

ARTICLE

Legal Strategies to Prevent the Lifting of Asset Freezes: Towards the Immobilisation of Russian Private Wealth in the EU?

Francesca Finelli¹  and Celia Challet²

¹Luxembourg School of Business, Luxembourg and ²Lille Catholic University, France

Corresponding author: Francesca Finelli; Email: francesca.finelli95@gmail.com

Abstract

Since February 2022, EU restrictive measures adopted under the Common Foreign and Security Policy have increasingly focused on targeting private wealth in response to Russia's war against Ukraine. This paper analyses the Council's strategies for maintaining, renewing, and expanding sanctions against Russian businesspersons (oligarchs) and their assets. It analyses the post-2022 amendments to the design and application of listing criteria, particularly the criterion (g), and the use of presumptions to secure the durability of listings decisions and the long-term imposition of asset freezes. These techniques enhance the resilience of listings to judicial review, limit opportunities for de-listing targets and unfreezing their assets, *de facto* immobilising private wealth within the EU. Nonetheless, they also raise broader questions about the purpose of sanctions, in particular whether asset freezes remain targeted, reversible and preventive tools to influence behaviour, or are increasingly used as instruments that aim at the long-term immobilisation of wealth.

Keywords: asset freezes; common foreign and security policy; listing criteria; re-listing; restrictive measures; Russia sanctions

1. Introduction

Restrictive measures adopted under the Common Foreign and Security Policy (CFSP)¹ have emerged as the most visible instruments of the European Union (EU)'s global actorness. Since February 2022, the adoption and renewal of sanctions² in response to Russia's war of aggression against Ukraine has become a clear illustration of this development: firstly, the scope and intensity of these sanctions have reached unprecedented levels;³ secondly, the targeting of Russian assets has become increasingly assertive. This assertiveness is evident with respect to both state and private assets allegedly linked to Russia's ability to wage war. On the one hand, the Council has prohibited any transactions related to the

The authors have jointly developed the ideas underpinning this paper. Francesca Finelli has authored Sections I and III; Celia Challet has authored Sections II and IV. The conclusions in Section V were written by both authors together.

¹ See Art. 29 TEU for the legal basis of Council Decisions and Art. 215 TFEU for Council Regulations.

² The terms *sanctions* and *restrictive measures* may be used interchangeably in this paper.

³ K Meissner and C Graziani, "The Transformation and Design of EU Restrictive Measures against Russia" (2023) 45 *Journal of European Integration* 377; A Hofer, "The EU's 'Massive and Targeted' Sanctions in Response to Russian Aggression, a Contradiction in Terms" (2023) 25 *Cambridge Yearbook of European Legal Studies* 19.

management of the Central Bank of Russia's assets (approximately 210 billion euros),⁴ thereby immobilising Russian reserves held in EU central securities depositories (most notably Euroclear, in Belgium). The Union has not, to date, taken the much-debated leap of confiscating Russian sovereign reserves;⁵ nonetheless, the Council has, for the first time, used emergency powers⁶ to prohibit any transfers of these reserves back to Russia.⁷ This has displayed considerable legal creativity to prohibit the movement of Russian state assets from EU banks, thereby offering new financial guarantees for the compensation of the damage caused to Ukraine.⁸ On the other hand, the scope of private asset freezes has expanded too: from the quantitative value of frozen assets (approximately 28 billion euros)⁹ to the record number of listed individuals and entities (more than 2500),¹⁰ the EU has embraced targeted restrictions, in the form of freezing measures, as one of its main responses to the escalation of the conflict.

Notwithstanding the fact that the Council does not explicitly refer to “immobilisation of assets” in the legal acts imposing restrictive measures, it is evident that these measures result in a comprehensive *prevention of the movement* of Russian public and private wealth located in the EU. On the one hand, the Central Bank of Russia's assets are *blocked* in EU financial institutions under multiple legal bases (both CFSP and non-CFSP ones). On the other hand, private assets are subject to a complex legal architecture that amounts to a similar restriction.¹¹ This architecture includes not only freezing measures, but also additional safeguards contained in Council Decisions and Regulations that broadly *prohibit the movement* of private assets in the EU, when owned or controlled by certain individuals. In this way, their private wealth is *de jure* frozen, but becomes *de facto* immobilised in the EU.

In parallel, the EU institutions have maintained their traditional stance: restrictive measures, including listing decisions against individuals (also known as designations), are, by definition, targeted, preventive, and temporary restrictions.¹² They are intended to apply to specific targets and to induce a change in behaviour – rather than immobilise wealth in the long term. In this sense, designations are not judicial decisions or criminal convictions, but reversible decisions of foreign policy. Asset freezes do not amount to seizing or confiscation measures (i.e., enforcement tools), but are limited to *temporarily*

⁴ See Council Decision (CFSP) 2022/335 of 28 February 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine.

