonstrate a verifiable disassociation of ties with the sanctioned regime, such as documented divestment of assets, formal resignation from state-affiliated corporate boards within a predefined timeframe (e.g., six months), or explicit public distancing. Such a teleological approach ensures that restrictive measures continue to function as temporary, behavior-altering tools under Article 21 TEU, rather than morphing into punitive, *de facto* permanent confiscations without a criminal conviction.

3. *Harmonized Enforcement:* The EU must urgently address the “scattered jungle” of implementation. The adoption of Directive (EU) 2024/1226 is a necessary step, but further integration is required. A dedicated EU sanctions agency or extended powers for the European Public Prosecutor's Office (EPPO) could ensure uniform application of the law and uniform protection of rights across Member States, preventing forum shopping and unequal treatment.⁴⁸
4. *Judicial Efficiency:* The General Court should consider expedited procedures for sanctions cases to prevent the adversarial cycle where judgments are of no practical significance by the renewal of listings. An accelerated procedure would enhance the effectiveness of the remedy under Article 47 of the Charter.

Ultimately, the jurisprudence emerging from this crisis demonstrates that strategic autonomy and the rule of law are not mutually exclusive, but their coexistence requires constant vigilance. The CJEU has managed to prevent the total securitization of the legal order by annulling listings where evidence was demonstrably outdated or insufficient, as seen in *Prigozhina*. Yet, the danger remains that the “exceptional” standards accepted during the conflict—reliance on press compilations, broad presumptions of association, and massive sectoral restrictions—will become the default setting for future EU external action. The Court's task in the coming years will be to guard the boundaries of this new regime rigorously, ensuring that the “security of the Union” does not become a *carte blanche* for executive discretion. The EU must remain a community of law, even when forced to act as a geopolitical power; if it sacrifices the former to achieve the latter, it risks eroding the very values it seeks to defend.

⁴⁸ Giumelli, F. *et al.*, *op. cit.*, note 43, p. 20.

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