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LEGAL OPINION

Commissioned by

Michael von der Schulenburg and Ruth Firmenich, non-attached members of the European Parliament

Provided by

Prof. Dr. Ninon Colneric and Prof. Dr. Alina Miron

1. Do sanctions against natural persons for alleged disinformation, based on the EU legal instruments concerning restrictive measures in view of Russia's destabilizing activities, comply with international and EU law?

2. Can the European Parliament bring an action for annulment of such legal instruments?

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QUESTION 1 – Do sanctions against natural persons for alleged disinformation, based on the EU legal instruments concerning restrictive measures in view of Russia's destabilizing activities, comply with international and EU law?

1. Preliminary remark

In common parlance, disinformation is deliberately false information intended to deceive or the act of using deliberately false information to deceive. As the legal instruments at issue in this legal opinion use the terms 'information manipulation and interference' in their provisions and do not contain a definition of disinformation, this preliminary understanding of disinformation will serve as a starting point.

Fighting disinformation by Russia is a major topic for the EU since Russia annexed Crimea in 2014. On 19 March 2015, after a summit meeting, the then 28 Heads of State or Government of the EU Member States announced:

> 'The European Council stressed the need to challenge Russia's ongoing disinformation campaigns and invited the High Representative, in cooperation with Member States and EU institutions, to prepare by June an action plan on strategic communication. The establishment of a communication team is a first step in this regard.'[1]

A team of experts, the East StratCom Task Force, was set up in the Strategic Communication and Information Analysis Division of the European External Action Service (EEAS) to implement this idea. It developed the project EUvsDisinfo.[2] The core objective of this project is to increase public awareness and understanding of the Kremlin's disinformation operations, and to help citizens in Europe and beyond develop resistance to digital information and media manipulation.

The evolution of EUvsDisinfo is part of a larger story of the European Union strengthening its response to foreign information manipulation and interference (FIMI) threats.[3] Thus, in 2018, the European Commission presented an 'Action Plan against Disinformation'[4], and in 2020, the European Digital Media Observatory (EDMO)[5] was created to support the independent community working to combat disinformation.

In its conclusions of 17 and 18 April 2024, the European Council underlined, in the context of the European elections, the Union and its Member States' determination to contain any risks stemming from FIMI in electoral processes.[6] Soon afterwards, in its conclusions of 27 June

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[1] European Council Conclusions on external relations (19 March 2015), Press release, https://www.consilium.europa.eu/en/press/press-releases/2015/03/19/conclusions-russia-ukraine-european-council-march-2015/.

[2] https://euvsdisinfo.eu/de/

[3] See European Commission, Shaping Europe's digital future, Tackling online disinformation, https://digital-strategy.ec.europa.eu/en/policies/online-disinformation.

[4] European Commission, Joint Communication to the European Parliament, the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, Action Plan against Disinformation, 5.12.2028, JOIN(2018) 36 final, https://www.eeas.europa.eu/node/54866_en .

[5] https://digital-strategy.ec.europa.eu/en/policies/european-digital-media-observatory .

[6] https://www.consilium.europa.eu/media/m5jlwe0p/euco-conclusions-20240417-18-en.pdf .

2024, it called for work to be taken forward in the Council to establish a new sanctions regime in view of hybrid threats .[7]

This was the prelude to the adoption of the measures which are the subject of this legal opinion. The provisions of the legal instruments concerned do not use the term 'disinformation'. However, this term is mentioned in some recitals as a subcategory of information manipulation and interference.

2. The sanctions regime and its judicial review

2.1. Overview of the relevant decisions and regulations

On 8 October 2024, the Council of the European Union (‚Council') adopted, on the basis of Article 29 Treaty on European Union ('TEU'), Council Decision (CFSP[8]) 2024/2643 concerning restrictive measures in view of Russia's destabilising activities (OJ L, 9.10.2024). On the same day, the Council, on the basis of Article 215 Treaty on the Functioning of the European Union ('TFEU'), adopted Council Regulation (EU) 2024/2642 concerning restrictive measures in view of Russia's destabilizing activities (OJ L, 9.10.2024).[9] Unlike decisions, regulations are directly applicable in all Member States (Article 288(2) and (4) TFEU).

On 20 May 2025, the Council adopted Council Decision (CFSP) 2025/963 amending Decision (CFSP) 2024/2643 concerning restrictive measures in view of Russia's destabilising activities (OJ L, 20.5.2025) and Council Regulation (EU) 2025/964 amending Regulation (EU) 2024/2642 concerning restrictive measures in view of Russia's destabilizing activities (OJ L, 20.5.2025). Council Decision (CFSP) 2024/2643 applied until 9 October 2025. By Council Decision (CFSP) 2025/2019 of 3 October 2025 amending Decision (CFSP) 2024/2643 concerning restrictive measures in view of Russia's destabilising activities (OJ L, 6.10.2025), it was prolonged until 9 October 2026.

Several measures amended Annex I (originally: the Annex) to Council Decision (CFSP) 2024/2643 and Annex I to Council Regulation (EU) 2024/2642, which list the natural and legal persons against whom the restrictive measures are directed. These are Council Decision (CFSP) 2024/31/74 of 16 December 2024 amending Decision (CFSP) 2024/2643 concerning restrictive measures in view of Russia's destabilising activities (OJ L, 16.12.1974), Council Implementing Regulation (EU) 2024/3188 of 16 December 2024 implementing Regulation (EU) 2024/2642 concerning restrictive measures in view of Russia's destabilizing activities (OJ L, 16.12.1974), Council Decision (CFSP) 2025/966 of 20 May 2025 amending Decision (CFSP) 2024/2643 concerning restrictive measures in view of Russia's destabilising activities (OJ L, 20.5.2025), Council Implementing Regulation (EU) 2025/965 of May 2025 implementing Regulation (EU) 2024/2642 concerning restrictive measures in view of Russia's destabilising activities (OJ L, 20.5.2025), Council Decision (CFSP) 2025/1279 of 26 June 2025 amending Decision (CFSP) 2024/2643 concerning restrictive measures in view of Russia's destabilising activities (OJ L, 26.6.2025), Council Implementing Regulation (EU) 2025/1278 of 26 June 2025 implementing Regulation 2024/2642 concerning restrictive measures in view of Russia's destabilising activities (OJ L, 26.6.2025), Council Decision (CFSP) 2025/1443 of 15 July 2025 amending

[7] https://www.consilium.europa.eu/media/qa3lblga/euco-conclusions-27062024-en.pdf

[8] Common Foreign and Security Policy.

[9] A precursor to these legal instruments were Council Decision (CFSP) 2023/891 of 28 April 2023 concerning restrictive measures in view of actions destabilising the Republic of Moldova and Council Regulation (EU) 2023/888 of 28 April 2023 concerning restrictive measures in view of actions destabilising the Republic of Moldova. However, they did not yet use the concept of information manipulation and interference.

Decision (CFSP) 2024/2643 concerning restrictive measures in view of Russia's destabilising activities (OJ L, 15.7.2025), Council Implementing Regulation (EU) 2025/1444 of 15 July 2025 implementing Regulation (EU) 2024/2642 concerning restrictive measures in view of Russia's destabilising activities (OJ L, 15.7.2025) and Council Implementing Regulation (EU) 2025/2021 of 3 October 2025 implementing Regulation (EU) 2024/2642 concerning restrictive measures in view of Russia's destabilising activities (OJ L, 6.10.2025).

While these Council Decisions are based on Article 29 TEU, the implementing Council regulations are based on Article 13 Council Regulation (CFSP) 2024/2642.

In the following, 'Council Decision (CFSP) 2024/2643' shall refer to Council Decision (CFSP) 2024/2643 as amended. Likewise, 'Council Regulation (EU) 2024/2642' shall refer to Council Regulation (EU) 2024/2642 as amended.

There are now 47 natural persons listed, however not all of them not for disinformation (for details see the list of natural persons sanctioned by the EU for information manipulation and interference annexed to this legal opinion).

Although the list of targeted individuals includes persons not living in the EU, the territorial scope of application of the legal instruments establishing the restrictive measures is limited to the territory of Union, including its airspace, and aircrafts and vessels under the jurisdiction of a Member State (Article 19(a) and (b) Council Regulation (EU) 2024/2642). As far as natural persons are concerned, the personal scope comprises any natural person inside or outside the territory of the Union who is a national of a Member State (Article19(c) Council Regulation (EU) 2024/2642).

2.2. The relevant target group

2.2.1. Council Decision (CFSP) 2024/2643

Articles 1(1)(a) Council Decision (CFSP) 2024/2643 defines the main target groups of natural persons subject to travel restrictions under this Decision. The definition has an introductory part common to all groups. It reads as follows:

> 'responsible for, implementing, supporting, benefitting from, involved in or facilitating actions or policies attributable to the Government of the Russian Federation which undermine or threaten democracy, the rule of law, stability or security in the Union or one or several of its Member States, in an international organisation or in a third country or which undermine or threaten the sovereignty or independence of one or several of its Member States, or of a third country, through the following actions:'

The second part of the definition comprises a list of actions, among them

> '(iv) planning, directing, engaging in, directly or indirectly, supporting or otherwise facilitating the use of information manipulation and interference;'

The original version of this provision required 'coordinated information manipulation and interference'. The element 'coordinated' was cancelled by Council Decision (CFSP) 2025/963.

A formal requirement for imposing travel restrictions on natural persons covered by Article 1(1)(a) of Council Decision (CFSP) 2024/2643 is that they are listed in Annex I to that Decision.

Points b and c of Articles 1(1) of Council Decision (CFSP) 2024/2643 extend the circle of target groups to include natural persons associated with natural persons listed under point (a) and natural persons supporting natural persons engaged in activities referred to in point (a).

Article 2(1) of Council Decision (CFSP) 2024/2643, which deals with the freezing of funds and economic resources, defines the target groups of natural persons in the same way as Article 1(1) of that Decision. However, it also includes legal persons, entities and bodies.

The term 'disinformation' is not used in the provisions of the Decision but in its recitals. Recital 9 sentence 2 of Council Decision (CFSP) 2024/2643 reads:

> 'The Union and Ukraine acknowledged the importance of strengthening cooperation in tackling Russian state-controlled information manipulation and interference, including disinformation, as well as building resilience in Ukraine's digital transformation.'

According to recital 10 of Council Decision (CFSP) 2024/2643, on 1 June 2023, the European Parliament in a resolution on foreign interference in all democratic processes in the Union, including disinformation, stressed that Russia uses an array of different methods of interference, embedded within a larger strategy, to harm, confuse, frighten, weaken and divide the Member States and its neighbourhood.

Recital 7 of Council Decision (CFSP) 2025/963 reads:

> 'Russia has engaged in a systematic, international campaign of media manipulation and distortion of facts in order to enhance its strategy of destabilising its neighbouring countries and the Union and its Member States. In particular, the propaganda and disinformation have repeatedly and consistently targeted European political parties, especially during election periods, as well as civil society, minority communities, refugees, and the functioning of democratic institutions in the Union and its Member States.'

2.2.2. Council Regulation (EU) 2024/2642

Article 2(3) of Council Regulation (EU) 2024/2642 defines the natural or legal persons, entities or bodies to be included in its Annex I. That definition is identical to that contained in Article 2(1) of Council Decision (CFSP) 2024/2643.

The recitals of Council Regulation (EU) 2024/2642 do not mention disinformation. Recital 5 of Council Regulation (EU) 2025/964 refers to 'Russia's involvement in a systematic, international campaign of media manipulation and distortion of facts in order to enhance its destabilising strategy against the Union and its Member States'.

2.3. Restrictive measures relating to natural persons

Council Decision (CFSP) 2024/2643 comprises two types of restrictive measures relating to natural persons: on the one hand, travel restrictions, on the other hand restrictive financial measures. Council Regulation (EU) 2024/2642 only deals with the latter category of measures.

2.3.1. Council Decision (CFSP) 2024/2643

According to Article 1 of Council Decision (CFSP) 2024/2643, Member States shall take the necessary measures to prevent the entry into, or transit through, their territories of natural persons, as listed in Annex I, who fall into one of the categories defined in paragraph 1 of that provision. Article 1(2) of Council Decision (CFSP) 2024/2643 stipulates that paragraph 1 shall not oblige a Member State to refuse its own nationals entry into its territory.

Article 1(3) to (9) of that Decision deal with further exceptions which Member States may grant. They concern cases in which a Member State is bound by an obligation of international law, e.g. as a host country to an international intergovernmental organisation, certain other cases

related to international activities, as well as travel justified by urgent humanitarian needs or necessary for the fulfilment of a judicial process.

According to Article 2(1) of Council Decision (CFSP) 2024/2643, all funds and economic resources belonging to, owned, held or controlled by natural or legal persons, entities or bodies, as listed in Annex I, who fall into one of the categories defined in that provision, shall be frozen. Article 2(2) of that Decision provides that no funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies listed in the Annex.

By way of derogation from paragraphs 1 and 2, the competent authorities of the Member States may authorise the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources, under such conditions as they deem appropriate, after having determined that certain conditions listed in paragraph 3 are fulfilled. Some of these derogations are of particular practical importance. They concern funds or economic resources

> (a) necessary to satisfy the basic needs of the persons listed in the Annex and their dependent family members, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;
>
> (b) intended exclusively for the payment of reasonable professional fees and the reimbursement of incurred expenses associated with the provision of legal services;
>
> d) necessary for extraordinary expenses (…)
>
> and
>
> (g) necessary for the provision of electronic communication services by Union telecommunication operators, and for the provision of associated facilities and services necessary for the operation, maintenance and security of such electronic communication services.

Article 2(5) Council Decision (CFSP) 2024/2643 specifies when a derogation from paragraph 1 is permitted in connection with arbitral, judicial or administrative decisions. According to Article 2(7) of that Decision, paragraph 1 shall not prevent a listed natural or legal person, entity or body from making a payment due under a contract entered into prior to the date of their listing in the Annex, provided that the Member State concerned has determined that the payment is not, directly or indirectly, received by a natural or legal person, entity or body referred to in paragraph 1. Article 2(8) deals with certain permitted additions to frozen accounts, such as the addition of interests and of payments due under contracts, agreements or obligations that were concluded or arose prior to the date on which those accounts became subject to the measures provided for in paragraphs 1 and 2.

Article 2a Council Decision (CFSP) 2024/2643 contains a prohibition on transactions related to tangible asset linked to Russia's destabilising activities, including vessels, aircraft, real estate, ports, and physical elements of digital and communication networks. They are listed in Annex II and shall include i.a. tangible assets which are owned, chartered or operated by natural persons listed in Annex I, or is (sic) otherwise used in the name of, on behalf of, in relations with, or for the benefit of, such persons.

Article 3 of Council Decision (CFSP) 2024/2643 contains exemptions from Article 2(1) and (2) for the delivery of humanitarian assistance and other activities supporting basic human needs.

According to Article 7 of Council Decision (CFSP) 2024/2643, no claims in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under this Decision (such as a claim for compensation) shall be satisfied if they are made by natural or legal persons, entities or bodies listed in the Annex (paragraph 1). In any proceedings for the enforcement of a claim, the onus of proving that satisfying the claim is not prohibited by paragraph 1 shall be on the natural or legal persons, groups, entities or body seeking the enforcement of that claim (paragraph 2) This Article is without prejudice to the right of the natural or legal persons, groups, entities and bodies referred to in paragraph 1 to judicial review of the legality of the non-performance of the contractual obligations in accordance with this Decision.

Article 8 of Council Decision (CFSP) 2024/2643 interdicts circumvention: It shall be prohibited to participate, knowingly or intentionally, in activities the object or effect of which is to circumvent the prohibitions set out in this Decision, including by participating in such activities without deliberately seeking that object or effect but being aware that the participation may have that object or effect and accepting that possibility.

According to Article 5 of Council Decision (CFSP) 2024/2643, the Annex shall include the grounds for listing the natural and legal persons, entities and bodies referred to in Articles 1 and 2. It shall contain, where available, the information necessary to identify the natural or legal persons, entities or bodies concerned. With regard to natural persons, such information may include: names and aliases; date and place of birth; nationality; passport and identity card numbers; gender; address, if known; and function or profession.

2.3.2. Council Regulation (EU) 2024/2642

Recital 2 of Council Regulation (EU) 2024/2642 explains that regulatory action at the level of the Union is necessary to implement the financial measures provided for by Council Decision (CSFP) 2024/2643, notably with a view to ensuring the uniform application by economic operators in all Member States.

Article 1 of Council Regulation (EU) 2024/2642 defines certain key notions. ‘Funds’ means financial assets and benefit of every kind. ‘Economic resources’ means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds, but may be used to obtain funds, goods or services. ‘Freezing of funds’ means preventing any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used, including portfolio management. ‘Freezing of economic resources’ means preventing the use of economic resources to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them. ‘Competent authorities” means the competent authorities of the Member States as identified on the websites listed in Annex II.

Article 2(1) and (2) of Council Regulation (EU) 2024/2642 correspond to Article 2(1) and (2) of Council Decision (CFSP) 2024/2643: All funds and economic resources belonging to, owned, held or controlled by any natural or legal person, entity or body as listed in Annex I shall be frozen. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies listed in Annex I.

Article 3 (1) of Council Regulation (EU) 2024/2642 authorizes derogations by the competent authorities that correspond to the derogations provided for in Article 2(3) of Council Decision

(CFSP) 2024/2643. Article 4 of Council Regulation (EU) 2024/2642, which deals with humanitarian assistance and other activities that support basic human needs, is the equivalent of Article 3 Council Decision (CFSP) 2024/2643. Article 5 of Council Regulation (EU) 2024/2642 concerns arbitral, judicial and administrative decisions and is the counterpart of Article 2(5) of Council Decision (CFSP) 2024/2643. Article 6 of Council Regulation (EU) 2024/2642 relates to contracts concluded prior to the listing and corresponds in essence to Article 2(7) of Council Decision (CFSP) 2024/2643. According to Article 7(1) of Council Regulation (EU) 2024/2642, Article 2(2) shall not prevent the crediting of frozen accounts by financial or credit institutions that receive funds transferred by third parties onto the account of a listed natural or legal person, entity or body, provided that any additions to such accounts will also be frozen. Article 7(2) of Council Regulation (EU) 2024/2642 contains the same permitted additions to frozen accounts as Article as Article 2(8) Council Decision (CFSP) 2024/2643.

Article 8(1) and (2) of Council Regulation (EU) 2024/2642 reads as follows:

> '1. Natural and legal persons, entities and bodies shall:
>
> (a) supply immediately any information which would facilitate compliance with this Regulation, such as information on accounts and amounts frozen in accordance with Article 2(1), to the competent authority of the Member State where they are resident or located, and transmit such information, directly or through the Member State, to the Commission; and
>
> (b) cooperate with the competent authority in any verification of the information referred to in point (a).
>
> 2. Paragraph 1 shall apply subject to national or other applicable rules regarding the confidentiality of information held by judicial authorities, and consistent with respect for the confidentiality of communications between lawyers and their clients guaranteed by Article 7 of the Charter of the Fundamental Rights of the European Union. For that purpose, such communications include those relating to legal advice provided by other certified professionals who are authorised under national law to represent their clients in judicial proceedings, insofar as such legal advice is provided in connection with pending or prospective judicial proceedings.'

