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Recent rulings of the General Court at the European Court of Justice regarding the challenges of European individual sanctions by sanctioned Russian subjects

As is well known, following the deterioration of the relationship between the Russian Federation and Ukraine, which escalated into open conflict in February 2022, the European Union adopted a series of restrictive measures against the Russian Federation that extend and intensify the restrictions already in place since 2014 and introduce several new ones.

Following the implementation of the latest sanctions package approved on 26 February 2023, more than 1,450 natural persons are included in Annex I to EU Regulation No. 269/2014 and, therefore, affected by the individual restrictive measures of freezing of funds and economic resources. It is also forbidden to any European subject to directly or indirectly provide such persons with funds or economic resources. The most significant figures affected by the aforementioned restrictions are the President, the Prime Minister, the Minister of Internal Affairs and the Minister of Foreign Affairs of the Russian Federation currently in office, all members of the State Duma, other people involved in Russian politics and the information sector, Russian businessmen and people associated with them.

Since the first introduction of the above-mentioned individual restrictive measures, some of the people concerned have considered the inclusion of their names in the sanction lists to be unlawful and have brought action for annulment before the European Court of Justice, and in particular before the General Court. Two cases that recently came to judgment in favour of the applicants have had different impacts on the current legislation.

Case T-714/20 - Ovsyannikov v Council of the European Union

Mr Dmitry Vladimirovich Ovsyannikov was included in Annex I to EU Regulation no. 269/2014 in 2017 because, at the time, he held the position of Governor of Sevastopol and as such was found to have actively supported or carried out political actions threatening the territorial integrity, sovereignty and independence of Ukraine. In that capacity he had made public statements in support of the annexation of Crimea and Sevastopol to the Russian Federation. Moreover, his inclusion among those sanctioned was later confirmed following his appointment as Deputy Minister of Industry and Trade of the Russian Federation. However, when he later ceased to hold all the above-mentioned positions, the Council of the European Union kept his name on the list, updating only his motivation first in 2020 and then in 2021.

By application of 3 December 2020, the applicant sought the annulment of Council Decision 2014/145/CFSP of 17 March 2014 and EU Regulation No 269/2014 to the extent that they affected or were likely to affect him.

Ultimately, in its judgment dated 26 October 2022, the General Court upheld the action, ordering the annulment of the Council's acts in so far as they kept the applicant's name on the list of persons sanctioned. The Court expressly stated that, since restrictive measures are precautionary and provisional in nature, their validity must always be subject to the continued existence of the factual and legal circumstances which justified their adoption and to the fact that their maintenance is necessary to achieve the objective with which they are associated.

With the end of his office as Governor of Sevastopol in April 2019, and subsequently as Deputy Minister of the Russian Government in April 2020, the grounds that had justified the applicant's initial inclusion in Annex I to EU Regulation No. 269/2014 no longer existed.

Moreover, The General Court has ruled that the burden is on the Council to prove, in the event of a challenge, that the grounds advanced against the relevant person are well-founded, whereas it is not on the latter to provide negative evidence that those grounds are unfounded.

Therefore, in February 2023, by Implementing Regulation (EU) No 2023/253, the Council ordered the removal of Mr Ovsyannikov from the list in Annex I to EU Regulation No 269/2014.

Case T-212/22 Prigozhina v Council of the European Union

Ms Violetta Prigozhina - the mother of Mr Yevgeny Prigozhin considered, inter alia, to be an unofficial funder and administrator of the 'Wagner' military group - was included in Annex I to EU Regulation No 269/2014 in February 2022, as the owner of certain companies founded by her son and deemed to be associated with him.

By application of 21 April 2022, the interested party sought the annulment of Council Decision (CFSP) 2022/265 of 23 February 2022 and its Implementing Regulation, which amended EU Regulation No 269/2014 by, inter alia, providing for her inclusion in the list of sanctioned persons.

The applicant complained of several flaws in the reasoning underlying her listing. Specifically, she objected that there were no links between her and her son's companies; that there was uncertainty as to whether the latter was actually linked to the Wagner Group; and, in any event, that there were insufficient grounds for claiming, on the basis of her links with her son, that the applicant could have contributed to undermining the territorial integrity of Ukraine in any way.

Ultimately, by judgment dated 8 March 2023, the General Court upheld the action, ordering the annulment of the Council's measures to the extent that Ms Prigozhina's name was included in the lists of persons sanctioned.

The judgment, also in this case, is based on the recognition that the lawfulness of a Union act must be assessed in the light of the elements of fact and law existing at the date of the issuing of the act and that it is on the Union authority, in the event of a challenge, to prove the merits of the reasons adopted against the relevant person. In particular, the Court held that the Council did not provide sufficient evidence to prove the applicant was the owner of the companies founded by Mr. Prigozhin (in support of this allegation, the Council was only able to refer to unofficial press sources, including articles from the Wikipedia website and other websites such as UAWire.org, The Moscow Times, Carnegie Endowment for International Peace, The Bell, Fontanka.ru, Wall Street Journal and others).

Furthermore, the General Court held that the application of restrictive measures to natural persons, irrespective of their personal conduct and solely on the basis of their family links with persons associated with the administration of the third

country concerned, must be regarded as contrary to its case-law. Therefore, Ms Prigozhina's family connection with another sanctioned person cannot alone justify her inclusion in the list of sanctioned persons.

Notwithstanding the above, and differently from what happened in the first case reported, by Implementing Regulation (EU) No 2023/571 of 13 March 2023, the Council confirmed Ms Prigozhina's inclusion in Annex I to EU Regulation No 269/2014. In fact, with a new motivation, the same considered that, although she is no longer the owner of the companies incorporated by her son, she should still be considered as a person associated with a sanctioned person, having provided support to actions and policies that compromise the territorial integrity, sovereignty and independence of Ukraine.