

EU Council Sanctions Against Individuals

An unacceptable threat to the Rule of Law and Freedom of Expression

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The Council of the European Union, acting under its Security and Foreign Affairs Policy mandate, has developed a non-transparent and opaque practice of sanctioning individuals—including EU citizens—accused of “spreading disinformation” on behalf of Russia in relation to the war in Ukraine. Who and why someone is sanctioned appears completely arbitrary. This practice contradicts both European and international law. In doing so, the European Union violates fundamental principles of the rule of law and undermines the core civil right of freedom of expression—pillars essential to any democratic order.

In October of last year, two eminent legal experts, Professor Dr. Ninon Colneric, former Judge at the Court of Justice of the European Union, and Professor Dr. Alina Miron, Professor of International Law at the University of Angers, issued a comprehensive Legal Opinion examining the EU sanctions regime in detail. Their analysis identifies multiple areas in which the regime conflicts with both EU law and international law.¹

To date, 59 individuals have been subjected to such sanctions. Most of these reside in countries where EU sanctions are not enforced. However, **a troubling number are EU citizens or residents of EU Member States or closely allied countries, and are therefore exposed to the full force of these measures. They deserve particular attention, as they must be shielded from such unlawful, arbitrary and disproportionate actions.**

Background

Council decisions to sanction individuals are taken in secrecy, and those affected are denied their right to due process. They are not informed in advance that their case is being considered; indeed, they are not even aware that a case exists or that the Council of the European Union claims the authority to judge them—with profound consequences for them and their families. No information is made public about which government initiated the request or how the decision was reached.

Persons against whom the Council imposes sanctions (the term used is ‘listed’) are not informed in advance of the allegations against them, do not have prior access to the evidence and therefore have no right to a hearing or legal representation. Only after the Council has “sentenced” a person to sanctions can they obtain information about the evidence and take legal action against the Council’s decision. In a case known to us, the person concerned did not receive these documents until four days before the expiry of the two-month appeal period.

It is extremely difficult to challenge such decisions. National courts have no jurisdiction, and the jurisdiction of the European Court of Justice is limited in matters of security and foreign policy. Anyone wishing to take legal action must grapple with a Kafkaesque European legal system in a very short space of time. However, there are hardly any lawyers who are familiar with this system.

The sanctions – referred to as ‘restrictive measures’ in Council Decision CFSP 2024/2643 – are severe. They include the freezing of all accounts and assets and a de facto ban on employment, private

¹ <https://michael-von-der-schulenburg.com/wp-content/uploads/25-10-31-Legal-Opinion-Sanctions-against-individuals-R2-1.pdf>

investment or any other form of income generation. Only minimal maintenance support for ‘basic needs’ is permitted (in one case, a family with three children receives €506 per month). The amount of these basic needs is to be determined by the respective Member States, which leads to confusion in the determination and payment of such support (in one case, even this amount was withheld without explanation). Third parties are prohibited from providing financial or material support. Sanctioned persons are prohibited from crossing EU borders, and in one case, a person was denied return to their home country.

In their legal opinion, the two renowned legal experts described this as a form of ‘legal death’. In many ways, the procedure resembles medieval autocratic practices when individuals were declared ‘outlaws’ or ‘vogelfrei’ or subjected to a ‘lettre de cachet’ – penalties imposed without due process.

All Member States have laws against slander, defamation, libel or hate speech. Why, then, are allegations of ‘disinformation’ or ‘destabilising activities’ not heard in national courts, where the rights of the accused are protected? Within EU Member States, the separation of powers – legislative, judicial and executive – is a fundamental principle of democratic governance. At EU level, however, there is no such separation of powers. In these sanction cases, the Council issues the decision (similar to a law), determines who allegedly violated it, and imposes the penalty in an extrajudicial procedure.

What Needs to Be Done

Even a war in Ukraine cannot justify reverting to such a medieval approach in dealing with the views and opinions of others. In every conflict, truth is the first casualty – and that applies to all sides. And it raises the question if the Council has – or should have – the legal authority to take punitive measures against individuals – in particular against EU citizens. Justifying such actions by the Council of the European Union by referring to the Treaty on European Union (Maastricht 1991) and the Treaty on the Functioning of the European Union (Lisbon 2009) are incomprehensible to ordinary people (and most MEPs) and will only reinforce the anger among EU citizens that increasingly experience against the EU as a technocratic monster that rules over their heads and that bypasses without any qualm its own principles.

This sanctions regime against individuals will ultimately undermine the EU’s commitment to democracy, to freedom of speech, the right to dissent, and the value of open debate. Hence these sanctions will only harm and weaken the European Union and its Member States themselves.

This should concern all political groups in the European Parliament. We must work across political lines to end this ill-conceived and politically damaging practice and restore the rule of law, due process and the protection of freedom of speech. This unlawful practice must be abolished.