Article 9(1) of Council Regulation (EU) 2024/2642 contains the same interdiction of circumvention as Article 8 Council Decision (CFSP) 2024/2643. Paragraphs 2 and 3 of Council Regulation (EU) 2024/2642) provide:

> '2. Natural or legal persons, entities or bodies listed in Annex I shall:
>
> (a) report within 6 weeks from the date of listing in Annex I funds or economic resources within the jurisdiction of a Member State belonging to, owned, held or controlled by them, to the competent authority of the Member State where those funds or economic resources are located; and
>
> (b) cooperate with the competent authority in any verification of such information.
>
> 3. Failure to comply with paragraph 2 of this Article shall be considered as participation, as referred to in paragraph 1 of this Article, in activities the object or effect of which is to circumvent the measures referred to in Article 2.'

According to Article 10 of Council Regulation (EU) 2024/2642, the freezing of funds and economic resources or the refusal to make funds or economic resources available, carried out

in good faith on the basis that such action is in accordance with this Regulation, shall not give rise to liability of any kind on the part of the natural or legal person or entity or body implementing it, or its directors or employees, unless it is proved that the funds and economic resources were frozen or withheld as a result of negligence. Actions by natural or legal persons, entities or bodies shall not give rise to any liability of any kind on their part if they did not know, and had no reasonable cause to suspect, that their actions would infringe the measures set out in this Regulation.

Article 11 of Council Regulation (EU) 2024/2642 deals with claims in connection with any contract or transaction the performance of which has been affected by the measures imposed under this Regulation in the same way as Article 7 of Council Decision (CFSP) 2024/2643.

Regarding the information to be published in Annex I, the requirements set out in Article 14 of Council Regulation (EU) 2024/2642 are the same as in Article 5 of Council Decision (CFSP) 2024/2643.

According to Article 15(1) of Council Regulation (EU) 2024/2642, Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall also provide for appropriate measures of confiscation of the proceeds of such infringements.

Article 16 of Council Regulation (EU) 2024/2642 deals with data protection. Its first paragraph states that the Council, the Commission and the High Representative of the Union for Foreign Affairs and Security Policy may process personal data in order to carry out their tasks under this Regulation.

2.4. Listing procedure

Article 4 of Council Decision (CFSP) 2024/2643 prescribes the following listing procedure: The Council, acting by unanimity upon a proposal from a Member State or the High Representative of the Union for Foreign Affairs and Security Policy shall decide to establish and amend the list in the Annex (paragraph 1). The Council shall communicate a decision pursuant to paragraph 1, including the grounds for the listing, to the natural or legal person, entity or body concerned, either directly, if the address is known, or through the publication of a notice in the *Official Journal of the European Union* (paragraph 2). Where observations are submitted, or where substantial new evidence is presented, the Council shall review the decision pursuant to paragraph 1 and inform the natural or legal person, entity or body concerned accordingly (paragraph 3).

According to Article 13(1) of Council Regulation (EU) 2024/2642, where the Council decides to subject a natural or legal person, entity or body to the restrictive measures referred to in Article 2 of this regulation, it shall amend Annex I accordingly. Article 13(2) of Council Regulation (EU) 2025/2642 is the counterpart of Article 4(2) of Council Decision (CFSP) 2024/2643. However, the wording is slightly different: direct communication is restricted to cases where such communication can be effected, and for communication by notice, it is not required to use the *Official Journal of the European Union*. Article 13(3) of Council Regulation (EU) 2024/2642 is identical to Art. 4(3) of Council Decision (CFSP) 2024/2643. According to Article 13(4) of Council Regulation (EU) 2024/2642, the list in Annex I shall be reviewed at regular intervals and at least every 12 months.

In its judgment of 3 September 2008, *Kadi and Al Barakaat International Foundation v Council and Commission*, C-402/05 P and C-425/05 P *('Kadi I')*, which concerned restrictive measures taken against persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban, the European Court of Justice ('ECJ') held that the authorities cannot be required to communicate the grounds for listing a person before the name of a person or entity is entered in the list for the first time (paragraph 338). It argued that prior communication would be liable to jeopardise the effectiveness of the freezing of funds and resources imposed by the regulation concerned because such measures must take advantage of a surprise effect and apply with immediate effect (paragraphs 339 und 340). For the same reasons, the Court held that the authorities were not bound to hear the persons concerned before their names were included in the list for the first time (paragraph 341).

However, as regards a decision whereby the name of the individual concerned is to be maintained on the list, compliance with the procedural obligations to communicate the grounds for listing and to hear the person concerned must precede the adoption of that decision (judgment of 18 July 2013, *Commission and Others v Kadi*, C-584/10 P, C-593/10 P and C-595/10 P *('Kadi II')*, paragraph 113).

2.5. Judicial review

According to Article 275 TFEU, the Court of Justice of the European Union, which includes the ECJ and the General Court (Article 19 TEU[10]), shall not have jurisdiction with respect to the provisions relating to the common foreign and security policy nor with respect to acts adopted on the basis of those provisions. However, there are two exceptions. The second states that the Court shall have jurisdiction to rule on proceedings, brought in accordance with the conditions laid down in the fourth paragraph of Article 263 TFEU, reviewing the legality of decisions providing restrictive measures against natural or legal persons adopted by the Council on the basis of Chapter 2 of Title V of the Treaty on European Union (see also Art. 24(1) last sentence TEU). Article 29 TEU, the legal basis for Council Decision (CFSP) 2024/2643, is part of this chapter. Consequently, the Court can review the legality of that decision. As for the Council regulations mentioned above, they fall under Article 215 TFEU and are thus subject to legal review.

The main legal remedy for persons directly affected by restrictive measures is the action for annulment provided for in Article 263 TFEU. It results from Article 256(1) TFEU that the General Court has jurisdiction to hear and determine at first instance actions brought under Article 263 TFEU by such persons. An appeal, limited to points of law, may be brought before the Court of Justice against final decisions of the General Court (Articles 56 and 58 Statute of the Court of Justice of the European Union).

According to Article 263(4) TFEU, any natural or legal person may, under the conditions laid down in the first and second paragraph of the provision, institute proceedings against an act addressed to that person or which is of direct and individual concern to them and does not entail any implementing measures. An action for annulment may be brought, inter alia, against an act of the Council (Article 263(1) TFEU). Under Article 263(2) TFEU, four pleas may be raised by the applicant, namely lack of competence, infringement of an essential procedural requirement, infringement of the Treaties (=TEU and TFEU) or of any rule of law relating to their application, or misuse of powers.

[10] Article 19(1) TEU also mentions specialised courts. However, at present, these do not exist.

Article 263(6) provides that the proceedings shall be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.[11] Where an action for annulment of an act was admissible under Article 263 TFEU, but was not brought in time, the invalidity of that act cannot be pleaded in the context of a preliminary ruling procedure when such an act serves as the basis for a measure of national law (judgment of 28 March 2017, *PJSEC Rosneft Oil*, C-72/15, paragraph 128, with further references).

According to Article 146 Rules of Procedure of the General Court, any person who, because of his financial situation, is wholly or partly unable to meet the costs of the proceedings shall be entitled to legal aid. Legal aid shall be refused if it is clear that the General Court has no jurisdiction to hear and determine the action in respect of which the application for legal aid is made or if that action appears to be manifestly inadmissible or manifestly lacking any foundation in law. For example, legal aid was granted to a person affected by restrictive measures against certain officials of Belarus (Order of the President of the Sixths Chamber of the General Court of 6 June 2012, *CD v Council*, T-646/11 AJ). An application for legal aid may be made before the action has been brought or while it is pending (Article 147 Rules of Procedure of the General Court). The introduction of an application for legal aid shall, for the person who made it, suspend the time limit prescribed for the bringing of an action until the date of service of the order making a decision on that application or of the order designating the lawyer instructed to represent the applicant. Legal aid is also available for appeals (Articles 185 et seq. Rules of Procedure of the Court of Justice).

Both Rules of Procedure of the General Court and Rules of Procedure of the Court of Justice contain provisions on adjudication under an expedited procedure. However, they are rarely used.

According to Article 278 TFEU, actions brought before the Court of Justice of the European Union shall not have suspensory affect. The Court may, however, if it considers that the circumstances so require, order that the application of the contested act be suspended. Art. 279 TFEU provides that the Court of Justice of the European Union may in any cases before it prescribe any necessary interim measures. For example, interim relief was granted by Order of the President of the General Court of 1 March 2023, *Mazepin v Council*, T-743/22 R, to a professional racer affected by restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

The procedural rules applicable in proceedings for annulment of restrictive measures were set out in the seminal rulings *'Kadi I'* and *'Kadi II'*. Later rulings on restrictive measures build on this case law.

It can be derived from *Kadi I* that the EU judicature must, in accordance with the powers conferred to it by the TEU and the TFEU, ensure the review, in principle the full review, of the lawfulness of all Union acts in the light of the fundamental rights forming an integral part of Union law (paragraph 326).

[11] Article 59 Rules of Procedure of the General Court provides that, where the time limit allowed for initiating proceedings against a measure adopted by an institution runs from the publication of that measure in the Official Journal of the European Union, that time limit shall be calculated, for the purposes of Article 58(1)(a), from the end of the fourteenth day after such publication. Pursuant to Article 60 of these rules, the procedural time limits shall be extended on account of distance by a single period of 10 days.

Any decision imposing or maintaining restrictive measures against a person must be taken on a sufficiently solid factual basis, and the EU Courts must then determine whether the facts alleged are made out in the light of the information or evidence provided and assess the probative value of that information or evidence in the circumstances of the particular case and in the light of any observations submitted in relation to them by, among others, the person concerned (*Kadi II*, paragraphs 119 and 124; judgment of 13 March 2025, *Shuvalov v Council*, C-271/24 P, paragraph 38).

It is the task of the competent EU authority to establish, in the event of a challenge, that the reasons relied on against the person concerned are well founded, and not the task of that person to adduce negative evidence that those reasons are not well founded. Although there is no requirement that that authority produce before the EU courts all the information and evidence underlying the reasons alleged, it is however necessary that the information or evidence produced should support the reasons relied on against the person concerned (*Kadi II*, paragraphs 120 and 121; judgment of 13 March 2025, *Shuvalov v Council*, C-271/24 P, paragraph 39).

The Court admitted that overriding considerations to do with the security of the European Union or of its Member States or with the conduct of their international relations may preclude the disclosure of some information or some evidence to the person concerned. It held that it is for the Courts of the European Union to determine whether the reasons relied on by the competent European Union authority as grounds to preclude that disclosure are well founded. If so, it is legitimate to consider possibilities such as disclosure of a summary outlining the information's content or that of the evidence in question. Irrespective of whether such possibilities are taken, it is for the EU Courts to assess whether and to what extent the failure to disclose confidential information or evidence to the person concerned and his consequential inability to submit his observations on them are such as to affect the probative value of the confidential evidence (*Kadi II*, paragraphs 125, 126 and 129).

When analysing whether the restriction of the exercise of Mr Kadi's right to property can be justified, the Court held that the legislature enjoys a wide margin of appreciation, with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the public interest for the purpose of achieving the object of the law in question (*Kadi I*, paragraph 360). In subsequent cases, the Court has held that, as regards restrictive measures, the EU legislature must be allowed a broad discretion in areas which involve political, economic and social choices on its part, and in which it is called upon to undertake complex assessments. It has inferred from this that the legality of a measure adopted in those fields can be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institution is seeking to pursue (judgment of 13 March 2025, C-271/24 P, *Shuvalov v Council*, paragraph 76 with further references).

If the action is well founded, the Court of Justice of the European Union shall declare the act concerned to be void (Article 264(1) TFEU). However, the Court shall, if it considers this necessary, state which of the effects of the act which it has declared void shall be considered as definitive (Article 264(2) TFEU). In *Kadi I*, the Court relied on the predecessor of this provision (Article 231 EC) to maintain the effects of the contested regulation, so far as concerns the appellants, for a period not exceeding three months running from the date of delivery of that judgment to give the Council the opportunity to remedy the procedural infringements found (paragraphs 375 f.).

In its judgment of 6 October 2020, *Bank Refah Kargaran v Council*, C-134/19 P, the CJEU held that an action for damages for harm allegedly suffered by a natural or legal person as a result of restrictive measures provided for by CFSP decisions falls also within the jurisdiction of the Court of Justice of the European Union (paragraph 49).

In 2024, at the General Court, the average duration of completed cases, category 'Other direct actions', which includes the cases concerning restrictive measure, was 19 months[12]. In the same year, at the Court of Justice, the average duration of completed cases, category "Direct actions" was 21,5 months.[13]

3. The Role of the European Convention on Human Rights

According to a provision which was included in the EU Treaty by the Treaty of Lisbon, the Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms (usually referred to as European Convention on Human Rights, 'ECHR') (Article 6(2) first sentence TEU). However, such accession shall not affect the Union's competences as defined in the Treaties (Article 6(2) second sentence TEU). After a draft accession agreement had been negotiated, the European Commission requested an opinion of the ECJ as to whether that draft agreement was compatible with the Treaties. On 18 December 2014, the Court answered this question in the negative (Opinion 2/13). Meanwhile, negotiations on the EU's accession to the ECHR have been resumed. They are still pending. The EU is therefore not yet a party to the ECHR.

In Case *Matthews v. United Kingdom* (judgment of 18 February 1999, application no. 24833/94) the European Court of Human Rights ('ECtHR') observed that acts of the EC as such cannot be challenged before the Court because the EC is not a Contracting Party (paragraph 32). The same goes for acts of the EU. It follows that neither Council Decision (CFSP) 2024/2643 nor Council Regulation (EU) 2025/2642 could be challenged as such before the ECtHR. This does not mean that the ECHR is not relevant for the assessment of their compliance with human rights. However, the method for bringing the ECHR into play when assessing these Council measures is interpreting the provisions of EU law on human rights. The relevant provisions of the ECHR will be dealt with in that context.

The legal situation is different when measures adopted by the EU Member States in order to fulfil their obligations arising from Council Decision (CFSP) 2024/2643 and Council Regulation (EU) 2642 are at stake.

According to a remark by the ECtHR in *Matthew v. United Kingdom*, the ECHR does not exclude the transfer of competences to international organisations provided that Convention rights continue to be 'secured'. Member States' responsibility therefore continues even after such a transfer (paragraph 32). In its judgment of 30 July 1996, *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Irland*, application no. 45036/98 (*'Bosphorus'*), the ECtHR clarified this approach:

The case was triggered by sanctions against the Federal Republic of Yugoslavia (Serbia and Montenegro) adopted by the United Nations and implemented by the European Community. The applicant company *Bosphorus* had leased an aircraft from Yugoslav Airlines, the national

[12] Court of Justice of the European Union, Annual Report 2024, Statistics concerning the judicial activity of the General Court, p. 14.
[13] Court of Justice of the European Union, Annual Report 2024, Statistics concerning the judicial activity of the Court of Justice, p. 21.

airline of former Yugoslavia. This aircraft was brought to Dublin for maintenance work. The Irish authorities seized it with reference to UN resolutions as implemented by a Council Regulation. *Bosphorus* started court proceedings which led to a reference for a preliminary ruling. The Court of Justice of the European Communities decided that the Council Regulation applied to this case and that this interpretation did neither infringe human rights nor the principle of proportionality (judgment of 30 July 1996, *Bosphorus Hava Yolları Turizm ve Ticaret*, C-84/95). Before the ECtHR, *Bosphorus* argued that, by seizing the aircraft, Ireland had violated the company's right to property.

The ECtHR stated that the general interest pursued by the impugned measure was compliance with legal obligations flowing from the Irish State's membership in the European Community. The question was whether, and if so to what extent, that important general interest could justify the impugned interference by the Irish State with the applicant company's property rights.

The ECtHR developed the following compromise formula: State action taken in compliance with such legal obligations is justified as long as the relevant organisation is considered to protect fundamental rights, as regards both the substantive guarantees offered and the mechanisms controlling their observance, in a manner which can be considered at least equivalent to that for which the Convention provides. By 'equivalent' the Court means 'comparable'; any requirement that the organisation's protection be 'identical' could run counter to the interest of international cooperation pursued (paragraph 155). If such equivalent protection is considered to be provided by the organisation, the presumption will be that a State has not departed from the requirements of the Convention when it does no more than implement legal obligations flowing from its membership of the organisation. However, any such presumption can be rebutted if, in the circumstances of a particular case, it is considered that the protection of Convention rights was manifestly deficient. In such cases, the interest of international cooperation would be outweighed by the Convention's role as a 'constitutional instrument of European public order' in the field of human rights (paragraph 156).

After a thorough analysis, the ECtHR considered the protection of fundamental rights by Community law to be 'equivalent' to that of the system of the ECHR (paragraph 165). Consequently, the presumption arose that Ireland did not depart from the requirements of the ECHR when it implemented legal obligations flowing from its membership of the European Community. The Court did not consider this presumption to be rebutted because it could not be said that the protection of the applicant company's Convention rights was manifestly deficient (paragraph 166).

It follows that the ECtHR would only exercise a marginal control of measures adopted by the EU Member States to implement Council Decision (CFSP) 2024/2643 and Council Regulation (EU) 2024/2642. As the focus of this legal opinion is on the measures adopted by the Council, the question of compatibility of Member States' measures with the ECHR will not be further explored.

4. Assessment under European Union law

4.1. Competences

4.1.1. Council Decision (CFSP) 2024/2643

Article 21(2) TEU, which forms part of Chapter 1 ('General provisions on the Union's external action') of Title V of the TEU provides: 'The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to […] (c) preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter […].'

Chapter 2 of Title V lies down specific provision on the CFSP. According to the first subparagraph of Article 24(1) TEU, '[t]he Union's competence in matters of common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union's security, including the progressive framing of a common defence policy that might lead to a common defence'. Article 29 TEU, another provision of Chapter 2, provides that the Council shall adopt decisions which shall define the approach of the Union to a particular matter of a geographical or thematic nature.

Disinformation as defined above constitutes a threat to peace and international security when it is an element of actions or policies which are, as required by Articles 1(1)(a) and 2(1)(a) Council Decision (CFSP) 2024/2643, attributable to the Government of the Russian Federation and undermine or threaten democracy, the rule of law, stability or security in the Union or in one or several of its Member States, in an international organisation or in a third country, or which undermine or threaten the sovereignty or independence of one or several of its Member States, or of a third country.

It follows from the foregoing that the Council has competence to combat disinformation under the conditions defined in Council Decision (CFSP) 2024/2643.[14]

It is true that, according to Article 40(1) TEU, the implementation of the CFSP shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union competences referred to in Articles 3 to 6 TFEU, and that the Council has only very limited competences in the field of criminal law (see Article 83 TFEU). However, the restrictive measures analysed in this legal opinion are not criminal sanctions because they do not have a punitive purpose (see for the case-law of the ECJ on assessing the criminal nature of a penalty judgment of 1 August 2025, *T.T., BAJi Trans*, C-544/23, paragraphs 63 ff.).

4.1.2. Council Regulation (EU) 2024/2642

Article 215(1) and (2) TFEU provide:

> '1. Where a decision, adopted in accordance with Chapter 2 of Title V of the Treaty on European Union, provides for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries, the Council, acting by a qualified majority on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission, shall adopt the necessary measures. It shall inform the European Parliament thereof.