⁵ A Rosas, “From Freezing to Confiscating Russian Assets?” (2023) 48 *European Law Review* 337; I Chernohorenko, “Seizing Russian Assets to Compensate for Human Rights Violations in Ukraine: Navigating the Legal Labyrinth” (2023) *European Papers-A Journal on Law and Integration* 1067; P Stejskal and M Faix, “Sanctions from the Perspective of the Right to Property. Confiscation of Assets” *International Sanctions and Human Rights* (Springer 2024); P Webb, *Legal Options for Confiscation of Russian State Assets to Support the Reconstruction of Ukraine: Study* (European Parliament 2024).

⁶ Pursuant to Art. 122(1) TFEU.

⁷ See Council Regulation (EU) 2025/2600 of 12 December 2025 on emergency measures addressing the serious economic difficulties caused by Russia's actions in the context of the war of aggression against Ukraine.

⁸ A Caprile and T Peters with A L M Almeida, *Confiscation of immobilised Russian sovereign assets: State of play, arguments and scenarios*, (European Parliament, 2025). See also M T Veber, “EU Sanctions and Russia's Frozen Assets” (European Parliament 2025).

⁹ European Commission, “Sanctions against individuals, companies and organisations: Facts and figures”, available at https://commission.europa.eu/topics/eu-solidarity-ukraine/eu-sanctions-against-russia-following-invasion-ukraine/sanctions-against-individuals-companies-and-organisations_en.

¹⁰ *Ibid.*

¹¹ It should be noted that, while the term “immobilisation” is commonly used to in the context of central bank assets, for the purpose of this paper the concept is interpreted in a broader sense in order to include the extensive consequences of freezing private assets of designated individuals.

¹² Council Sanctions Guidelines, paras 4 and 13–14, and “EU sanctions against Russia”, available at <https://www.consilium.europa.eu/en/policies/sanctions-against-russia/>.

restrict the target from disposing of or transferring their funds and economic resources. In principle, once the desired change in behaviour occurs or factual circumstances evolve, designations should be lifted as no longer necessary.

However, the credibility of this narrative has been increasingly called into question. Recent practice points to an erosion of the “targeted, preventive and temporary” paradigm. In fact, numerous studies have questioned whether current measures can still be described as fully non-punitive restrictions,¹³ adopted merely to *prevent* threats to peace and security or violations of international law. Because they are often adopted *after* the violation or behaviour has occurred, individual sanctions have been described as entailing a punitive aspect,¹⁴ or even as “penalties linked to real or alleged misconduct.”¹⁵ Some scholars even argued that designations are increasingly used as criminal justice measures (and conviction-free forfeiture).¹⁶

Building upon this line of research, this paper intends to show the Union’s clear determination to keep a specific category of individuals on the sanctions list, namely *Russian business elites*, often referred to as “oligarchs,”¹⁷ thereby *preventing the movement* of their assets outside the EU. Similar to the immobilisation of the Russian Central Bank’s assets, the Council has elaborated progressive safeguards to immobilise private wealth and prevent asset flight. In the last four years, through successive amendments of CFSP Decisions and Article-215 TFEU Regulations,¹⁸ the Council has deployed strategies to prolong listing decisions, minimise opportunities for de-listing, and, in this way, prohibit the movement of funds and economic resources outside the EU. This prompts the question whether we are observing a progressive move from freezing to *de facto immobilisation* of Russian private wealth, in other words, a progressive shift from *temporary* to *prolonged* restrictions on private assets.

The authors address this question by analysing the most recent trends in the design and use of asset freezes, focusing on sanctions adopted since February 2022 against certain businesspersons operating in Russia. After situating asset freezes within the broader evolution of EU sanctions policy (II), the paper examines how the Council prolongs listings to ultimately prevent the delisting of certain individuals operating in Russia. For that purpose, the analysis focuses on the design of listing criteria (III) and their subsequent utilisation in practice (IV). For each section, the paper maps out selected trends that point to immobilisation, shedding light on the legal shortcomings of the EU targeting process and the (so far deferential) scrutiny of the Court of Justice (ECJ). The paper demonstrates that through these trends, the Council is gradually equipping itself with the necessary tools to immobilise Russian private assets, raising questions about the ultimate objective of these targeted measures (V).

¹³ See, for instance, Y Miadzvetskaya and C Challet, “Are EU Restrictive Measures Really Targeted, Temporary and Preventive? The Case of Belarus” (2022) 6 *Europe and the World: A Law Review*; R A Wessel, E Anttila, H Obenheimer and A Ursu, “The Future of EU Foreign, Security and Defence Policy: Assessing Legal Options for Improvement”, 26 *European Law Journal* 375 (2021); N van der Have, “The Proposed EU Human Rights Sanctions Regime – A First Appreciation” (2019) 30 *Security and Human Rights* 56, 71.

¹⁴ *Ibid.*

¹⁵ M P Doxey, *International Sanctions in Contemporary Perspective* (Macmillan 1987) 4.

