

# CJEU: Recent Rulings on EU's Restrictive Measures against Russia

Thomas Wahl



**eucri**m

European Law Forum: Prevention • Investigation • Prosecution

## News

In September/October 2024, the Court of Justice of the European Union issued several judgments on the interpretation of the EU's legal regime of restrictive measures in response to Russia's war in Ukraine. The following overview summarises these judgments in reverse chronological order:

- 2 October 2024: The General Court (GC) [dismisses actions for annulment brought by several bar associations against the ban to provide legal advisory services](#) to the Russian Government and entities established in Russia. The ban was introduced by the EU's 8th sanctions package in October 2022 (→ [eucri](#)m 3/2022, 170-171). According to this, EU regulations prohibit any person in a position to provide legal advisory services (practising, in particular, in the territory of the European Union) from directly or indirectly providing such services to the Russian Government or to legal persons, entities or bodies established in Russia. This prohibition is not absolute: the regulations include some exceptions and limits, and the ban does not apply to legal advice and legal representation in connection with judicial, administrative or arbitral proceedings. The applicants argued, *inter alia*, that the prohibition interferes with the right of access to legal advice from a lawyer, as well as with legal professional privilege and the independence of the lawyer. Furthermore, it is disproportionate and lacks legal certainty (Cases [T-797/22, \*Ordre néerlandais des avocats du barreau de Bruxelles and Others v Council\*](#); [T-798/22, \*Ordre des avocats à la cour de Paris and Couturier v Council\*](#); and [T-828/22, \*ACE v Council\*](#) → [eucri](#)m 1-2023, 9-10). The GC rejects all these arguments. It underlines the importance of the fundamental right of all persons to be advised by a lawyer for the purposes of conducting, pre-empting or anticipating judicial proceedings. However, given that the scope of application is limited (legal advice with link to judicial proceedings and vis-à-vis natural persons still permissible), the rights of access to a lawyer and effective judicial protection is not called into question. The prohibition at issue, as delimited by the derogation provisions, does pursue objectives of general interest, without impairing the very essence of the fundamental role of lawyers in a democratic society. Lawyers [criticise the ruling](#) arguing that legal advice and legal representation before courts and authorities were often closely related. Both advice and representation by a lawyer of one's choice should be open to everyone, in view of the rule of law's requirement of access to justice. The GC's judgment of 2 October 2024 can be appealed to the Court of Justice (ECJ).
- 11 September 2024: The GC [dismisses actions brought by individuals who sought annulment of reporting and cooperation obligations](#) designed to counteract the circumvention of restrictive measures. The applicants were included on the lists of persons subject to restrictive measures due to Russia's invasion of Ukraine. They oppose the obligation introduced in July 2022 by a Council Regulation that designated persons and entities with assets within the jurisdiction of an EU Member State

### AUTHOR

**Thomas Wahl**

Senior Researcher  
Max Planck Institute for the  
Study of Crime, Security and  
Law

---

Published in  
2024, Vol. 19(2) [eucri](#)m pp 89 –  
91

ISSN: 1862-6947



must report these assets and cooperate with the competent authority. Failure to respect this obligation would constitute a circumvention of the freezing of assets and would be subject to penalties in accordance with the national law of the Member States. The applicants argued, in essence, that there had been no legal basis for introducing such obligations and the Council unlawfully acted as a legal authority in criminal matters (Cases [T-635/22, \*Fridman and Others v Council\*](#) and [T-644/22, \*Timchenko and Timchenko v Council\*](#)). The GC rejects these arguments. It first states that the obligations are not restrictive measures as such but measures to ensure the effective and uniform implementation of restrictive measures. Therefore, the contested provisions could correctly be adopted on the basis of Art. 215(2) TFEU. The GC does also not see a violation of the fundamental right to privacy or a breach of the principle of legal certainty. Second, the GC argues that the Council did not act as a legal authority in criminal matters because Member States retained their power to decide about the consequences of circumvention activities; penalties could be attached as criminal, civil or administrative in nature.