[14] See also judgment of 27 July 2022, *RT France v Council*, T-125/22, paragraphs 48 ff., concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine.

2. Where a decision adopted in accordance with Chapter 2 of Title V of the Treaty on European Union so provides, the Council may adopt restrictive measures under the procedure referred to in paragraph 1 against natural or legal persons and groups or non-State entities.'

The Council had competence to adopt Council Regulation (EU) 2024/2642 on the basis of this provision because Council Decision (CSFP) 2024/2643 provides for the restrictive measures dealt with in that Regulation (see also judgment of 19 July 2012, *European Parliament v Council*, C-130/10, paragraph 65).[15]

4.2. Necessary provisions on legal safeguards

According to Article 215(3) TFEU, the acts referred to in this Article shall include necessary provisions on legal safeguards. Given the massive interference, without any preceding involvement of a judge, of the restrictive measures with the lives of the targeted persons, the term 'necessary provisions on legal safeguards' must be interpreted as including information about the judicial protection available.

Such information is absent in Council Regulation (EU) 2024/2642. It only contains provisions which concern communication with the Council (Article 13(2) and (3)).

It is not sufficient to inform a listed person about the possibility of challenging the Council's decision before the General Court of the European Union, in accordance with the conditions laid down in Article 275(2) and Article 263(4) and (6) TFEU, when informing that person about the fact that the Council has included him/her in the list of persons subject to restrictive measures. According to Article 215(3) TFEU, necessary provisions on legal safeguards must be part of 'the acts referred to in this Article'. A letter informing about a decision to list a person is not an act within the meaning of Article 215(3) TEU.[16] A simple technique for complying with this provision would be an Annex to Council Regulation (EU) 2024/2642 containing the basic information about the judicial protection available.

Insofar, Council Regulation (EU) 2024/2642 does not comply with EU law.

4.3. Human rights

4.3.1. General provisions of EU Law on human rights

According to Article 6(1) TEU, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007 ('Charter'), which shall have the same legal value as the TEU and the TFEU. The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions (Article 6(1) third subparagraph TEU)

[15] See also *RT France v Council*, T-125/22, paragraphs 62 ff-

[16] In the case of restrictive measures induced by UN Security Council resolutions, the Council used a notice in part C of the Official Journal as a measure to inform listed persons about available remedies (see, e.g., OJ 11.1.2011, C 6/20 concerning the Democratic Republic of Congo and OJ 3.3.2011, C 68/1 concerning Libya). Such a notice would not be sufficient to comply with Article 215(3) TFEU either.

Article 6(3) TEU states that fundamental rights, as guaranteed by the ECHR and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

Article 51(1) of the Charter, entitled 'Field of application', reads as follows:

> 'The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.'

Article 52 of the Charter, headed 'Scope and interpretation of rights and principles', provides:

> '1. Any limitation on the exercise of the rights and freedoms recognised by this charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
>
> 2. Rights recognised by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits defined by those Treaties.
>
> 3. In so far as this Charter contains rights which correspond to rights guaranteed by the [ECHR], the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
>
> 4. In so far as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.
>
> […]
>
> 7. The explanations drawn up as a way of providing guidance in the interpretations of this Charter shall be given due regard by the courts of the Union and of the Member States.'

The explanation on Article 52 of the Charter reads as follows:

> 'The purpose of Article 52 is to set the scope of the rights and principles of the Charter, and to lay down rules for their interpretation. Paragraph 1 deals with the arrangements for the limitation of rights. The wording is based on the case-law of the Court of Justice: '... it is well established in the case-law of the Court that restrictions may be imposed on the exercise of fundamental rights, in particular in the context of a common organisation of the market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, disproportionate and unreasonable interference undermining the very substance of those rights' (judgment of 13 April 2000, Case C- 292/97, paragraph 45 of the grounds). The reference to general interests recognised by the Union covers both the objectives mentioned in Article 3 of the Treaty on European Union and other interests protected by specific provisions of the Treaties such as Article 4(1) [TEU] and Articles 35(3), 36 and 346 [TFEU].

Paragraph 2 refers to rights which were already expressly guaranteed in the Treaty establishing the European Community and have been recognised in the Charter, and which are now found in the Treaties (notably the rights derived from Union citizenship). It clarifies that such rights remain subject to the conditions and limits applicable to the Union law on which they are based, and for which provision is made in the Treaties. The Charter does not alter the system of rights conferred by the EC Treaty and taken over by the Treaties.

Paragraph 3 is intended to ensure the necessary consistency between the Charter and the ECHR by establishing the rule that, in so far as the rights in the present Charter also correspond to rights guaranteed by the ECHR, the meaning and scope of those rights, including authorised limitations, are the same as those laid down by the ECHR. This means in particular that the legislator, in laying down limitations to those rights, must comply with the same standards as are fixed by the detailed limitation arrangements laid down in the ECHR, which are thus made applicable for the rights covered by this paragraph, without thereby adversely affecting the autonomy of Union law and of that of the Court of Justice of the European Union.

The reference to the ECHR covers both the Convention and the Protocols to it. The meaning and the scope of the guaranteed rights are determined not only by the text of those instruments, but also by the case-law of the [ECtHR] and by the [ECJ]. The last sentence of the paragraph is designed to allow the Union to guarantee more extensive protection. In any event, the level of protection afforded by the Charter may never be lower than that guaranteed by the ECHR.

….'

4.3.2. Case law of the ECJ on the relation between the Charter and the ECHR

Although, as Article 6(3) TEU confirms, fundamental rights recognised by the ECHR constitute general principles of the European Union's law and although Art. 52(3) of the Charter provides that the rights contained in the Charter which correspond to rights guaranteed by the ECHR are to have the same meaning and scope as those laid down by that convention, the latter does not constitute, as long as the European Union has not acceded to it, a legal instrument which has been formally incorporated into European Union law. In those circumstances, the ECJ has held that the interpretation of EU law and examination of the legality of EU legislation must be undertaken in the light of the fundamental rights guaranteed by the Charter (judgment of 16 July 2020, *Facebook Ireland and Schrems*, C-311/18, paragraphs 98 f.)

The ECJ explained the role of Article 52(3) of the Charter as follows:

> 'Article 52(3) of the Charter is intended to ensure the necessary consistency between the rights contained in the Charter and the corresponding rights guaranteed in the ECHR, without adversely affecting the autonomy of EU law and that of the [ECJ]. Account must, therefore, be taken of the corresponding rights of the ECHR for the purpose of interpreting the Charter, as the minimum threshold of protection (…).' (Judgment of 6 October 2020, *La Quadrature du Net and Others*, C-511/18, C-512/28 and C-520/18, paragraph 124.)

4.3.3. Relevant rights guaranteed by the Charter

In *Kadi I*, the ECJ held that the imposition of measures which restricted Mr. Kadi's right to property was unjustified because he was not afforded a reasonable opportunity of putting his case to the competent authorities (paragraphs 368-370). That is why the following analysis starts with procedural rights.

4.3.3.1. Right to an effective remedy and to a fair trial (Article 47 of the Charter)

Article 47 of the Charter reads as follows:

> '**Right to an effective remedy and to a fair trial**
>
> Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.
>
> Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.
>
> Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.'

The first paragraph of this provision is based on Article 13 ECHR, the second corresponds to Article 6(1) ECHR. The third paragraph is in accordance with the case-law of the ECtHR.

The starting point of Article 47(1) of the Charter is a violation of a right or a freedom guaranteed by EU law. Article 47 does not provide safeguards for preventing such violations. In principle, the system of judicial review provided for under EU law (see above) fulfils the requirements of Article 47. However, a remedy can only be considered effective if the authority that has interfered with the rights and freedoms concerned is not granted such a wide margin of discretion by the EU Courts that legal protection becomes an empty shell. Although a number of cases were won by listed persons because of an error of assessment on the part of the Council (see, e.g., judgments of 20 March 2024, *Mazepin v Council*, T-743/22, and of 10 April 2024, *Aven v Council*, T-301/22 and *Fridman v Council*, T-304/22), the fact remains that the Council is granted a very wide margin of appreciation. It seems to be even wider than usual when sanctions against Russia in the context of the war against Ukraine are at stake. A telling example is the judgment of 27 July 2022 given by the Grand Chamber of the General Court in Case *RT France v Council*, T-125/22, which confirmed acts by the Council prohibiting that Russian TV company from broadcasting content. The control which the ECtHR exercised in its judgment of 23 June 2020 in Case *OOO Favus and Others v. Russia*, application nos. 12368/15 and 2 others, which concerned the blocking of online media outlets, was considerably stricter.

In *Kadi I*, the ECJ set out that the effectiveness of judicial review, which it must be possible to apply to the lawfulness of the grounds on which, in such cases, the name of a person or entity is included in the list forming Annex I to the contested regulation and leading to the imposition on those persons or entities of a body of restrictive measures, means that the Community [now: Union] authority in question is bound to communicate those grounds to the person or entity concerned, so far as possible, either when that inclusion is decided on or, at the very least, as swiftly as possible after that decision in order to enable those persons or entities to exercise, within the periods prescribed their right to bring an action (paragraph 336).

Observance of that obligation to communicate the grounds is necessary both to enable the persons to whom restrictive measures are addressed to defend their rights in the best possible conditions and to decide, with full knowledge of the relevant facts, whether there is any point in their applying to the Community [now: Union] judicature, and to put the latter fully in a position in which it may carry out the review of the lawfulness of the Community measure in question which is its duty under the EC Treaty (paragraph 337).

This requirement is met by Article 4(2) of Council Decision (CFSP) 2024/2642 and Article 13(2) of Council Regulation (EU) 2024/2642.

As regards the right to a fair trial, the question arises as to whether the set of rules which impose duties to report and cooperate on the persons listed in Annex I and treat non-compliance with these obligations as circumvention (Article 9(2) and (3) of Council Regulation (EU) 2024/2642) triggering the penalties Member States shall lay down according to Article 15(1) of that Regulation, are in line with this requirement.

The ECtHR held that, although not specifically mentioned in Article 6 ECHR, there can be no doubt that the right to remain silent under police questioning and the privilege against self-incrimination are generally recognised international standards which lie at the heart of the notion of a fair procedure under Article 6. By providing the accused with protection against improper compulsion by the authorities these immunities contribute to avoiding miscarriages of justice and to securing the aims of Article 6 ECHR (judgment of 8 February 1996, *John Murray v. The United Kingdom*, application no. 18731/91, § 45). It results from the wording of this quote that the ECtHR had persons faced with criminal charges in mind.

Although, for the purpose of interpreting the Charter, the corresponding rights of the ECHR only constitute the minimum threshold of protection, there is no evidence that Article 47(2) of the Charter contains further protection in this respect. EU law recognises the right to be silent in the field of criminal law (see, in particular, Article 3(1)(e) of Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings). However, neither in the EU nor in its Member States this principle is generally acknowledged outside criminal law.

Consequently, the duties to report and to cooperate imposed by Article 9(2) of Council Regulation (EU) 2024/2642 do not violate Article 47(2) of the Charter.

4.3.3.2. Presumption of innocence and right of defence (Article 48 of the Charter); Right to good administration (Article 41 of the Charter)

Article 48 of the Charter provides:

> **'Presumption of innocence and right of defence**
>
> 1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
>
> 2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.'

The counterpart of these provisions is Article 6(2) and (3) ECHR, which read as follows:

> '2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
>
> 3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

According to the Explanations relating to the Charter of Fundamental Rights, it follows from Article 52(3) of the Charter that the right contained in Artikel 48 of the Charter has the same meaning and scope as the right guaranteed by the ECHR.

While Article 6(2) ECHR is explicitly limited to the protection of persons charged with a criminal offence, the words 'with a criminal offence' are lacking in Article 48 of the Charter. However, the terminology of other language versions of the Charter ('Tout accusé', 'Jeder Angeklagte', 'Todo accusado', 'Var och en som har blivit anklagad för en lagöverträdelse', 'Każdego oskarżonego' etc.) clearly indicates that Article 48 concerns the protection of the accused in criminal proceedings. According to its wording, Article 48 of the Charter is thus not applicable to the restrictive measures under consideration.

Nevertheless, in Case *Kadi I*, the ECJ considered that there were rights of the defence, in particular the right to be heard, although the regime of restrictive measures under review was not one of criminal sanctions (paragraph 338). While the Court explained that the principle of effective judicial protection is a general principle of Community law stemming from the constitutional traditions common to the Member States, it did not mention a specific legal basis for the right to be heard outside the domain of criminal sanctions. But the same reasoning as for the principle of effective legal protection can also be applied to the right to be heard: It stems from the constitutional traditions common to the Member States. Nowadays, Article 41(2)(a) of the Charter provides that the right to good administration includes 'the right of every person to be heard, before any individual measure which would affect him or her adversely is taken'.

As a general rule, an addressee of a decision having an adverse effect must be put in a position to submit his observations before that decision is taken, so that, in particular, the competent authority will be able effectively to take account of all the relevant evidence and so that, where appropriate, the addressee will be able to correct an error (judgment of 16 October 2019, *Glencor Agriculture Hungary*, C-189/18, paragraph 52).

This right is not without limits. In *Kadi I*, the ECJ held:

> "338 So far as concerns the rights of the defence, in particular the right to be heard, with regard to restrictive measures such as those imposed by the contested regulation, the Community authorities cannot be required to communicate those grounds before the name of a person or entity is entered in that list for the first time.

> 339 As the Court of First Instance stated in paragraph 308 of *Yusuf and Al Barakaat*, such prior communication would be liable to jeopardise the effectiveness of the freezing of funds and resources imposed by that regulation.
>
> 340 In order to attain the objective pursued by that regulation, such measures must, by their very nature, take advantage of a surprise effect and, as the Court has previously stated, apply with immediate effect (*Möllendorf and Möllendorf-Niehuus*, paragraph 63).
>
> 341 Nor were the Community authorities bound to hear the appellants before their names were included for the first time in the list set out in Annex I to that regulation, for reasons also connected to the objective pursued by the contested regulation and to the effectiveness of the measures provided by the latter.'

When, in Council Regulation (EU) 1286/2009 of 22 December 2009 amending Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, the Council introduced a listing procedure to take account of the criticism levelled by the ECJ in *Kadi I*, it maintained this approach and explained it in recital 5 as follows:

> 'As the relevant UN Security Council Resolutions provide that such freezing has to take place 'without delay', such a measure must, by its very nature, take advantage of a surprise effect.
>
> Therefore, the Commission should be able to take a decision before informing the person, entity, body or group concerned of the reasons for listing.'

There is no UN Security Council Resolution urging to take action without delay in the case of Council Decision (CFSP) 2024/2643 and Council Regulation (EU) 2024/2642. Consequently, this justification for deviating from the rule that the person concerned must be heard before the decision is taken does not apply.

Moreover, the case of natural persons charged with disinformation must be distinguished from that of alleged terrorists for three reasons: First, in the case of terrorists, funds are a crucial means of procuring the tools for the actions the legislator wants to prevent. In contrast, funds play a less important role when it comes to disinformation. Here, the tools are words, not weapons. Second, in the case of terrorists, the restrictive measures aim at combating crimes. However, it results from recital 18 of Council Decision (CFSP) 2024/2643 that, in a report on FIMI threats of 2023, the European External Action Service defined FIMI (the generic term including the kind of disinformation at issue in this legal opinion) as a mostly non-illegal pattern of behaviour that threatens or has the potential to negatively impact values, procedures and political processes. Third, in case *Kadi I*, the right at stake was only the right to property. In the event of restrictive measures for alleged disinformation, there is also interference with the freedom of expression and information, a right which constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment (ECtHR, judgment of 15 March 2011, *Otegi Mondragon v Spain*, application no. 2034/07, § 48). In a case concerning the wholesale blocking of an opposition media outlet under the Russian Information Act (already mentioned above), the ECtHR strongly criticized that the measure was taken without advance notification to the parties whose rights and interests were likely to be affected (judgment of 23 June 2020, *OOO Flavus and others v. Russia*, applications nos. 12468/15 and to others, § 40).

For these reasons, in weighing the interests, the right to be heard must be given priority over the interest to achieve maximum effectiveness when seizing the funds of the persons concerned. It is not in line with the principle of proportionality to deny to persons charged with disinformation the right to be heard before the listing decision is taken.

As the rules on the listing procedure contained in Article 4 of Council Decision (CFSP) 2024/2643 and Article 13 of Council Regulation (EU) 2024/2642 do not provide for a right to be heard before a person charged with disinformation is listed, they do not comply with EU law.

An example of a higher standard of protection of the right of defence is Article L.163-2 of the French electoral code (Code électoral): When inaccurate or deceptive allegations or imputations of a fact that could affect the integrity of the upcoming election[17] are deliberately, artificially, or automatically disseminated on a massive scale through an online public communication service, an interim relief judge may, at the request of the public prosecutor, any candidate, any political party or group, or any person with an interest in taking action, issue an order to stop such dissemination. However, within the procedural law of the European Union as set out in the TFEU, it would not be possible to provide for judicial review before restrictive measures are taken.

4.3.3.3. Freedom of expression and information (Article 11 of the Charter)

Article 11 of the Charter provides:

> '**Freedom of expression and information**
>
> 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
>
> 2. The freedom and pluralism of the media shall be respected.'

The explanation on Article 11 of the Charter states that this Article corresponds to Article 10 ECHR, which reads as follows:

> '1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.'

[17] 'allégations ou imputations inexactes ou trompeuses d'un fait de nature à altérer la sincérité du scrutin'

4.3.3.3.1. Notion of information and abuse of rights

In so far as Council Decision (CFSP) 2024/2643 and Council Regulation (EU) 2024/2642 are under consideration in this legal opinion, they aim at preventing disinformation in the context of Russia's destabilising activities. As explained above, in common parlance, disinformation is deliberately false information intended to deceive or the act of using deliberately false information to deceive. One could consider excluding disinformation already from the notion of information within the meaning of Article 11 of the Charter. However, this is not the approach adopted by the ECtHR when interpreting the corresponding right guaranteed by Article 10 ECHR. E.g., in its judgment of 25 July 2024, *Brzeziński v. Poland*, application no. 47542/07, where there was alleged disinformation (unfounded allegation of subsidy fraud) in a brochure used during an electoral campaign, the ECtHR just noted that it was not contested that the court rulings issued against the applicant were an interference with his freedom of expression. Without saying so explicitly, the ECtHR treats anything communicated as information.

A tool for excluding somebody from the protection afforded by the provisions guaranteeing freedom of expression in the Charter and the ECHR are the rules on abuse of rights.

Article 54 of the Charter reads as follows:

> '**Prohibition of abuse of rights**
>
> Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.'

This article corresponds to Article 17 ECHR:

> 'Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.'

Where the ECtHR rejected applicability of Article 10 ECHR without examining whether an interference with freedom of expression was permitted under its traditionally three-pronged test (i.e. prescribed by law, in pursuit of a legitimate aim and necessary in a democratic society), it did so under Article 17 ECHR. So far, the main field of application of this provision was the dissemination of hateful, racist, and discriminatory ideas.[18] The ECtHR underlined that Article 17 ECHR is only applicable on an exceptional basis and in extreme cases (judgment of 15 October 2015, *Perincek v. Switzerland*, application no. 27510/08, paragraph 114.) There are no cases of disinformation where Article 17 ECHR was applied.

The *European Digital Media Observatory (EDMO)* considered the application of Article 17 ECHR to combat disinformation undesirable since it tends to set aside substantial principles and safeguards that are characteristic of the European speech-protective framework.[19] The following observations by *Ethan Shattock* are along the same lines: '(…) the Court needs to address the legitimate aims under which restrictions on disinformation can be justified, and

[18] A list of examples is given in the judgment of 17 April 2018, *ROJ TV A/S v. Denmark*, application no 24683/14, paragraphs 31 ss.

[19] EDMO, Case law for policy making: an overview of ECtHR principles when countering disinformation, January 2022, p. 7.

how to proportionately balance these interferences with the right to freedom of expression. These salient questions will need to be addressed in detail, and with reference to the requirements under Article 10(2). Failure to do so, and to instead relegate disinformation to Article 17 cases, could create unnecessary uncertainty in this ever-challenging area.'[20]

These concerns are convincing and in accordance with the ECtHR considerable reluctance in invoking Article 17 ECHR (see, in particular, *Perincek v. Switzerland*, paragraphes 115 and 282). The same concerns apply to Article 54 of the Charter.

Therefore, this legal opinion will follow the usual analytical scheme of examining whether the legal instruments under assessment are consistent with the freedom of expression and information.

4.3.3.3.2. Existence of an interference/limitation?

The right enshrined in Article 11 of the Charter is guaranteed 'without interference' by public authorities. The existence of an interference constitutes a limitation of the right concerned within the meaning of the horizontal limitation clause of Article 52(1) of the Charter. Any adverse effect of Union or Member State conduct on the exercise of a fundamental right granted by the Charter is sufficient to constitute an interference.

Council Decision (CFSP) 2024/2643 and Council Regulation (EU) 2024/2642 interfere with the right enshrined in Article 11 of the Charter because they have an adverse effect on the exercise of freedom of expression and information. They do not only affect individuals who spread disinformation. The sanctions regime provided for in Council Decision (CFSP) 2024/2643 and Council Regulation (EU) 2024/2642 makes it risky to touch upon topics which are the object of public controversy because information might be labelled as disinformation. Mistakes in listing persons because of alleged disinformation – whether they consist of incorrect application of the law or simply of mistaking one person for another (e.g. due to spelling mistakes) - have a chilling effect. The sanctions regime is thus liable to deter journalists and others from exercising their right to freedom of expression and information when it comes to certain topics.

Consequently, the measures under consideration constitute an interference with and a limitation of that right.

The ruling of the ECJ in Case *Shuvalov* (judgment of 13 March 2024, C-271/24 P) does not contradict this assessment. In that case, the reasons given for a listing read as follows:

> 'Igor Ivanovich Shuvalov is the chairman of State Development Corporation VEB.RF and a member of the Council of the Eurasian Economic Commission. He was previously a First Deputy Prime Minister of Russia. In his capacity of First Deputy Prime Minister, he made remarks stating that Russia would change budget rules to reflect an additional two million in population after the illegal annexation of Crimea by the Russian Federation.
>
> He is therefore supporting actions and policies which undermine the territorial integrity, sovereignty and independence of Ukraine.'

The ECJ rejected the plea that the listing of Shuvalov infringed his right to freedom of expression on the ground that the statements at stake were used as evidence to corroborate

[20] Ethan Shattock, Should the ECtHR Invoke Article 17 for Disinformation Cases? EJIL: Talk!, Blog of the European Journal of International Law, 26 March 2021.

the fact that the conditions of criterion (a)[21] of the provisions concerned were satisfied (paragraph 64). It held that the restrictive measures did not as such affect the exercise of Shuvalov's right to freedom of expression (paragraph 65).

It cannot be inferred from this ruling that provisions imposing restrictive measures for alleged disinformation do not constitute an inference with and a limitation of the freedom of expression and information.

4.3.3.3.3. Justification?

4.3.3.3.3.1. Provided for by law (quality)?

According to Article 52(1) first sentence of the Charter, any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law. As the ECtHR explained, this means that the law should be accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (judgment of 17 February 2004, *Maestri v. Italy*, application no. 39748/98, paragraph 30).

The ECtHR has acknowledged in its case-law that 'however clearly drafted a legal provision may be, in any system of law […] there is an inevitable element of judicial interpretation. There will always be a need for elucidation of doubtful points and for adaptation to changing circumstances. Again, whilst certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstance. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice. […] The role of adjudication vested in the courts is precisely to dissipate such interpretational doubts as remain […].' (Judgment of 12 February 2008, *Kafkaris v. Cyprus*, application no. 21906/04, § 141). The ECtHR considered the fact that legal provisions are often more or less vague as a logical consequence of the principle that laws must be of general application (judgment of 11 November 1996, *Cantoni v. France*, application no. 17862/91, § 31). It held that the penumbra of doubt in relation to borderline facts does not in itself make a provision incompatible with the requirement of foreseeability, provided that it proves to be sufficiently clear in the large majority of cases (*Cantoni v. France*, § 32). The scope of the notion of foreseeability depends on various factors, among other things the field the text is designed to cover (*Cantoni v. France*, § 35). The ECtHR affirmed the lack of foreseeability in a case where the national law as a whole was contradictory (*Kafkaris v. Cyprus*, § 150).

The ECJ built on this case-law. It held that the requirement that any limitation on the exercise of fundamental rights must be provided for by law implies that the act which permits the interference with those rights must itself define the scope of the limitation of the right concerned, bearing in mind, on the one hand, that that requirement does not preclude the limitation in question from being formulated in terms which are sufficiently open to be able to adapt to different scenarios and keep pace with changing circumstances and, on the other hand, that the Court may, where appropriate, specify by means of interpretation, the actual scope of the limitation in the light of the very wording of the EU legislation in question as well

[21] ‚natural persons responsible for, actively supporting or implementing, actions or policies which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine, or stability or security in Ukraine, or which obstruct the work of international organisations in Ukraine, and natural or legal persons, entities or bodies associated with them'

as its general scheme and the objectives it pursues, as interpreted in view of the fundamental rights guaranteed by the Charter (judgment of 21 June 2022, *Ligue des droits humains*, C- 817/19, paragraph 114). In the field of data protection law, the ECJ also dealt with the issue of clarity when analysing the requirement of proportionality. It held that, in order to satisfy this requirement according to which derogations from and limitations on the protection of personal data must apply only in so far as is strictly necessary, the legislation in question which entails the interference must lay down clear and precise rules governing the scope and application of the measure (judgment of 16 July 2020, *Facebook Ireland and Schrems*, C- 311/18, paragraph 176; see also *Ligue des droits humains*, paragraph 119, where the EJC stated that the question of observance of the principle of legality is largely the same as that of compliance with the proportionality requirement).

Both Council Decision (CFSP) 2024/2643 and Council Regulation (EU) 2024/2642 are accessible because they are published in the *Official Journal of the European Union*.

As regards the requirement of foreseeability, the provisions to be analysed are based on the concept of 'information manipulation and interference'. Given that freedom of expression is concerned – a right of paramount importance for a democratic society and each individual's self-fulfilment – and that the sanctions are grave, a strict standard must be applied. This is also necessary with a view to Article 19 of the International Covenant on Civil and Political Rights (ICCPR), the impact of which on the problem under discussion will be analysed in detail in section 6.

Neither Council Decision (CFSP) 2024/2643 nor Council Regulation (EU) 2024/2642 contain a definition of 'information manipulation and interference'. Nor do they illustrate the meaning of these terms with a list of examples.

According to the Cambridge Dictionary, 'manipulation' signifies 'controlling someone or something to your own advantage, often unfairly or dishonestly'. The German Duden gives the following definition 'undurchschaubares, geschicktes Vorgehen, mit dem sich jemand einen Vorteil verschafft, etwas Begehrtes gewinnt' ('an inscrutable, skilful approach that someone uses to gain an advantage or obtain something desirable'). The French dictionary Larousse defines the manipulation of public opinion as follows: 'Action d'orienter la conduite de quelqu'un, d'un groupe dans le sens qu'on désire et sans qu'ils s'en rendent compte' ('The act of guiding the behaviour of someone or a group in the desired direction without them realising it'). These three examples already show the great vagueness of the concept.

It results from the recitals of Council Decision (CFSP) 2024/2643 that 'disinformation' is considered to be included in the formula 'information manipulation and interference'. However, that term is also less clear than one might think at first glance. The Action Plan against Disinformation[22], which the European Commission presented on 5.12.2018, defines disinformation as 'verifiably false or misleading information that is created, presented and disseminated for economic gain or to intentionally deceive the public, and may cause public harm'. In the working definition adopted at the beginning of this legal opinion, a defining element of disinformation is that it is deliberately false. In contrast, the definition of the Action Plan allows misleading information to be sufficient to assume that 'disinformation' has occurred.

[22] Joint Communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, JOIN(2018) 36 final.

While the ECJ has occasionally held that provisions of directives have not been transposed into national law with the exactitude, precision and clarity required by Community and Union law respectively[23], we are not aware that the ECJ has ever annulled provisions of secondary Community or Union law for lack of legal certainty. Nevertheless, the case of the sanctions for disinformation might be apt for convincing the Court that the respective provisions do not fulfil the requirement of foreseeability and must be annulled for this reason.

4.3.3.3.3.2. Respecting the essence?

According to the first sentence of Article 52(1) of the Charter, any limitation on the exercise of the rights and freedoms recognised by the Charter must respect the essence of those rights and freedoms.

As already explained above, the source of this requirement is a judgment by the Court of Justice of the European Communities which stated:

> '… it is well established in the case-law of the Court that restrictions may be imposed on the exercise of fundamental rights … provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, disproportionate and unreasonable interference undermining the very substance of those rights.'

The limitation under consideration does not undermine the very substance of the freedom of expression and information.

4.3.3.3.3.3. Legitimate aim?

Article 52(1) of the Charter accepts two kinds of legitimate aims: on the one hand, objectives of general interest recognised by the Union and, on the other hand, the need to protect the rights and freedoms of others.

The aims of the two Council measures under consideration are objectives of general interest, namely defending democracy, the rule of law, stability and security in the Union and its Member States, in international organisations and third countries as well as the sovereignty and independence of its Member States and third countries. These objectives are also recognised by the Union (see, e.g., Articles 2, 3(1)(2)(5), 21 TEU).

4.3.3.3.3.4. Proportionate to the legitimate aim pursued?

How the other elements of the second sentence of Article 52(1) of the Charter are related to each other is not evident at first sight. It results from the case-law of the ECJ that they must be seen as facets of the principle of proportionality. The requirement that the limitation must 'genuinely meet' a legitimate aim is just another way of saying that the restrictive measure must be appropriate for attaining it. It is settled case-law that the principle of proportionality requires that measures adopted by the European Union institutions do not exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by the legislation in question; when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be

[23] See, e.g., judgments of 17 May 2001, *Commission v Italy*, C-159/99, paragraph 36, and of 13 February 2014, *Commission v United Kingdom*, C-530/11, paragraph 56.

disproportionate to the aims pursued (see, e.g., judgment of 22 January 2013, *Sky Österreich*, C-283/11, paragraph 50 and case-law cited).

So, the first question to be answered is whether the restrictive measures at stake are apt to fight disinformation. As regards travel restrictions, their impact on spreading disinformation is weak because they do not prevent the use of social media. The aptitude of the restrictive financial measure to combat disinformation is doubtful as well because the use of social media does not primarily depend on financial means. Measures certainly apt to fight terrorism because terrorists need money for weapons etc. and terrorist acts typically require the physical presence of the terrorists in the country concerned, do not have the same impact on people who want to spread disinformation. Of course, these measures have a deterrent effect.

As already explained in the part on judicial review of restrictive measures, the ECJ has held that the EU legislature must be allowed a broad discretion in areas which involve political, economic and social choices on its part, and in which it is called upon to undertake complex assessments. In view of this case law, it is assumed that the restrictive measures at stake are apt to fight disinformation despite the concerns outlined above.

The second question to be answered as part of the proportionality test is whether the measures do not go beyond what is necessary to achieve the goal pursued. The word 'necessary' used in Article 52(1) of the Charter, must be read in the light of the formula 'necessary in a democratic society' contained in Article 10(2) ECHR. As the ECtHR underlined in its judgment of 15 March 2011, *Otegi Mondragon v. Spain,* application no. 2034/07, there is little scope under Article 10(2) ECHR for restrictions on freedom of expression in the area of political speech or debate – where freedom of expression is of the utmost importance – or in matters of public interest (§ 50).

We already briefly mentioned Article L.163-2 of the French electoral code (Code électoral), which provides that, when inaccurate or deceptive allegations or imputations of a fact that could affect the integrity of the upcoming election are deliberately, artificially, or automatically disseminated on a massive scale through an online public communication service, an interim relief judge may, at the request of the public prosecutor, any candidate, any political party or group, or any person with an interest in taking action, issue an order to stop such dissemination. This provision was challenged before the Conseil constitutionnel, the French constitutional court.

In its decision of 20 Decembre 2018 (N° 2018-773 DC), the Conseil constitutionnel held:

> "**22.** (…) la liberté d'expression revêt une importance particulière dans le débat politique et au cours des campagnes électorales. Elle garantit à la fois l'information de chacun et la défense de toutes les opinions mais prémunit aussi contre les conséquences des abus commis sur son fondement en permettant d'y répondre et de les dénoncer.
>
> **23.** Dès lors, compte tenu des conséquences d'une procédure pouvant avoir pour effet de faire cesser la diffusion de certains contenus d'information, les allégations ou imputations mises en cause ne sauraient, sans que soit méconnue la liberté d'expression et de communication, justifier une telle mesure que si leur caractère

> inexact ou trompeur est manifeste. Il en est de même pour le risque d'altération de la sincérité du scrutin, qui doit également être manifeste."[24]

The Conseil constitutionnel considered Article L.163-2 of the French electoral code to be constitutional subject to the reservation expressed in paragraph 23.

This ruling is in line with the interpretation given to Article 10(2) ECHR by the ECtHR. It shows the way how to weigh against each other freedom of expression on the one hand and the legitimate aims pursued by the legal instruments under consideration on the other:

The restrictive measures for disinformation contained in Council Decision (CFSP) 2024/2643 and Council Regulation (EU) 2024/2642 go beyond what is necessary in a democratic society because, without limitation to obvious cases, the damage caused to one of the pillars of democracy is disproportionate to the aim of fighting disinformation. Regarding disinformation, the measures under consideration violate Article 11 of the Charter for they are not limited to cases where a) it is manifest that the information is disinformation and b) it is manifest that the disinformation concerned contributes to Russia's destabilising activities.

4.3.3.3.3.5. Provided for by law (procedure)?

In *Kadi I*, the ECJ explained that the restrictive measures imposed by the contested regulation constitute restrictions to the right to property which might, in principle, be justified. Nevertheless, the Court concluded that, in the circumstances of the case, the imposition of these measures constituted an unjustified restriction of Mr Kadi's right to property because a procedural requirement inherent in Article 1 of the Protocol No 1 to the ECHR – being afforded a reasonable opportunity of putting one's case to the competent authorities - was not satisfied (paragraphs 366-370). The second sentence of this Article provides:

> 'No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.'

Article 10(2) ECHR contains a similar requirement for restrictions on the freedom of expression, namely 'prescribed by law'. It follows from Article 52(3) of the Charter that, in so far as Article 11 of that Charter is concerned, the requirement 'provided for by law' established by Article 53(1) of the Charter must be interpreted in the light of the corresponding requirement 'prescribed by law' contained in Article 10(2) ECHR. According to the case-law of the ECtHR, this expression necessitates compliance with domestic law (judgment of 25 June 1997, *Halford v. the United Kingdom*, no. 20605/92, paragraph 49).

As the sanctions regime established by Council Decision (CFSP) 2025/963 and Council Regulation (EU) 2025/964 does not provide for a right to be heard before a person is listed although this is required by law (see above), the interference with the freedom of expression and information by this regime is also unlawful for this reason.

[24] '22. (…) Freedom of expression is particularly important in political debate and during election campaigns. It guarantees both the dissemination of information to everyone and the defence of all opinions but also protects against the consequences of abuses committed on its basis by allowing them to be responded to and denounced. 23. Therefore, given the consequences of proceedings that could result in the cessation of the dissemination of certain information, the allegations or imputations in question cannot, without disregarding freedom of expression and communication, justify such a measure unless they are manifestly inaccurate or misleading. The same applies to the risk of undermining the integrity of the election, which must also be manifest.'

4.3.3.4. Right to liberty and security (Article 6 of the Charter)

According to Article 6 of the Charter, everyone has the right to liberty and security of person. These rights correspond to the rights guaranteed by Article 5 ECHR. In accordance with Article 52(3) of the Charter, they have the same meaning and scope.

Article 5(1) ECHR provides:

> 'Everyone has the right to liberty and security of person. No one shall be deprived of this liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> a) the lawful detention of a person after conviction by a competent court;
>
> (b) the lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.'

Article 5(4) ECHR reads as follows:

> 'Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.'

According to the ECtHR, Article 5(1) ECHR is not concerned with mere restrictions on liberty of movement, which are governed by Article 2 of Protocol No. 4 to the ECHR (judgment of 12 September 2012, *Nada v. Switzerland*, application no. 10593/08, § 225). In order to determine whether someone has been 'deprived of this liberty' within the meaning of Article 5 ECHR, account must be taken of criteria such as the type, duration, effects and manner of implementation of the measure in question. The ECtHR held that the difference between deprivation and restriction of liberty is one of degree or intensity, and not one of nature or substance. The requirement to take account of the 'type' and 'manner of implementation' of the measure in question enables it to have regard to the specific context and circumstances surrounding types of restrictions other than the paradigm of confinement in a cell. The context in which the measure is taken is an important factor, since situations commonly occur in modern society where the public may be called on to endure restrictions on freedom of movement or liberty in the interests of the common good (*Nada v. Switzerland*, paragraph 225 f.).

In a case where the applicant, an Italian and Egyptian national, was listed under the Swiss Federal Taliban Ordinance and lived in an Italian enclave surrounded by Swiss territory, the ECtHR admitted that the restrictions were maintained for a considerable length of time. However, it observed that the area in which he was not allowed to travel was the territory of a third country, and that he was not, strictly speaking, in a situation of detention, nor was he actually under house arrest: he was merely prohibited from entering or transiting through a given territory, and as a result of that measure was unable to leave the enclave. The Court also pointed out that the sanctions regime permitted the applicant to seek exemptions from the entry or transit ban and that such exemptions were indeed granted to him on two occasions. Having regard to all the circumstances of the case, the ECtHR found that the applicant was not 'deprived of his liberty' within the meaning of Article 5(1) by the measure prohibiting him from entering and transiting through Switzerland (*Nada v. Switzerland*, paragraph 229 ff.).

It follows from this case-law that the travel restrictions imposed by Council Decision (CFSP) 2024/2643 are not in breach of Article 6 of the Charter.

4.3.3.5. Freedom of movement and of residence (Article 45 of the Charter, Articles 20(2)(a) and 21(1)TFEU)

Article 45 of the Charter provides:

> '**Freedom of movement and of residence**
>
> 1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
>
> 2. Freedom of movement and residence maybe granted, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State.'