- 11 September 2024: In the case [T-494/22](#), the GC [dismisses an action by the Russian non-bank financial entity NSD](#) against its maintenance on the Council's list of entities which are subject to restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. NKO AO National Settlement Depository (NSD) provides securities record-keeping and custody services as a central depository as well as other financial services, such as bank settlement services. The GC rules that the Council could validly consider that, from both a quantitative and a qualitative perspective, NSD was significantly supporting, materially or financially, the Russian Government, by enabling it in its financial resources with the aim of pursuing its actions to destabilise Ukraine. The GC clarifies, however, that the decisive criterion is the material or financial support: the finding that the applicant is under the control of the Russian Government cannot be decisive in justifying the inclusion of the applicant on the lists at issue. The GC also examines NSD's argument that the restrictive measures imposed on it entailed the freezing of funds and economic resources belonging to its customers – who are not subject to those measures – and, therefore, the infringement of their right to property. In this context, the GC clarifies that it has no jurisdiction to carry out a review of the lawfulness of decisions adopted by national authorities; however, when deciding on a request for release of frozen funds pursuant to the derogations laid down in the EU regulations, the competent national authority must ensure that the interference with the right to property of the customers of an undertaking subject to those measures complies with the Charter of Fundamental Rights of the EU.
- 10 September 2024: Upon a request for preliminary ruling brought by the Regional Court of Bucharest, Romania, the ECJ specifies its jurisdiction over decisions taken in Common Foreign and Security Policy (CFSP) matters and [rules on the scope of the prohibition on providing brokering services in relation to military equipment](#) laid down in Art. 2(2)(a) of Decision 2014/512/CFSP. This Decision concerns restrictive measures adopted by the Council of the European Union in view of Russia's actions destabilising the situation in Ukraine. The case at issue (Case [C-351/22, \*Neves 77 Solutions\*](#)) arose from a lawsuit by a Romanian company which opposes the confiscation of amounts for brokering services and a fine. It put forward that it brokered the sale of Russian radio sets between an Ukrainian and Indian company, while the goods have never been imported into the EU. The ECJ first clarified that it has jurisdiction to interpret a measure of general scope of a CFSP decision which forms the basis for national sanctions imposed on an undertaking. Second, the ECJ ruled that the prohibition on providing brokering services in relation to military equipment to an operator in Russia applies even if those goods were never imported into a Member State. Third, the ECJ confirms that EU law permits the automatic confiscation of the full amounts received in relation to the provision of brokering services concerning military equipment to an operator in Russia.

- 5 September 2024: The ECJ rules on the question as to whether a notary's authentication of a contract for the sale of immovable property belonging to a legal person established in Russia is covered by the ban to provide legal advisory services as established by the 8th sanctions package (see above). In the case at issue ([C-109/23, Jemerak](#)), a German notary had refused to authenticate a purchase contract for a Berlin apartment belonging to a Russian company because he could not rule out the possibility of violating the ban. To clarify this question, the Berlin Regional Court referred it to the ECJ for a preliminary ruling. The [ECJ concludes](#) that the notary does not breach the sanctions against Russia by the authentication. It reasons that the German notary performs, independently and impartially, a public function entrusted to him or her by the State if he/she authenticates a contract on immovable property. It does not appear to provide, beyond that authentication, legal advice intended to promote the specific interests of the parties. Moreover, the notary's activities that secure the execution of the authenticated contract (e.g. the transfer of the amount of the purchase price to the vendor) do not constitute legal advice. Lastly, the ECJ clarified that an interpreter acting in the context of notarial authentication does not provide legal advice, so that his/her services are not covered by the prohibition at issue either.
- 

## About eucrim

eucrim is the leading journal which regularly informs about current developments in European criminal and “criministrative” law.

All news items are freely accessible at: <https://eucrim.eu/news/>

Stay informed by emailing to [eucrim-subscribe@csl.mpg.de](mailto:eucrim-subscribe@csl.mpg.de) to receive alerts for new releases of issues.

The project is co-financed by the [Union Anti-Fraud Programme \(UAFP\)](#), managed by the [European Anti-Fraud Office \(OLAF\)](#).



**Co-funded by  
the European Union**