The right enshrined in Article 45(1) of the Charter is also guaranteed by Article 20(2)(a) TFEU. More specifically, Article 21(1) TFEU provides that every citizen of the Union shall have the right to move and reside freely within the territory of the Member States subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect. As regards the situation of third-country nationals, Article 45(2) of the Charter only contains an option for the Union institutions to grant them freedom of movement and of residence.

Article 1(2) of Council Decision (CFSP) 2024/2643 provides that a Member States is not obliged to refuse its own nationals entry into its territory. So, the problem to be solved is whether it is compatible with Article 45(1) of the Charter to impose a duty on Member States to prevent the entry into, or transit through, their territories of natural persons who are nationals of other Member States and listed in Annex I for alleged disinformation.

According to Article 52(2) of the Charter, rights recognised by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits defined by those Treaties. The Explanations relating to Article 52(2) of the Charter state that the Charter does not alter the system of rights conferred by the EC Treaty and taken over by the Treaties. Article 45(1) of the Charter is one of the cases in which Article 52(2) of the Charter is applicable.

The TFEU guarantees freedom of movement of workers (Article 45 TFEU), freedom of establishment (Article 49 TFEU) and freedom to provide services (Article 56 TFEU) within the

Union. Even if a Union citizen does not carry on an economic activity, he/she has the right to move and reside freely within the territory of the Member States by virtue of Union citizenship nowadays enshrined in Article 20(2)(a) and Article 21(1) TFEU (see judgment of 17 September 2002, *Baumbast*, C-413/99, paragraph 81). The principal measure adopted to give effect to these rights is Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

Council decisions limiting the right to freedom of movement within the EU which were adopted on the basis of Article 29 TEU are provisions adopted in application of the EU Treaty and thus measures to give effect to the Treaties within the meaning of Article 21(1) TFEU. However, in order to comply with EU law, limitations on the exercise of rights enshrined in the Charter, must satisfy the conditions set out in Article 52(1) thereof. This also applies to the rights which are the subject of provisions in the Treaties (see, to this effect, judgment of 6 October 2015, *Delvigne*, C-650/13, paragraph 46; see also judgment of 26 February 2025, *Melnichenko*, T-498/22, paragraph 122).

In order to assess the proportionality of the travel restriction imposed by Council Decision (CFSP) 2024/2643, already existing restrictions must be taken into account: The freedom of movement of worker, the freedom of establishment and the freedom to provide services are subject to limitations justified on grounds of public policy, public security or public health (Articles 45(3), 52(1) and 62 TFEU). The same goes for the freedom of movement and residence of Union citizens and their family members (Article 27 Directive 2004/38/EC). As the rights concerned are associated with Union citizenship, which is the fundamental status of nationals of the Member States, a particularly restrictive interpretation of the derogations is required (judgment of 29 April 2004, C-482/01 and C-493/01, *Orfanopoulos and Others*, paragraph 65). Based on the case-law of the ECJ, Article 27(2) of Directive 2004/38/EC provides:

> ‘Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures.
>
> The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted.’

When freedom of expression is at stake, such a restrictive interpretation is also required under international law (see below section 5).

These provisions reflect which restrictions are necessary in the interest of public policy and public security. Instead of imposing sweeping travel restrictions which almost entirely deprive the persons concerned of one of the rights associated with Union citizenship, it would have been sufficient to oblige the Member States to make use of their right to impose travel restrictions under the conditions of the existing rules when listed persons are concerned.

Therefore, Council Decision (CFSP) 2024/2643 does not comply with EU law insofar as it imposes a general duty on Member States to prevent the entry into, or transit through, their territories of listed persons who are EU citizens.

4.3.3.6. Right to property (Article 17 of the Charter)

Article 17(1) of the Charter reads as follows:

> 'Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under 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.'

This Article is based on Article 1 of the Protocol to the ECHR:

> 'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.'

Limitations may be placed on the right to property under the conditions set out in Article 52(1) of the Charter.

In Case *Shuvalov*, the ECJ dealt with the freezing of funds and economic resources in the context of decisions and regulations concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. The ECJ rejected the argument that the acts at issue infringe the essence of the right to property (judgment of 13 March 2025, C-271/24 P, paragraph 79). It underlined the fact that restrictive measures are temporary and reversible precautionary measures, that they are subject to regular review and that the national authorities may authorise the use of frozen funds or grant specific authorisations allowing funds to be released (paragraph 78). This is also the case in the present instance.

As for the principle of proportionality, the ECJ recalled its case-law according to which the EU legislature must be allowed a broad discretion in areas which involve political, economic and social choices on its part, and in which it is called upon to undertake complex assessments. It had inferred from this that the legality of a measure adopted in those fields can be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institution is seeking to pursue (paragraph 76). The ECJ ruled that the General Court did not commit an error of law by holding that the limitation brought by those acts to the exercise of the appellant's right to property was not, in the light of the principle of proportionality, manifestly inappropriate in relation to the objective pursued, that is to say, exerting direct or indirect pressure on the Government of the Russian Federation and its leaders so that they put an end to their actions and policies destabilizing Ukraine (paragraph 79).

These considerations can be applied mutatis mutandis to the present case. In the light of this case-law it is unlikely that the ECJ would categorise the acts at issue as a violation of the right to property as such.

However, as the sanctions regime established by Council Decision (CFSP) 2024/2643 and Council Regulation (EU) 2024/2642 does not provide for a right to be heard before a person is

listed although this is required by law (see above), the interference by this regime with the right to property is unlawful for this reason.

4.3.3.7. Respect for private and family life (Article 7 of the Charter)

According to Article 7 of the Charter, everyone has the right to respect for his or her private and family life, home and communications. These rights correspond to those guaranteed by Article 8 ECHR, which provides:

> '**Right to respect for private and family life**
>
> 1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'

According to the case-law of the ECtHR (see, e.g., judgment of 12 September 2012, *Nada v. Switzerland*, application no. 10593/08, § 151 with further references), 'private life' is a broad term not susceptible to exhaustive definition. The Court has found that health, together with physical and moral integrity, falls within the realm of private life. The right to private life also encompasses the right to personal development and to establish and develop relations with other human beings and the outside world in general. As for the right to respect for 'family life', the State must in particular act in a manner calculated to allow those concerned to lead a normal family life.

The restrictive financial measures imposed by Council Decision (CFSP) 2024/2643 and Council Regulation (EU) 2024/2642 considerably limit the right to respect for private and family life because the listed persons and their dependant family members are not allowed more than the funds or economic resources necessary to satisfy their basis needs.

However, for the same reasons as those discussed in relation to the right to property, it is unlikely that the ECJ would conclude that the acts at issue violate the right to respect for private and family life as such.

An element of the sanctions regime provided for by Council Regulation (EU) 2024/2642 is the already mentioned set of rules which impose duties to report and cooperate on the persons listed in Annex I and treat non-compliance with these obligations as circumvention (Article 9(2) and (3)). In Case *Fridman and others v Council* (judgment of 11 September 2024, T-635/22), the General Court already dealt with similar provisions concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. Among other things, the applicants claimed that the reporting and cooperation obligations are disproportionate with regards to their private lives. The General Court rejected that argument (paragraph 75).

However, as the sanctions regime established by Council Decision (CFSP) 2024/2643 and Council Regulation (EU) 2024/2642 does not provide for a right to be heard before a person is listed although this is required by law (see above), the interference by that regime with the right to respect for private and family life is unlawful for this reason.

As regards the right to respect for private life with regard to processing personal data, it will be dealt with in the following section.

4.3.3.8. Protection of personal data (Article 8 of the Charter, Article 16(1) TFEU)

Article 8(1) and (2) of the Charter, entitled **'Protection of personal data'**, provide:

> '1. Everyone has the right to the protection of personal data concerning him or her.
>
> 2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him and her, and the right to have it rectified.'

The right to protection of personal data is not only enshrined in the Charter but also in Article 16(1) TFEU.

There is no direct equivalent to Article 8 of the Charter in the ECHR. But the right to protection of personal data is considered as comprised by the right to respect for private and family life guaranteed by Article 8 ECHR.

Article 16 of Council Regulation (EU) 2024/2642 provides that the Council, the Commission and the High Representative of the Union for Foreign Affairs and Security Policy may process personal data in order to carry out their tasks under this Regulation. According to Article 5 of Council Decision (CFSP) 2024/2643 and Article 14 of Council Regulation (EU) 2024/2642, Annex I shall include the grounds for listing the natural persons and contain, where available, the information necessary to identify them. Such information may include: names and aliases; date and place of birth; nationality; passport and identity card numbers; gender; address, if known; and function or profession.

The recitals of Council Decision (CFSP) 2024/2643 do not refer to these provisions. Recitals 6 and 7 of Council Regulation (EU) 2024/2642 state:

> "(6) The procedure for amending the list set out in Annex I to this Regulation should include providing designated natural or legal persons, entities or bodies with the grounds for their listing in order to give them an opportunity to submit observations.
>
> (7) For the implementation of this Regulation, and in order to ensure maximum legal certainty within the Union, the names and other relevant data concerning natural and legal persons, entities and bodies whose funds and economic resources are to be frozen in accordance with this Regulations should be made public. (…)"

According to Article 4(1) General Data Protection Regulation, 'personal data' means any information relating to an identified or identifiable natural person ('data subject'). Not only the identification information but also the grounds for listing are personal data. The case-law of the ECtHR concerning the right to respect for private life with regard to the processing of personal data leads to the same conclusion. That right concerns any information relating to an identified or identifiable individual (see, in particular, ECtHR, judgments of 16 February 2000, *Amann v. Switzerland* [GC], application no. 27798/95, § 65, and of 4 May 2000, *Rotaru v. Romania* [GC], application no. 28341/95, § 43). In its judgment of 9 November 2010, *Volker and Markus Schecke*, C-92/09 and C-93/09), the ECJ adopted this interpretation (paragraph 52).

The ECJ held that derogations and limitations in relation to the protection of personal data must apply only so far as is strictly necessary (*Volker and Markus Schecke*, paragraph 77).

Article 5 of Council Decision (CFSP) 2024/2643 and Article 14 of Council Regulation (EU) 2024/2642 limit the right to the protection of the personal data listed in Article 5 of Council Decision (CFSP) 2024/2643 and Article 14 of Council Regulation (EU) 2024/2642.

As regards publication of the grounds for listing, it results from recital 6 of Council Regulation (EU) 2024/2642 that the aim of this provision is to give the persons concerned an opportunity to submit their observations. This is, of course, a legitimate aim. However, the provision is not proportionate to the aim pursued. It is not necessary to make the grounds for listing known to the general public in order to inform the targeted person about the charges. The Council can disclose them when informing the person concerned of the listing in accordance with Article 13(2) of Council Regulation (EU) 2024/2642. Even if the address is not known and the method of publication of a notice must be used, it is not necessary to publish the grounds for the listing in order to inform the person concerned of these grounds. He/she could be offered some channel of communication to get that information.[25] Consequently, Article 5(1) of Council Decision (CFSP) 2024/2643 and Article 14 (1)of Council Regulation (EU) 2024/2642 violate Article 8 of the Charter.

As regards identification information, recital 7 of Regulation (EU) 2024/2642 gives two reasons for making these data public: the implementation of the regulation and ensuring maximum legal certainty in the Union. These are legitimate aims (provided that the legal deficiencies of the regulation are corrected). However, they cannot justify that even the address is made public. On the one hand, making this information available to anybody entails considerable risks for the private and family life of the person concerned and perhaps even for his/her physical integrity. On the other hand, an address can easily be changed, which is why publishing it does not make a major contribution to implementing the regulation and to legal certainly. Insofar, Article 5(2) of Council Decision (CFSP) 2024/2643 and Article 14(2) of Council Regulation (EU) 2024/2642 do not respect the principle of proportionality and thus violate Article 8 of the Charter.

As private life is concerned, this is at the same time a violation of Article 7 of the Charter (see the ECJ's approach in *Volker and Markus Schecke*, paragraphs 44 ff.).

4.3.3.9. Freedom to choose an occupation and right to engage in work (Article 15 of the Charter)

According to Article 15(1) of the Charter, everyone has the right to engage in work and to pursue a freely chosen or accepted occupation. This article has no equivalent in the ECHR.

Article 2(2) of Council Decision (CFSP) 2024/2643 as well as Article 2(2) of Council Regulation (EU) 2024/2642 provide that no funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural persons listed in Annex I. By way of derogation, the competent authorities of the Member States may authorise the making available of certain funds or economic resources, under such conditions as they deem appropriate, after having

[25] See the following example from the Council's own practice: Notice for the attention of certain persons subject to the restrictive measures provided for in Council Decision 2014/145/CFSP and in Council Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (C/2025/3850), which concerns information related to maintaining restrictive measures (OJ C, 8.7.2025.

determined that the funds or economic resources concerned are necessary to satisfy the basic needs of natural persons listed in Annex I and their dependent family members, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurances premiums, and public utility charges (Article 2(3)(a) Council Decision (CFSP) 2024/2643, Article 3(1)(a) Council Regulation (EU) 2024/2642). Despite this derogation, that prohibition makes it practically impossible to choose an occupation and to engage in paid work.

Thus, when a newspaper asked the German Federal Ministry of Economics (Bundeswirtschaftsministerium) whether they could employ a certain listed journalist as an editor, the answer was that, in this case, the so-called 'Bereitstellungsverbot' ('prohibition of provision') applied. The listed person may no longer receive any economic benefits – not even in exchange for wage labour. The official of the German Federal Ministry of Economics added that a violation of the prohibition of provision constitutes a criminal offence.[26]

It is evident that Article 2(2) of Council Decision (CFSP) 2024/2643 and Article 2(2) of Council Regulation (EU) 2024/2642 constitute a limitation on the exercise of the right to engage in work und to pursue a freely chosen or accepted occupation. The recitals do not explain the specific purpose of these provisions. From a systematic point of view, they are a supplement to the freezing of funds and economic resources ordered by Article 2(1) of Council Decision (CFSP) 2024/2643 and Article 2(1) of Council Regulation (EU) 2024/2642. In any case, the overall aim is combatting Russia's destabilizing activities.

According to the first sentence of Art. 52(1) of the Charter, any limitation on the exercise of the rights and freedoms recognised by the Charter must respect the essence of those rights and freedoms. Violation of the essence is just a sub-category of violation of the principle of proportionality. To state that the essence of the rights and freedoms concerned was not respected is kind of a shot-cut for blatant cases. The essence of a right guaranteed by the Charter is not respected where the violation of the principle of proportionality is so serious that it is intolerable.

The effect of Article 2(2) of Council Decision (CFSP) 2024/2643 and Article 2(2) of Council Regulation (EU) 2024/2642 on the freedom to choose an occupation and the right to engage in work is such as to deprive the person concerned of these rights if he or she lives in the EU. The interference impairs their very substance. The fact that the acts at issue are subject to regular review does not change this assessment.

Even if, for whatever reason, it could not be concluded that Article 2(2) of Council Decision (CFSP) 2024/2643 and Article 2(2) of Council Regulation (EU) 2024/2642 do not respect the essence of Article 15 of the Charter, they violate that provision, as far as disinformation is concerned, because they – manifestly, as required by the ECJ - go beyond what is necessary to achieve the goal of combatting disinformation as part of Russia's destabilizing activities.

4.3.3.10. Freedom to conduct a business (Article 16 of the Charter)

Article 16 of the Charter provides that the freedom to conduct a business in accordance with Union law and national laws and practices is recognised. There is no equivalent to this article in the ECHR.

[26] Florian Warweg, Skandal in der BPK: Bundesregierung diffamiert deutsche Journalisten Hüsein Doğru als „Desinformationsakteur", NachDenkSeiten 1.10.2025.

First and foremost, the protection afforded by Article 16 of the Charter covers the freedom to choose an economic or commercial activity (see, e.g., judgment of 22 January 2013, *Sky Österreich*, C-283/11, paragraph 42). For a person living in the EU, the freezing of funds and economic resources combined with the prohibition of provision makes it impossible to engage in an economic or commercial activity even of the most modest kind like running a kiosk. So, the same assessment as in the case of Article 15 of the Charter is appropriate: Article 16 of the Charter has been violated as well.

4.3.3.11. Health care (Article 35 of the Charter)

Article 35 of the Charter provides:

> 'Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities.'

There is no equivalent to this provision in the ECHR. The second sentence takes over Article 168(1) TFEU.

According to Article 2(3)(a) of Council Decision (CFSP) 2024/2643, by way of derogation from paragraphs 1 and 2, the competent authorities of the Member States may authorise the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources, under such conditions as they deem appropriate, after having determined that the funds and economic resources concerned are necessary to satisfy the basic needs of the persons listed in the Annex and their dependent family members, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges. Article 3(1)(a) of Council Regulation (EU) 2024/2642 contains a similar provision.

As far as health care is concerned, the effect of this provision is that listed persons and their dependent family members who are already in need of medicines and medical treatment or - as in the case of advanced pregnancy – will need them soon have to identify the competent authority for granting an exemption (also with respect to health insurance premiums) and go through the authorization procedure without even knowing whether the exemptions will be granted because the relevant rules are formulated as mere enabling provisions.

It would be less onerous for the persons concerned if medicines and medical treatment as well as health insurance premiums were dealt with in the same way as humanitarian assistance according to Article 3 of Council Decision (CSFP) 2024/2643 and Article 4 of Council Regulation (EU) 2024/2642, in other words: if they were simply exempt from the application of the provisions on freezing and the prohibition to provide. Given that a high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities, recourse must be had to this measure. In any case, the disadvantages caused by the present system of authorisation in the field of health care are disproportionate to the aims pursued.

4.3.3.12. Principles of legality and proportionality of criminal offences and penalties (Article 49 of the Charter); General principle of proportionality

Article 49 of the Charter deals with the principle of legality and proportionality of criminal offences and penalties. Like Article 48, it only concerns the area of criminal law.

However, the ECJ also applied the principle of proportionality to sanctions it did not consider as criminal penalties since that principle is one of the general principles of Community law (now: Union law) (judgments of 11 July 2002, *Käserei Champignon Hofmeister*, C-210/00, paragraphs 43, 44, 52 and 59 ff., and of 4 May 2023, T.A.C., C-40/21, paragraphs 44 and 48).

The combined effect of the restrictive measures affects the entire existence of listed persons. In relation to the sanctions regime for terrorists, *Dick Marty* spoke of 'mort civile' in a report of 16 November 2007 for the Parliamentary Assembly of the Council of Europe.[27] The situation of persons listed for disinformation is not much different although, unlike the persons listed for terrorism back then, they undoubtedly have a legal remedy.

However, the question of whether the rules of the sanctions regime violate the principle of proportionality due to their combined effect will not be discussed further here because the ECJ will most likely not consider an element that is not unlawful in itself to be unlawful because of its contribution to the combined effect of the entire regime.

5. Assessment under general international law

This part of the opinion focuses on the (in)compatibility of the EU restrictive measures for disinformation (as identified in section 2 above) with the freedom of speech protected by international law. It does not purport to deal with the possible violations of international law by the system of EU unilateral restrictive measures in general, a question considered elsewhere, in particular in the reports of the UN Special Rapporteur appointed by the Human Rights Council on the negative impact of unilateral coercive measures on the enjoyment of human rights,[28] as well as by one of the present authors in a report.[29]

As noted by Marko Milanovic and Philippa Webb,

> 'Although prohibitions on false speech have existed for at least 140 years, many laws criminalizing it have been introduced much more recently. (…) In parallel, laws have been introduced or are contemplated in response to the rise of social media and its use in spreading harmful speech of all kinds, including false information on elections.'[30]

What is remarkable is that these new laws have been adopted by States of liberal traditions, in which the freedom of speech was considered to be the foundation stone of a free and democratic society. Indeed, states such as China, Iran or Türkiye have had for decades laws prohibiting all types of information providers from disseminating 'rumours'. The EU, on the

[27] Frank Meyer, Rechtsstaat und Terrorlisten – Kaltstellung ohne Rechtsschutz? HRRS 2010, p. 14.

[28] Reports of Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, "Impact of unilateral coercive measures on the right to education and other academic rights," A/80/208, 18 July 2025; "Impact of unilateral coercive measures on economic, labour and social rights," A/HRC/60/36, 16 July 2025; "Monitoring and assessment of the impact of unilateral sanctions and overcompliance on human rights," A/HRC/57/55, 9 August 2024; "Secondary sanctions, overcompliance and human rights," A/78/196, 4 September 2023; "Secondary sanctions, civil and criminal penalties for circumvention of sanctions regimes and overcompliance with sanctions," A/HRC/51/33, 15 July 2022; "Targets of unilateral coercive measures: notion, categories and vulnerable groups," A/75/174/Rev.1, 13 September 2021; "Unilateral coercive measures: notion, types and qualification," A/HRC/48/59, 8 July 2021; "Negative impact of unilateral coercive measures: priorities and road map," A/HRC/45/7, 21 July 2020; "Negative impact of unilateral coercive measures on the enjoyment of human rights," A/75/209, 21 July 2020.

[29] Alina Miron and Antonios Tzanakopoulos, "Unilateral Coercive Measures and International Law," *The Left in the European Parliament 2022*, 2021, *available at* <hal-04679298>.

[30] Marko Milanovic and Philippa Webb, "False Speech," in Amal Clooney & David Neuberger (eds.), *Freedom of Speech in International Law*, Oxford University Press, 2024, p. 221.

other hand, emphasizes the centrality of freedom of expression in its legal order: 'That fundamental right, [freedom of expression] guaranteed in Article 11 of the Charter, constitutes one of the essential foundations of a pluralist, democratic society, and is one of the values on which, under Article 2 TEU, the Union is founded.'[31] The EU joined the club of entities sanctioning disinformation in the aftermath of the full-scale invasion of Ukraine in 2022.

5.1. Interference with the freedom of expression and information as protected by international law

Freedom of opinion and expression is provided for in Article 19 of the Universal Declaration of Human Rights ('UDHR')**:** "Everyone has the right to *freedom of opinion and expression*; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Although the UDHR, being a resolution adopted by the General Assembly of the United Nations, is not binding *per se*, the text has inspired general principles integrated into EU law.[32]

Article 19 ICCPR regulates this freedom in further detail:

> '1. Everyone shall have the right to hold opinions without interference.
>
> 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.'

All EU Member States are parties to and bound by the ICCPR. According to the case-law of the ECJ, the ICCPR is one of the international instruments for the protection of human rights of which it takes account in applying the general principles of Community law.[33] The General Court referred to the ICCPR in *RT France*.[34]

In its General Comment No. 34,[35] on the freedom of expression, the Human Rights Committee ('HRC') insisted that:

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[31] Judgment of 21 December 2016, *Tele2 Sverige AB v Post- och telestyrelsen and Secretary of State for the Home Department* v *Tom Watson and Others*, Joined Cases C-203/15 and C-698/15, para. 93.

[32] ECJ, Grand Chamber, Judgment of 2 June 2024, *Alchaster*, C-202/24, para. 80.

[33] Judgment of 27 June 2006, *European Parliament v Council*, C-540/03, para. 37, with further references.

[34] In this case, the General Court held that "it is appropriate to take into consideration the International Covenant on Civil and Political Rights, adopted on 16 December 1966 by the United Nations General Assembly, to which not only the Member States but also the Russian Federation are parties, which is one of the international instruments for the protection of human rights of which the Courts of the European Union take account in applying the general principles of EU law" (Judgment of 27 July 2022, *RT France* v *Council*, Case T-125/22, para. 208).

[35] General Comments are authoritative interpretations issued by the United Nations HRC (the treaty body that monitors implementation of the International Covenant on Civil and Political Rights, ICCPR). These comments clarify the legal obligations of States Parties regarding the rights enshrined in the ICCPR (see Abdelfattah Amor, "Le Comité des Droits de l'Homme des Nations-Unies – Aux confins d'une juridiction internationale des Droits de l'Homme" in Nisuke Ando (ed.), *Towards Implementing Universal Human Rights: Festschrift for the Twenty-Fifth Anniversary of the Human Rights Committee*, Brill | Nijhoff, 2004, pp. 41-61). Although they are not legally binding, the general comments are taken into account by other courts and tribunals (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, *Advisory Opinion*, *I.C.J. Reports 2004*, p. 192, para. 136; see also pp. 179-180, paras. 109-111; ECtHR, judgment of 11 January 2006, *Sørensen and Rasmussen* v. *Denmark*, applications nos. 52562/99 and 52620/99, paras. 35-36).

> Freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society. They constitute the foundation stone for every free and democratic society. The two freedoms are closely related, with freedom of expression providing the vehicle for the exchange and development of opinions.'[36]

Article 19(1) of the ICCPR protects *the right to hold opinions* without interference from public authorities. This is a right to hold or not to hold an opinion and it is particularly well protected from any form of coercion.[37]

Article 19(2) of the ICCPR protects *the freedom of expression and information* as such. It covers all forms of expression through all means of dissemination. It includes 'the right to seek, receive and impart information and ideas of all kinds regardless of frontiers'.[38] The right of access to information, including information of public interest detained by public bodies,[39] is therefore included within the scope of Article 19(2).

Like the ECtHR, the HRC insists on the importance of '[a] free, uncensored and unhindered press or other media [which] is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society.'[40]

There is no doubt that the measures referred to in section 2 above interfere sometimes with the freedom of opinion, more often with the freedom of expression and information.[41] The test for the legality of this sanctions-regime resides in the analysis of the conditions set out for limitations to the freedom of expression to be lawful.

5.2. The limits of the freedom of expression in international law

It is widely accepted, both at the universal and at the regional level, that freedom of expression is not absolute. On the contrary, Article 19(3) of ICCPR insists that:

> '3. The *exercise of the rights* provided for in paragraph 2 of this article *carries with it special duties and responsibilities*. It may therefore be *subject to certain restrictions*, but these shall only be *such as are provided by law and are necessary*:
>
> (a) For respect of the rights or reputations of others;
>
> (b) For the protection of *national security or of public order (ordre public),* or of public health or morals.'[42]

[36] HRC, General Comment No. 34, Article 19: Freedoms of opinion and expression, 12 September 2011 (hereafter "General Comment No. 34").
[37] HRC, Communication No. 878/1999, *Kang v. Republic of Korea*, 15 July 2003, para. 7.2.
[38] General Comments No. 34, para. 11.
[39] General Comments No. 34, paras. 18-19. See also Venice Commission, Opinion on Act CXII of 2011 on informational Self-determination and Freedom of Information of Hungary, CDL-AD(2012)023, 18 October 2012, paras. 51, 53; Venice Commission, Joint Report on Digital Technologies and Elections, CDL-AD(2019)016, 24 June 2019, paras. 54-55.
[40] General Comments No. 34, para. 13.
[41] The General Court recognized it explicitly in RT France (in relation to the prohibition on broadcasting): Judgment of 27 July 2022, *RT France* v *Council*, Case T-125/22, paras. 142-143.
[42] Emphasis added by authors.

5.2.1. Duties of individuals and corporations when exercising the freedom of expression

The exercise of the freedom of expression and information *'carries with it special duties and responsibilities*' (Article 19(3) ICCPR).Furthermore, Article 5 of ICCPR provides that:

> 'nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.'

Article 5 has thus a double relevance: on the one hand, it means that States cannot limit the freedom of expression beyond what it is allowed by the ICCPR; on the other hand, it applies to private persons and means that they cannot invoke the freedoms established by the Covenant to destroy their purpose. This may have consequences when the freedom of speech is invoked to protect speeches which are utterly and knowingly false.

Indeed, courts have sought to determine what is the level of protection to expression of lies (*deliberate falsehood*). British courts for instance held that:

> 'The liberty to communicate (and receive) information has a similar place in a free society but it is important always to remember that it is the communication of information not misinformation which is the subject of this liberty. *There is no human right to disseminate information that is not true*. No public interest is served by publishing or communicating misinformation.'[43]

However, international human rights bodies do not agree with the *a priori* exclusion of defamatory speech from the protection of Article 19 of ICCPR. Even if the HRC has not yet directly addressed the level of protection to be given to knowing falsehoods, the conclusions it reached in the context of defamation can be applied *mutatis mutandis* to other situation of disinformation:

> 'Defamation laws must be crafted with care to ensure that they comply with paragraph 3, and that they do not serve, in practice, to stifle freedom of expression. All such laws, in particular penal defamation laws, should include such defences as the defence of truth and they should not be applied with regard to those forms of expression that are not, of their nature, subject to verification. At least with regard to comments about public figures, consideration should be given to avoiding penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice.'[44]

Article 20 of ICCPR must also be kept in mind. In essence, it prohibits propaganda for war and hate speeches:

> '1. Any propaganda for war shall be prohibited by law.
>
> 2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.'

[43] UK House of Lords, *Reynolds v. Times Newspapers Ltd* [2001] 2 AC 127, 28 October 1999, 238 (Lord Hobhouse).
[44] General Comments No. 34, para. 47.

Article 20 thus creates a positive obligation on States to enact legislation to prohibit the acts described therein. This is the only duty that States must abide by, as far as restricting freedom of expression is concerned.[45]

Article 20(1) prohibits *propaganda for war*. It stems from the experiences of World War II, where such propaganda was widely acknowledged as having played a fundamental role in the consolidation of Nazi power in Germany, the subsequent wars of aggression, and the execution of the Holocaust. Furthermore, the provision gives expression to the principle set forth in Art. 29 (3) UDHR that 'rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations'.

In its General Comment 11 on Article 20 ICCPR issued in 1983, the HRC stated that:

> 'The prohibition under paragraph 1 extends to all forms of propaganda threatening or resulting in an act of aggression or breach of the peace contrary to the Charter of the United Nations'[46]

However, some EU member States made reservations to this provision,[47] considering it to be either unnecessary given pre-existing legislation on public order offences, or an unacceptable threat to the right of freedom of expression given difficulties in determining the meanings of both 'propaganda' and 'war'. Therefore, this provision cannot be considered to be part of the general principles of EU, inspired by the common constitutional traditions of Member States. It has no equivalent in the EU Charter and was not invoked by EU institutions to justify the introduction of the restrictive measures analysed in the present report.

Article 20, paragraph 2 (which prohibits hate speeches) is equally difficult to interpret and apply, as there is a broad spectrum of differences between States. 'At one hand of the spectrum is the US approach which *protects* hate speech unless (1) the speech actually incites to violence and (2) the speech will likely give rise to *imminent* violence. This is a very stringent standard indeed: even speech advocating violence and filled with racial insults, will be protected absent a showing that violence is likely to occur virtually immediately. At the other hand of the spectrum are stringent restrictions on hate speeches, and the development of specific hate speech regulations for denying the Holocaust or other genocides. Nowhere are the substantial differences in the ways states will restrict hate speech clearer than in the European Union where countries have approached and dealt with hate groups and hate speeches with considerable variety, from the French or German position of high restriction, to

[45] Note however that The Additional Protocol to the Convention on Cybercrime invites Parties to enact prohibitions which can be very broad (for example, on the distribution of racist material through a computer system (Article 3), or on the public insulting of persons 'for the reason that they belong' to a racial or ethnic group (Article 5)).

[46] HRC, General Comment No. 11: Prohibition of propaganda for war and inciting national, racial or religious hatred (Art. 20), 29 July 1983, para 2.

[47] Currently, nine EU Members made reservations to the Article 20, paragraph 1 of the ICCPR: Belgium, Denmark, Finland, France, Ireland, Luxembourg, Malta, Netherlands, Sweden. For instance, the Government of Denmark has stated: 'Reservation is further made to Article 20, paragraph 1. This reservation is in accordance with the vote cast by Denmark in the XVI General Assembly of the United Nations in 1961 when the Danish Delegation, referring to the preceding article concerning freedom of expression, voted against the prohibition against propaganda for war.'

that of the UK or Hungry where greater protection has been afforded to a variety of speeches.'[48]

In any event, as underlined by the Rabat Plan of Action,[49]

> 'Article 20 of the Covenant requires a high threshold because, as a matter of fundamental principle, limitation of speech must remain an exception. Such threshold must take into account the provisions of article 19 of the Covenant.'[50]

In *Ross v Canada*, the HRC recognised the overlapping nature of Articles 19 and 20, stating that it considered that:

> 'restrictions on expression which may fall within the scope of Article 20 must also be permissible under Article 19, paragraph 3, which lays down requirements for determining whether restrictions on expression are permissible.'[51]

This reflects the conclusion that any law seeking to implement the provisions of Article 20(2) ICCPR must not overstep the limits on restrictions to freedom of expression set out in Article 19(3).

Article 19(3) or Article 20 of ICCPR are not referred to directly or indirectly in the texts of the restrictive measures adopted by the EU and presented in section 2. Indeed, the terminology used by EU sanctions does not draw upon the one of Article 20 ICCPR.

Rather, the EU has adopted autonomous concepts such as 'information manipulation and interference' and 'undermine or threaten democracy, the rule of law, stability or security in the Union or in one or several of its Member States, in an international organisation, or in a third country, or (…) undermine or threaten the sovereignty or independence of one or several of its Member States, or of a third country' to justify the adoption of those measures infringing upon the freedom of expression. As seen below, these new autonomous concepts, while they could draw upon the terminology in Article 19(3) ICCPR, it is potentially broader and raises questions as to their compatibility with the requirements set out in that provision.

5.2.2. The three-part test of legality of restrictions provided for in Article 19(3) ICCPR

Under Article 19(3) ICCPR, States may restrict freedom of expression '[f]or the protection of national security or of public order (*ordre public*), or of public health or morals.' For a restriction to be legitimate, it must also comply with the three-part test which is generally accepted by the human rights bodies (universal and regional)[52] to be quintessential to the application of those restrictions.

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[48] Report of Agnes Callamard at Expert Meeting on the Links Between Articles 19 and 20 of the ICCPR: Freedom of Expression and Advocacy of Religious Hatred that Constitutes Incitement to Discrimination, Hostility, or Violence, OHCHR, Geneva, 2-3 October 2008.

[49] Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred is a set of conclusions and recommendations intended to guide the implementation of the international prohibition of incitement to hatred, adopted by experts convened by OHCHR on 5 October 2012.

[50] *Ibid*., para. 18.

[51] HRC, Communication No. 736/1997, *Ross v. Canada*, 26 October 2000, para. 10.6.

[52] HRC, Communication No. 926/2000, *Shin v. Republic of Korea*, 16 March 2004, para. 7.2; ECtHR, Judgment of 26 April 1979, *The Sunday Times v. The United Kingdom*, No. 6538/74, para. 45; IACtHR, Judgment of 2 July 2004, *Herrera-Ulloa v. Costa Rica*, No. 107, para. 120; AfCHPR, Judgment of 5 December 2014, *Lohé Issa Konaté vs Republic of Burkina Faso*, No. 004/2013, para. 125.

The three conditions are the following:

(a) the restriction is provided by law;

(b) it pursues a legitimate aim; and

(c) it is 'necessary in a democratic society'.

5.2.2.1. The restriction is provided by the law

Restrictions must be provided by law. As the HRC noted, this requirement encompasses a procedural aspect (the law must be a written instrument adopted by a representative body having competence for that purpose)[53] and a substantive aspect, related to the quality of the law:

> 'For the purposes of paragraph 3, a norm, to be characterized as a 'law', must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.'[54]

Vagueness in the legislation restricting the freedom of expression and adopting sanctions for its violation has been a constant preoccupation for the international and regional human rights bodies. Vague laws do not allow the private person submitted to them to determine what is required of him/her and adapt his/her conduct accordingly. They are also criticized because they tend to chill far too much truthful, protected speech.[55]

Also, 'vague definitions vest state authorities that interpret and apply a misinformation law with excessive discretion that can be used subjectively, inconsistently or arbitrarily.'[56]

As noted by the UN Special Rapporteur on freedom of opinion and expression, 'States' use of blocking or filtering technologies is frequently in violation of their obligation to guarantee the right to freedom of expression, (…) the specific conditions that justify blocking are not established in law, or are provided by law but in an overly broad and vague manner, which risks content being blocked arbitrarily and excessively.' [57] Both UN and regional experts have confirmed that '[g]eneral prohibitions on the dissemination of information based on vague

[53] General Comments No. 34, para. 24.

[54] *Ibid*., para. 25 (footnotes omitted).

[55] See the Report of the Office of the Special Rapporteur for Freedom of Expression Inter American Commission on Human Rights, "Inter-American Legal Framework Regarding the Right to Freedom of Expression,", approved by the Inter-American Commission on Human Rights on 30 December 2009, paras. 70-71: "[V]ague or ambiguous legal provisions that grant, through this channel, very broad discretionary powers to the authorities, are incompatible with the American Convention (…) Vague, ambiguous, broad or open-ended laws, by their mere existence, discourage the dissemination of information and opinions out of fear of punishment, and can lead to broad judicial interpretations that unduly restrict freedom of expression."

[56] See Marko Milanovic and Philippa Webb, "False Speech," in Amal Clooney and David Neuberger (eds.), *Freedom of Speech in International Law*, Oxford University Press, 2024, pp. 224-225. In that regard, the European Court has consistently held that the law must "afford *adequate legal protection against arbitrariness* and accordingly indicate with sufficient clarity the scope of discretion conferred on the competent authorities and the manner of its exercise" (ECtHR (GC), Judgment of 4 December 2008, *S. and Marper v. United Kingdom*, Nos. 30562/04 & 30566/04, para. 95, emphasis added).

[57] Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, 16 May 2011, A/HRC/17/27, para. 31.

and ambiguous ideas, including 'false news' or 'non-objective information' are incompatible with international standards for restrictions on freedom of expression.'[58]

The general criteria introduced by Council Decision (CFSP) 2024/2643 and Council Regulation (EU) 2024/2642 probably do not meet the quality of law requirements. Concepts such as 'information manipulation and interference', which characterize the impugned conduct, and 'undermine or threaten democracy, the rule of law, stability or security (…) undermine or threaten the sovereignty or independence of one or several of its Member States, or of a third country' which characterize the harm caused by the impugned conduct are not defined in the legislation and are broad enough to virtually grant unfettered discretion to the Council.

Annex 1 of the present opinion contains a table of natural persons listed for 'information manipulation and interference' and/or 'disinformation' under Council Decision (CFSP) 2024/2643 and Council Regulation (EU) 2024/2642 which illustrates how these criteria are applied in practice.

5.2.2.2. The restrictions must pursue a legitimate aim

Under Article 19(3) ICCPR, two limitative areas of restrictions on the right are permitted, which may relate either to respect of the rights or reputations of others or to the protection of national security or of public order (*ordre public*) or of public health or morals. One may also consider that the restrictions identified in Article 20 ICCPR (prohibition of war propaganda and hate speech) could be included in the broader concepts of 'national security' or 'public order'.

Furthermore, as noted by the HRC, 'restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.'[59]

It must be noted that the relevant EU legislation does not expressly refer to any of the concepts used in Article 19(3) of the ICCPR. Instead of 'national security' or 'public order', it uses concepts such as democracy, the rule of law, stability or security, sovereignty and State independence.

Arguably, the concepts used in the EU instruments could be encompassed within the broader concept of 'national security' or 'public order'. Indeed, these concepts are malleable and dynamic, and States enjoy a broad margin of appreciation in determining what constitutes a threat to their 'national security' or 'public order'.

However, the HRC tends to consider '*national security*' as a narrowly construed concept tied to the protection of the existence or physical integrity of the state and its ability to function as a sovereign entity. In its General Comment No. 29 (State of Emergency, 2001), the HRC linked 'national security' to situations where there is a public emergency threatening the life of the nation (Article 4 ICCPR).

'Measures derogating from the provisions of the Covenant must be of an exceptional and temporary nature. Before a State moves to invoke article 4, two fundamental conditions must

[58] UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe, Representative on Freedom of the Media, the Organization of American States, Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights, Special Rapporteur on Freedom of Expression and Access to Information, "Joint Declaration on Freedom of Expression and 'Fake News', Disinformation and Propaganda," 3 March 2017, FOM.GAL/3/17, para. 2(a).
[59] General Comment No. 34, para. 22.

be met: the situation must amount to a public emergency which threatens the life of the nation, and the State party must have officially proclaimed a state of emergency.'[60]

In the same vein, in General Comment No. 37 on Article 21 (Right of peaceful assembly), the HRC held:

> 'The 'interests of national security' may serve as a ground for restrictions if such restrictions are necessary to preserve the State's capacity to protect the existence of the nation.'[61]

The concept is thus related to a threat to the state's survival or core functions.

In its General Comment No. 34 (Freedom of Expression, 2011), the HRC warned against using 'national security' as a justification for restrictions on rights unless the threat is real, specific, and directly related to the protection of the state's fundamental interests (e.g., preventing armed conflict, terrorism, or espionage)/

> 'When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.'[62]

More generally, the HRC insists on the fact that such regulations should not be aimed at concealing information of public interest:

> 'It is not compatible with paragraph 3, for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information.'[63]

The HRC defined '*public order'* as 'the sum of the rules that ensure the proper functioning of society, or the set of fundamental principles on which society is founded, which also entails respect for human rights.'[64]

Taking into consideration the broad meaning of the concepts in the case-law of the HRC, there is little doubt that 'democracy, the rule of law, stability or security, sovereignty and State independence' referred to in the EU legislation would fall within.

In the *Rosneft* case, the Grand Chamber of the ECJ conflated security interests and international peace and security, considering that the latter deserved protection through the activation of the security clause of Article 99(1)(d) of the 1994 EU-Russia Partnership Agreement, even if the European Union or its member States were not directly affected:

> "[T]he wording of that provision does not require that the 'war' or 'serious international tension constituting a threat of war' refer to a war directly affecting the territory of the European Union. Accordingly, events which take place in a country bordering the European Union, such as those which have occurred in Ukraine and which have given rise to the restrictive measures at issue in the main proceedings, are

[60] HRC, General Comment No. 29, States of Emergency (Article 4), 31 August 2001, para. 2.
[61] HRC, General Comment No. 37, Article 21: right of peaceful assembly, 17 September 2020, para. 42.
[62] HRC, General Comment No. 34, para. 35.
[63] HRC, General Comment No. 34, para. 30.
[64] HRC, General Comment No. 37, Article 21: right of peaceful assembly, 17 September 2020.

capable of justifying measures designed to protect essential European Union security interests and to maintain peace and international security, in accordance with the specified objective, under the first subparagraph of Article 21(1) and Article 21(2)(c) TEU, of the Union's external action, with due regard to the principles and purposes of the Charter of the United Nations".[65]

However, Article 99 of the 1994 EU-Russia Partnership Agreement itself links the two concepts:

> 'Nothing in this Agreement shall prevent a Party from taking any measures:
>
> (1) which it considers necessary for the protection of its essential security interests:
>
> …
>
> (d) 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.'

If States enjoy a broad margin of appreciation when characterizing a situation as a threat to 'national security' or 'public order', they also have an obligation to *individualize that assessment*. Public authorities cannot rely on presumptions of threat:

> "When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in *specific and individualized fashion the precise nature of the threat*, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat."[66]

The broad margin of discretion is further compounded by the limited review ensured by courts over a situation of threat to 'national security' or 'public order'. Indeed, the International Court of Justice,[67] the Appellate Body of the WTO[68] and the ECJ[69] have all accepted that they would not in principle control the characterization of a situation as amounting to a threat to national security or public order.

5.2.2.3. The limitations must be necessary in a democratic society

In essence, a court's control over the invocation of a limitation in Article 19(3) will essentially be limited to an assessment of the necessity and proportionality of the measure. To quote the ICJ:

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[65] ECJ (Grand Chamber), *PJSC Rosneft Oil Company* v *Her Majesty's Treasury and Others,* 28 March 2017, C-72/15, para. 112.

[66] General Comments No. 34, para. 35.

[67] *Military and Paramilitary Activities in und against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986*, para. 224.

[68] WTO Panel Report, *Russia — Measures Concerning Traffic in Transit*, 5 April 2019, WT/DS512, paras. 7.130-7.135.

[69] ECJ (Grand Chamber), *PJSC Rosneft Oil Company* v *Her Majesty's Treasury and Others,* 28 March 2017, C-72/15, para. 113.

> 'The Court has therefore to assess whether *the risk run by these 'essential security interests' is reasonable*, and secondly, whether the measures presented as being designed to protect these interests are not merely useful but 'necessary'.'[70]

Human rights case-law on restrictions to the freedom of expression is even more precise and goes further in its degree of control of the strict proportionality of the measure.

A necessary restriction on speech is more than one that is merely useful, reasonable or desirable; it can only be justified if other, less restrictive forms of limitations of free expression are incapable of remedying the harm.

Thus, the HRC insisted that

> 'Restrictions must not be overbroad. The Committee observed in general comment No. 27 that 'restrictive measures must conform to the principle of proportionality; they must be *appropriate to achieve their protective function*; they must be *the least intrusive instrument* amongst those which might achieve their protective function; they must be *proportionate to the interest to be protected*...The principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law'. The principle of proportionality must also *take account of the form of expression* at issue as well as the means of its *dissemination*. For instance, the value placed by the Covenant upon *uninhibited expression* is particularly high in the circumstances of *public debate in a democratic society concerning figures in the public and political domain*.'[71]

Drawing on the case-law of the ECtHR,[72] the Inter-American Court of Human Rights ('IACtHR') also held that 'the restriction, even if justified by compelling governmental interests, must be so framed as not to limit the right protected by Article 13 [of the American Convention on Human Rights] more than is necessary. That is, the restriction must *be proportionate and closely tailored to the accomplishment of the legitimate governmental objective necessitating it*.'[73]

Before regional courts such as the ECHR and IACtHR, as well as before the HRC,[74]

> 'most cases analysing the permissibility of state regulation of misinformation turn on the question of necessity and proportionality of the law as applied. And international standards dictate that the necessity and proportionality of the penalization of misinformation depend on a number of factors: (1) the severity and imminence of the harm caused by the untruthful speech and the causal link between the untruthful

[70] *Military and Paramilitary Activities in und against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986*, para. 224 (emphasis added).

[71] See HRC, General Comment No. 34, paras. 33, 35 (emphasis added).

[72] ECtHR, *The Sunday Times Case*, judgment of 26 April 1979, Series A no. 30, para. 59, pp. 35-36; *Barthold* judgment of 25 March 1985, Series A no. 90, para. 59, p. 26.

[73] IACtHR, *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights),* Advisory Opinion OC-5/85 (Series A, no. 5), 13 November 1985, §46 (emphasis added).

[74] See HRC, General Comment No. 34, para. 35; ECtHR, *Mariya Alekhina and Others v. Russia* (App. no. 38004/12), 17 July 2018, para. 220 (the Court noting the importance of whether the speech had the capacity— direct or indirect—to lead to harmful consequences').

speech and the harm; (2) the intent of the speaker; and (3) the penalty that is imposed.'[75]

The EU Courts have not yet decided a case on the basis of Council Regulation (EU) 2024/2642, therefore it is premature to determine whether they would exercise a strict control of proportionality on such limitations to the freedom of expression. However, in other cases concerning Russian-related sanctions, the General Court has exercised only a limited control of proportionality, without assessing whether the restrictions adopted are actually fit to meet the stated purpose and whether there would be less restrictive measures possible.

The broadcast banning of RT France, which also concerned the freedom of expression, - criticized by the journalist corporation,[76] as well as by academics[77] – was upheld by the Grand Chamber of the General Court.[78] However, the Court repeatedly referred to the extraordinary context characterised by extreme urgency in which this measure was adopted.

On the overall, the listing criteria adopted by the EU in Council Decision (CFSP) 2024/2643 and Council Regulation (EU) 2024/2642 might be incompatible with the international law requirements for at least two reasons: On the one hand, they seem to be too vague to fulfil the legality standards ('provided by the law') as they are understood by the international and regional human rights bodies. On the other hand, the control of proportionality exercised by EU courts in this context is presumably not stringent enough.

Furthermore – and this is probably the most regrettable development – the EU departs even further from the traditional liberal conception of fundamental freedoms. If, so far, individual sanctions have been restricting essentially the right to property and the freedom of movement, with these measures restricting the freedom of expression the EU has crossed the Rubicon, by limiting a freedom that has been quintessential to its identity. The limited control exercised by the EU courts in relation to Russia-related sanctions is a further element of concern: indeed, since the *Kadi* case, the full control of the restrictive measures has been considered as an essential counter-part to the sanctioning power recognized to the Council in exceptional circumstances and a guarantee for the rule of law. While disinformation is indeed a challenge to democracy, and it has been recognized as such by the United Nations,[79] censorship measures are probably not the most appropriate means to reach the stated objectives. As noted by the UN Secretary-General in his report on Disinformation,

'Countering disinformation requires lasting investment in building societal resilience and media and information literacy, thereby empowering individuals to identify, critically

[75] Marko Milanovic and Philippa Webb, "False Speech," in Amal Clooney and David Neuberger (eds.), *Freedom of Speech in International Law*, Oxford University Press, 2024, p. 245.

[76] The European Federation of Journalists considered the decision to be a "complete break" from "democratic guarantees" (Fighting disinformation with censorship is a mistake – European Federation of Journalists: https://europeanjournalists.org/blog/2022/03/01/fighting-disinformation-with-censorship-is-a-mistake/).

[77] Madalena de Almeida Veiga, "Combating Foreign Information Manipulation and Interference through EU-Restrictive Measures," in Frank Hoffmeister and Lorant Havas (eds.), *The High Representative of the Union for Foreign Affairs and Security Policy as a Legal Actor,* Brill | Nijhoff, 25 August 2025, p. 184.

[78] General Court (Grand Chamber), *RT France*, Judgment of 27 July 2022, T-125/22.

[79] See Countering disinformation for the promotion and protection of human rights and fundamental freedoms, Report of the Secretary-General of the United Nations, 2022, doc. A/77/287, available at https://www.un.org/en/countering-disinformation.

analyse and counter disinformation, with a view to enabling their full and effective participation in public affairs.'[80]

6. Conclusions

The sanctions regime established by Council Decision (CSFP) 2024/2643 and Council Regulation (EU) 2024/2642 does not comply with EU law in several respects:

Council Regulation (EU) 2024/2642 does not include necessary provisions on legal safeguards – violation of Article 215(3) TFEU.

Regarding disinformation, the sanctions regime is not limited to cases where a) it is manifest that the information is disinformation and b) it is manifest that the disinformation concerned contributes to Russia's destabilising activities – violation of Article 11 of the Charter (Freedom of expression and information).

The travel restrictions for Union citizens go beyond what is necessary on grounds of public policy and public security – violation of Article 45(1) of the Charter (Freedom of movement and of residence).

Article 4 of Council Decision (CFSP) 2024/2643 and Article 13 of Council Regulation (EU) 2024/2642 do not provide for a right to be heard before a person charged with disinformation is listed – violation of Article 41(2)(b) of the Charter (Right to good administration). This procedural flaw makes the limitation of other human rights unlawful as well, e.g. the limitations of the right to property and the right to private and family life – violations of Article 17 (Right to property) and Article 7 (Respect for private and family life) of the Charter.

It is not necessary to publish the grounds for the listing in order to inform the person concerned of these grounds, and it is disproportionate to publish the address of the targeted person– violation of Article 8 of the Charter (Protection of personal data).

The sanctions regime makes it practically impossible for persons living in the EU to engage in paid work or to conduct a business – violation of Articles 15 (Freedom to choose and occupation and right to engage in work) and 16 (Freedom to conduct a business).

Using the method of derogation instead of exemption in relation to expenses for medicines and medical treatment as well as health insurance premiums is disproportionate – violation of Article 35 of the Charter (Health care).

Also, it is very doubtful that the requirements of foreseeability of law and an effective remedy are met.

An analysis based on the standard of the IPPCR provisions on freedom of expression provides further evidence that Council Decision (CFSP) 2025/963 and Council Regulation (EU) 2025/964 do not comply with the protection this human right is granted.

[80] *Ibid*.

QUESTION 2 – Can the European Parliament bring an action for annulment of such legal instruments?

According to Article 263, first paragraph, TFEU, the Court of Justice of the European Union shall review the legality of acts of the Council. It shall for this purpose have jurisdiction in actions brought, i.a., by the European Parliament (Article 263, second paragraph TFEU).

However, the Court of Justice of the European Union has no jurisdiction with respect to the provisions relating to the common foreign and security policy nor with respect to acts adopted on the basis of those provisions (Article 275, first paragraph TFEU, Article 24(1), second subparagraph TEU). In this field, the Treaties confer on the Court only jurisdiction to (a) monitor compliance with Article 40 TEU and (b) rule on actions brought by natural or legal persons against decisions of the Council providing for restrictive measures against natural or legal persons (Article 275, second paragraph TFEU).

Article 40, first paragraph TEU aims at ensuring that the implementation of the CFSP does not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union competences referred to in Articles 3 to 6 TFEU.

1. Council Decision (CFSP) 2024/2643

Council Decision (CFSP) 2024/2643 was adopted on the basis of Article 29 TEU, a provision relating to the common foreign and security policy. In this respect, the ECJ has only jurisdiction to monitor compliance with Article 40 TEU.

In its judgment of 28 March 2017, *PJSC Rosneft Oil Company*, C-72/15, the Court analysed whether the adoption of Council Decision 2014/512/CFSP of 31 July concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine was in breach of Article 40 TEU. *Rosneft* argued that the Council infringed Article 40 TEU when it defined, by means of that decision, the Union position on the restrictive measures at issue in the main proceedings in excessive detail thereby encroaching on the joint power of proposal of the High Representative of the Union for Foreign Affairs and Security Policy and the Commission under Article 215 TFEU (paragraph 84).

According to the Court's ruling (para. 88-90), it is apparent from Articles 24 and 29 TEU that, as a general rule, the Council is called upon, acting unanimously, to determine the persons and entities that are to be subject to the restrictive measures that the Union adopts in the field of the CFSP. Taking account of the wide scope of the aims and objectives of the CFSP, as set out in Article 3(5) TEU and Article 21 TEU and in the specific provisions relating to the CFSP, in particular, in Articles 23 and 24 TEU, the Council has a broad discretion in determining such persons and entities. However, Article 215 TFEU, which serves as a bridge between the objectives of the TEU in matters of the CFSP and the actions of the Union involving economic measures falling within the scope of the TFEU, permits the adoption of legislation by the Council, acting by a qualified majority on a joint proposal from the High Representative and the Commission, in order to give effect to restrictive measures where such measures fall within the scope of the TFEU, and, in particular, to ensure their uniform application in all the Member States. With respect to Regulation No 833/2014, while it essentially reproduces the content of Decision 2014/512, it also contains definitions and clarification on the application of the restrictive measures prescribed by that decision.

The ECJ concluded: Having regard to the different functions of those two types of act, the one declaring the Union's position with respect to the restrictive measures to be adopted and the other constituting the instrument giving effect to those measures at Union level, the fact that a decision, adopted by the Council under Article 29 TEU, describes in detail the persons and entities that are to be subject to the restrictive measures cannot, as a general rule, be regarded as encroaching on the procedure, laid down in Article 215 TFEU, for the implementation of that decision. In particular, when the measures relate to a field where there is a degree of technicality, it may prove to be appropriate for the Council to use detailed wording when establishing restrictive measures. In such circumstances, the Council cannot be criticised for having predetermined, by the adoption of Decision 2014/512, part of the content of Regulation No 833/2014.

Hence the Court saw no reason to find that the determination by Decision 2014/512 of the persons and entities subject to the restrictive measures undermined the procedure provided for in Article 215 TFEU and the exercise of powers that that article confers on the High Representative and the Commission. The Court concluded: That being the case, an examination of Decision 2014/512 in the light of Article 40 TEU has disclosed nothing capable of affecting the validity of that decision (paragraph 93).

As regards Council Decision (CFSP) 2024/2643, its relationship to Council Regulation (EU) 2024/2642 is the same as that of Council Decision 2014/512/CFSP to Council Regulation (UE) No 833/2014. Although the European Parliament could bring an action for annulment invoking an infringement of Article 40 TEU, the chances of success would be close to zero.

2. Council Regulation (EU) 2024/2642

Council Regulation (EU) 2024/2642 was adopted on the basis of Article 215 TFEU. The restrictions imposed on the jurisdiction of the ECJ by Articles 275 TFEU and Article 24 TEU do not apply to it.

In Case *PJSC Rosneft Oil Company*, C-72/15, the Council argued that the Court had no jurisdiction to review the legality of the provisions of Regulation No 833/2014 since the aim of the pleas of illegality raised by Rosneft were essentially to challenge the decisions of principle, falling entirely within the field of the CFSP, that the Council adopted by means of Decision 2014/512 (paragraph 105). The Court rejected this argument (paragraph 106). It held that the jurisdiction of the Court is in no way restricted with respect to a regulation, adopted on the basis of Article 215 TFEU, which gives effect to the positions adopted by the Union in the context of the CFSP. Such regulations constitute European Union acts, adopted on the basis of the FEU Treaty, and the Courts of the European Union must, in accordance with the powers conferred on them by the Treaties, ensure the review, in principle the full review, of the legality of those acts.

Therefore, the European Parliament can bring an action for annulment of Council Regulation (EU) 2024/2642. Such an action is also possible where an act does not contain an element it should contain (see, e.g., judgment of 10 December 2002, *Commission v Council*, C-29/99, paragraph 107).

An example of an action for annulment of a regulation concerning restrictive measures is Case *European Parliament v Council*, C-130/10: The European Parliament sought annulment of Council Regulation (EU) No 1286/2009 amending Regulation (EC) No 881/2002 imposing certain restrictive measures directed against certain persons and entities associated with

Usama bin Laden, the Al-Qaeda network and the Taliban on the grounds that the contested was wrongly based on Article 215 TFEU instead of Article 75 TFEU. In its judgment of 19 July 2012, the Court rejected this plea as unfounded.

3. Conclusions

While, regarding Council Decision (CFSP) 2024/2643, the European Parliament could only bring an action for annulment invoking an infringement of Article 40 TEU, it could bring an action for annulment of Council Regulation (EU) 2024/2642 without such a limitation.

About the authors

NINON COLNERIC was an honorary professor at the University of Bremen, President of the Labour Appeal Court of Schleswig-Holstein, a Judge of the Court of Justice of the European Communities and the European Co-Dean of the China-EU School of Law at the China University of Political Science and Law in Beijing. She now works as a freelancer.

ALINA MIRON is a Professor of International Law at the University of Angers, partner at *FAR Avocats*. She has been counsel and advocate in several cases before the ICJ, the ILTOS, the ECJ and before arbitral tribunals. She is a co-author (with Alain Pellet and Mathias Forteau) of *Droit international public* (LGDJ, 2022), the leading editor of the *Atlas des espaces maritimes de la France* (Pedone, 2022) and the author of numerous articles.

ANNEX - List of natural persons sanctioned by the EU for information manipulation and interference

<table>
<tr><td colspan="2">Council Regulation (EU) 2024/2642 concerning restrictive Measures in view of Russia’s destabilising activities

<u>Original criterion adopted on 8 October 2024:</u>
Article 2 - “3. Annex I shall include natural or legal persons, entities or bodies that are: (a) responsible for, implementing, supporting, or benefitting from actions or policies by the Government of the Russian Federation which undermine or threaten democracy, the rule of law, stability or security in the Union or in one or several of its Member States, in an international organisation, or in a third country, or which undermine or threaten the sovereignty or independence of one or several of its Member States, or of a third country through any of the following actions: (...) (iv) planning, directing, engaging in, directly or indirectly, supporting or otherwise facilitating the use of <u>coordinated</u> information manipulation and interference”

<u>Criterion as amended by Council Regulation (EU) 2025/964 of 20 May 2025:</u>
Article 2 - “3. Annex I shall include natural or legal persons, entities or bodies that are: (a) responsible for, implementing, supporting, or benefitting from actions or policies by the Government of the Russian Federation which undermine or threaten democracy, the rule of law, stability or security in the Union or in one or several of its Member States, in an international organisation, or in a third country, or which undermine or threaten the sovereignty or independence of one or several of its Member States, or of a third country through any of the following actions: (...) (iv) planning, directing, engaging in, directly or indirectly, supporting, or otherwise facilitating the use of information manipulation and interference”</td></tr>
<tr><td>1. Artem Sergeevich KUREEV</td><td>“Artem Sergeevich Kureev is a Russian Federal Security Service officer involved in malign activities, namely coordinated disinformation campaigns, both in Europe and Africa. He conducts influence campaigns in Europe, including by organising the dissemination of articles in Russian and their English translations on proxy websites and making payments for the publication of pro-Russian articles, with the aim of spreading Russian disinformation in Europe. He founded two media outlets in Africa and conducted deliberate disinformation campaigns aiming at undermining Western health projects in Africa by spreading conspiracy theories such as the alleged use of Africa for biological warfare experiments and illicit trials of various drugs by Western pharmaceutical companies.
Therefore, Artem Sergeevich Kureev is implementing actions or policies by the Government of the Russian Federation</td></tr>
</table>

	which undermine or threaten stability or security in the Union or in third countries by planning and directing the use of coordinated information manipulation and interference.”
2. Nikolai Aleksandrovich TUPIKIN	Nikolai Aleksandrovich Tupikin is the head and founder of Structura National Technologies (GK Struktura). The company has been involved in the so-called ‘Doppelganger’ campaign, a Russian-led digital **disinformation campaign aimed at manipulating information and spreading disinformation** in support of the Russian war of aggression against Ukraine and targeting the Union’s Member States, the United States and Ukraine. He works in close coordination with the Presidential Administration of the Russian Federation. He has also been one of the key figures in Russia’s disinformation campaign across Latin America aiming at undermining support for Ukraine. Therefore, Nikolai Aleksandrovich Tupikin is implementing actions or policies by the Government of the Russian Federation which undermine or threaten stability or security in the Union or in third countries by planning and directing the use of coordinated information manipulation and interference.
3. Sofia Avraamovna ZAKHAROVA	Sofia Avraamovna Zakharova is the department head in the Office of the President of the Russian Federation for the Development of Information and Communication Technologies and Communications Infrastructure. She has been involved in the so-called ‘Doppelganger’ campaign aimed at **manipulating information and spreading disinformation** in support of the Russian war of aggression against Ukraine and targeting the Union’s Member States, the United States and Ukraine. She has been working directly with Ilya Gambashidze and Nikolai Tupikin, heads of Social Design Agency and GK Struktura, respectively, on this operation. She has also been one of the team leaders and active members of the so-called ‘Team I’ lead by Ilya Gambashidze, which stands behind the Kremlin’s campaign for disinformation in the West, interfering in the elections of different countries, and is preparing projects to discredit the Russian opposition. Therefore, Sofia Avraamovna Zakharova is implementing actions or policies by the Government of the Russian Federation which undermine or threaten stability or security in the Union or in third countries by planning and directing the use of coordinated information manipulation and interference.

5. Tinatin Givievna KANDELAKI	"Tinatin Givievna Kandelaki is a Russian journalist employed by the state-owned company Gazprom Media, and a public figure who has been **using her popularity and influence in the public sphere to voice Russian propaganda** and to justify the ongoing Russian war of aggression against Ukraine. She was among those who performed during the Luzhniki stadium concert of 18 March 2022 that marked the 8th anniversary of the illegal annexation of Crimea and served as a symbol of support for the ongoing war in Ukraine. After 2014, she fully supported the illegal annexation of Crimea. Moreover, she is a Deputy General Director of Gazprom Media Holding, a holding of several media outlets that spread anti-Ukrainian propaganda and justify Russian aggression against Ukraine. (...) Therefore, Tinatin Givievna Kandelaki is responsible for (...) information manipulation and interference."
7. Denis Alexandrovich SMOLYANINOV	"He uses Telegram channels to **spread disinformation, including in Ukraine**. (...) Therefore, Denis Alexandrovich Smolyaninov is responsible for, implementing, supporting or benefiting from actions or policies by the Government of the Russian Federation (...) by facilitating the use of coordinated information manipulation and interference."
12. Timofey Vyacheslavovich BORDACHEV	"Through his activities, he substantially contributes to the ideological base and rationalisation of the Russian war of aggression against Ukraine and aggressive policies of the Kremlin, including by **promoting the view that neither Ukraine as a state nor its government are legitimate**." "Therefore, Timofey Vyacheslavovich Bordachev is responsible for (...) information manipulation and interference."
13. Harouna DOUAMBA	"Harouna Douamba's **disinformation networks** were dismantled by Meta in May 2021, and later in May 2023. Despite this, GPCI-related disinformation groups are still active and running structured and coordinated disinformation campaigns, with the use of a vast network of information chains. Those campaigns target France in particular, including through accusations of conspiracy, terrorism, destabilisation operations or preparing coups against the Union or its Member States. Therefore, Harouna Douamba is supporting and implementing actions or policies of the Government of the

	Russian Federation which undermine or threaten democracy, the rule of law, stability or security in a Member State or in a third country by planning, directing, engaging in, directly or indirectly, supporting or otherwise facilitating the use of coordinated information manipulation and interference."
14. Anatolii PRIZENKO	"Anatolii Prizenko is a businessman in the Republic of Moldova. In late October 2023, he coordinated the dispatch of several citizens of the Republic of Moldova to France, where they painted the Star of David on the streets in exchange for financial compensation. That operation was widely reported by the media and had a significant destabilising effect in the context of the conflict between Israel and Hamas following the attacks on 7 October 2023. Images of that operation were first spread by the Recent Reliable News media network, which is associated with the Government of the Russian Federation and used by Russian actors to conduct disinformation campaigns. Anatolii Prizenko publicly took responsibility for his role as the organiser of that operation. According to media reports, that destabilising operation was carried out for the benefit of the Russian military intelligence service, the GRU, and aimed at fuelling tensions in French society. Therefore, Anatolii Prizenko is **responsible for (...) information manipulation and interference**."
20. Hüseyin DOGRU[81]	"Hüseyin Doğru is the founder and representative of AFA Medya A.Ș., which is a media company based in Istanbul. AFA Medya A.Ș. operates "RED", which comprises a number of media platforms, and which has close financial and organisational connections with Russian state propaganda entities and actors, and shares deep structural ties, including interlinkages between, and rotation of, individual personnel with Russian state media organisations. RED has used its media platforms – often publishing under "redstreamnet" or "thered.stream" – to **systematically spread false information on politically controversial subjects** with the intent of creating ethnic, political and religious discord amongst its predominantly German target audience, including by disseminating the narratives of radical Islamic terrorist groups such as Hamas.

[81] The statement of reasons was modified by Council implementing Regulation (EU) 2025/2021 of 3 October 2025 implementing Regulation (EU) 2024/2642 concerning restrictive measures in view of Russia's destabilising activities. The one in this table is the one currently specified in Annex I.

	During a violent occupation of a German university by anti-Israel rioters, RED personnel coordinated with the occupiers to disseminate images of their vandalism – which included the use of Hamas symbols – through their online channels, thus providing them with an exclusive media platform, facilitating the violent nature of the protest. Hüseyin Doğru continues to spread false information through AFA Medya A.Ş. as well as through his own social media accounts. [Phrase inserted by Council Decision (CFSP) 2025/2019 of 3 October 2025] Through AFA Medya A.Ş. and his personal social media accounts, Hüseyin Doğru thus supports actions by the Government of the Russian Federation which undermine or threaten stability and security in the Union and in one or several of its Member States, including by indirectly supporting and facilitating violent demonstrations and **engaging in coordinated information manipulation**."
21. Yulia Sergeevna PROKHOROVA	"[S]he **disseminates misinformation in Russian state media about the energy supply, the rule of law, and Ukrainian refugees in Germany**." "Yulia Prokhorova thus supports actions and policies by the Government of the Russian Federation which undermine or threaten democracy, the rule of law, stability or security in the Union or in one Member State by engaging in the use of coordinated information manipulation and interference"
23. Alina LIPP	"Alina Lipp runs the blog "Neues aus Russland", in which she systematically **disseminates misinformation about Russia's war of aggression against Ukraine**, and delegitimises the Ukrainian government, especially with a view to manipulating German public sentiment as regards support for Ukraine." "Thus, Alina Lipp is engaging in and supporting actions by the Government of the Russian Federation which undermine or threaten security and stability in the Union and in a third country (Ukraine) through the use of coordinated information manipulation and interference, and through facilitating an armed conflict in a third country."
24. Viktor Volodymyrovych MEDVEDCHUK	"Through his associates, including Artem Marchevskyi, Viktor Medvedchuk controlled Ukrainian media outlets and used them to disseminate pro-Russian propaganda in Ukraine and beyond. After the start of Russia's war of aggression against Ukraine, Viktor Medvedchuk **spread Russian propaganda**

	narratives about the war, undermining Ukrainian sovereignty. To that end, in April 2023, Viktor Medvedchuk founded a political movement in Russia called 'Another Ukraine'." "Viktor Medvedchuk has directed and maintained control over the malign activities of Artem Marchevskyi and Voice of Europe, using Artem Marchevskyi's de facto direction of Voice of Europe." "Therefore, Viktor Medvedchuk is responsible for (...) information manipulation and interference."
25. Artem Pavlovich MARCHEVSKYI	"By virtue of his position in the pro-Russian party 'Opposition Platform – For Life' and in a TV channel involved in pro-Russian propaganda, Artem Marchevskyi supported and provided assistance to Viktor Medvedchuk in the years 2018 to 2021." "Artem Marchevskyi has played an instrumental role in **disseminating concerted disinformation and biased narratives aimed at supporting the foreign policy interests of the Russian Federation and spreading its influence**, including ahead of the 2024 European Parliament elections, by undermining the credibility and public image of Ukraine and its efforts to defend itself against Russia's war of aggression." Therefore, Artem Marchevskyi is responsible for (...) information manipulation and interference."
26. Natallia SUDLIANKOVA	"Natallia Sudliankova is a journalist and a media and PR consultant who has been producing custom-made media products that included information manipulation and **spreading misleading narratives aiming to support the foreign policy interests of the Russian Federation and aiming to undermine the public trust towards Czech national and European Union democratic values and processes**." "She plays a significant role in planning and directing coordinated information manipulation intended for the public in the Czech Republic and in other Member States"
27. Iurie NECULITI	"Stark enables various Russian state-sponsored and state-affiliated actors to conduct destabilising activities including **coordinated information manipulation and interference** and cyber-attacks against the Union and third countries by providing services intended to hide these activities from European law enforcement and security agencies."

28. Ivan NECULITI	"Stark enables various Russian state-sponsored and state-affiliated actors to conduct destabilising activities including **coordinated information manipulation and interference** and cyber-attacks against the Union and third countries by providing services intended to hide these activities from European law enforcement and security agencies."
31. Ruslan Vasilyevich NESTERENKO	"Recently, GPS signal failures in several European countries have been linked to electronic warfare activities from Kaliningrad, Russia, including jamming and spoofing of GPS signals, primarily affecting the Baltic States and disrupting civil aviation. The repression of GPS signals requires the permission of the GRFC. Under Nesterenko's direction, the GRFC is involved in planning and supporting **information manipulation and interference** that impacts Union Member States."
32. Viktor Aleksandrovitch LUKOVENKO	"Viktor Lukovenko has been active on the African continent for several years, previously as a member of the Wagner Group and now as the head of the news agency 'African Initiative'. He is involved in **spreading Russian propaganda on the continent**. He is linked to well known figures of Russian propaganda in Africa." "Viktor Lukovenko is therefore responsible for (...) information manipulation and interference."
34. Justin Blaise TAGOUH	"Justin Tagouh is CEO of the press group International Africa Media. This media group has direct links with the Russian authorities, and **spreads Russian narrative and anti-western narrative in African countries**."
35. Mikhaïl Mikhaïlovich PRUDNIKOV	"Mikhaïl Prudnikov is a Russian **disinformation activist** operating in the Central African Republic (CAR) who has close links with the Wagner galaxy and disinformation campaign holdings in CAR through various newspapers and networks. In particular, he developed a narrative against western countries and participated in communication actions in order to undermine and threaten the Union's image in the CAR."
36. Sylvain AFOUA	"Sylvain Afoua spreads Russian narratives and **misinformation** on the war of aggression against Ukraine,

	which he carries out in particular on the African continent. His message is transmitted via social networks and his association's website."
37. Thomas RÖPER	"Thomas Röper is a German blogger. Through his network of online channels named "Anti-Spiegel", he systematically **disseminates misinformation** about Russia's war of aggression against Ukraine and delegitimises the Ukrainian government, especially with a view to manipulating German public sentiment regarding support to Ukraine."
38. Nathalie YAMB	"Nathalie Yamb is a **social media influencer**. Since the Sochi summit she attended in 2019, Nathalie Yamb has been an outspoken supporter of Russia, adopting Moscow's language and targeting France and the West in particular, with a view to ousting them from the African continent. She has specific ties with AFRIC, an organisation linked to Russian private military companies."
39. Andrey Yuryevich ROMANCHENKO	"Andrey Yuryevich Romanchenko is the General Director of The Federal State-owned Enterprise 'Russian Television and Radio Broadcasting Network' (RTRS), a Russian federal unitary for-profit enterprise of strategic significance, operating terrestrial radio and television broadcasting infrastructure in Russia. Romanchenko, who was appointed as General Director by the Russian President, directs the RTRS, which plays a direct role in implementing policies attributable to the Government of the Russian Federation by providing the infrastructure and technical capabilities for the transmission of the so called 'All-Russian mandatory publicly available television and radio channels' such as Pervyi Kanal or Rossiya 24 which disseminate Russian state propaganda. Under Romanchenko's leadership, RTRS has played a key role in effectively replacing legacy Ukrainian broadcasting systems in occupied regions with a network that transmits content approved by the Government of the Russian Federation intended to suppress dissent, to align the local population with Russian policies and to delegitimise Ukraine's governance in the occupied territories. This directly undermines the ability of local populations to access diverse and independent information. The expansion of RTRS operations into the occupied territories is facilitated by the Government of the Russian Federation which grants RTRS the exclusive right to establish transmission infrastructure in the occupied territories. By overseeing and directing these

	operations, Romanchenko actively facilitates the obstruction of access to diverse and independent information, thereby **assuming responsibility for the use of information manipulation**."
40. Vladimir NAIDENOV	"In his position within the RTRS, Vladimir Naidenov has played a key role in effectively replacing legacy Ukrainian broadcasting systems in occupied regions with a network that transmits content approved by the Government of the Russian Federation intended to suppress dissent, to align the local population with Russian policies and to delegitimise Ukraine's governance in the occupied territories. This directly **undermines the ability of local populations to access diverse and independent information**. The expansion of RTRS operations into the occupied regions is facilitated by the Government of the Russian Federation which grants RTRS the right to establish transmission infrastructure there."
41. Dmitri BUIMISTRU	"Dmitri Buimistru intentionally engages in coordinated **information manipulation and interference** by operating as a key propagandist on MD24, a Russia-based online TV channel created by Ilan Shor following license withdrawals from his previous stations for disseminating Russian disinformation."
42. Veaceslav VALICO	"Veaceslav Valico participated, alongside Anatolii Prizenko, a natural person listed by the Union, in the Russian destabilisation operation concerning the painting of the Star of David on the streets of Paris following the 7 October 2023 Hamas attack on Israel in exchange for financial compensation and in order to create tensions in French society. Moreover, Veaceslav Valico is involved in the **systematic dissemination of disinformation** in the Republic of Moldova and Ukraine, as part of the Russian Federation's malign hybrid activities."
44. Vitaly KULIKOV	"The EW center of the Baltic Fleet, under Kulikov's commands, has received jamming equipment and conducted exercises using advanced systems capable of **disrupting communications over large areas**, and is also involved in **planning, supporting and executing coordinated information manipulation and interference** that impacts Union Member States."

45. Yuri Illarionovich LASTOCHKIN	"The 841st Separate EW center in the Kaliningrad region, under Lastochkin's commands, has received jamming equipment and conducted exercises using **advanced systems capable of disrupting communications** over large areas; it is also involved in planning, supporting and executing coordinated information manipulation and interference that impacts Union Member States."
46.Yevgeny Shevchenko	"Yevgeny Shevchenko is a web developer who has specialised in creating websites for many years. He is the founder of Tigerweb, the web-company that runs the **informational manipulation** set "Portal Kombat" which disseminates pro-Russian content and targets several Western countries, including France, on several so-called 'informational portals'."
47. Aleksey Nikolayevich SHAVROV	"Aleksey Shavrov's malign activities include **information manipulation and disinformation** campaigns in the Czech Republic and other Union Member States."