¹⁶ A Moiseienko, “Crime and Sanctions: Beyond Sanctions as a Foreign Policy Tool” (2024) 25 *German Law Journal* 17; N Hovic, “Securitizing Corruption” [2023] *SSRN Electronic Journal*.

¹⁷ See F Finelli, “Who Are the Russian Oligarchs? Recent Developments in the Case Law of the European Court of Justice” (2024) 2023 *European Papers*.

¹⁸ See the successive amendments to Council Decision 2014/145/CFSP of 17 March 2014, and Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

II. Background and context: how to keep targets on the sanctions list?

The Council's willingness to designate *and* keep specific persons on the sanctions list is neither a recent development nor unique to the sanctions adopted against Russia. Historically, maintaining designations in force has been a pillar of the EU's credibility in its sanctions policy.

Several factors explain this practice. First, the objectives of sanctions are often not fully achieved, as the situations that prompted them continue to exist or aggravate. Second, the relatively short timeframe of sanctions, typically one year (exceptionally, 6 months in the case of Russia), makes maintaining listings necessary. Third, there is the realistic acknowledgment that releasing frozen funds will likely lead to their diversion (i.e., asset flight), weakening the EU's leverage and future sanctions' effectiveness. In this context, keeping certain people on the list, or re-listing them, is crucial for asset freezes to continue to function as a meaningful tool. This explains why, aside from selected individual delistings caused by an annulment judgment,¹⁹ a change in the target's situation or a lack of unanimity within the Council,²⁰ cases in which this institution has willingly lifted sanctions remain relatively limited. While, in principle, the Council may decide to suspend or lift some restrictive measures,²¹ this is not the most common outcome. Importantly, rarely did any of these suspensions or sanctions liftings lead to a *full* lifting of *all* the asset freezes.²² Some targets have remained on the sanctions list over the course of time. Although sanctions relief remains a tool available to the Council,²³ in practice, the prevailing approach has been to maintain sanctions, in particular asset freezes, in force. In fact, freezing measures represent the *hard core*, the common denominator, of sanctions regimes: they are usually among the first measures to be adopted and the last to be lifted – if ever lifted at all.

Despite the cardinal importance attached by the Council to maintaining listings in force, multiple obstacles have historically complicated its ability to do so. These include the expiry of sanctions and the difficulty of maintaining the consensus required for unanimity in voting; the fundamental rights and safeguards enshrined in Article 215(3) TFEU, which require temporary listings and a constant duty to review; the duty to state reasons and to substantiate the listings with reliable and accurate evidence, both of which have been amply expanded by the ECJ case law.²⁴ Moreover, the temporal nature of listing criteria (written in the present tense) requires that assessments be made at the moment of

¹⁹ Such as in the case of Russian oligarch Prigozhin's mother. See Case T-212/22, *Prigozhina v Council*, ECLI:EU:T:2023:104.

²⁰ For instance, this was the case of the listing of Russian oligarch Usmanov's sister. See Gavin, "EU Renews Russian Sanctions after Deal with Hungary," *Politico* (2025).

²¹ See examples under Belarus sanctions (Council Decision (CFSP) 2015/1957), Iran sanctions (See Council Decision (CFSP) 2016/35), Myanmar sanctions (Council Decision 2013/184/CFSP), Guinea (Council Decision 2014/213/CFSP), Zimbabwe sanctions (Council Decision 2013/160/CFSP) or, more recently, Syria (Council Decision (CFSP) 2025/406).

²² To the authors' knowledge, the only available example of a lifting of all asset freezes, followed by a subsequent reintroduction of sanctions, concerns Myanmar. Following progress towards democratization, the Council lifted in 2013 almost all restrictive measures against Myanmar, including asset freezes (Council Decision 2013/184/CFSP).

²³ On the practice of sanctions relief and its (underexploited) use, see Z Hudáková, T J Biersteker and E Moret, "Sanctions Relaxation and Conflict Resolution: Lessons from Past Sanctions Regimes"; T J Biersteker and D Lanz, "Negotiated Settlement through Sanctions Relief: Options for the Korean Peninsula."

²⁴ See, for instance, Case T-228/02 *Organisation des Modjahedines du peuple d'Iran v Council*, EU:T:2006:384 paras. 143–146; Case T-86/11, *Bamba v Council*, EU:T:2011:260, para. 40; A Ali, "The Challenges of a Sanctions Machine: Some Reflections on the Legal Issues of EU Restrictive Measures in the Field of Common Foreign Security Policy" in L Antonioli, L Bonatti and C Ruzza (eds), *Highs and Lows of European Integration* (Springer International Publishing 2019).

designation, a principle which is, too, often recalled by the Court.²⁵ Consequently, changes in circumstances, whether geopolitical, individual or internal to the EU, can affect listings, creating multiple potential pathways toward de-listing.

At the same time, the CFSP remains inherently political. Indeed, political considerations play a central role in the decision to adopt and maintain sanctions.²⁶ The resulting tension (or, arguably, contradiction) throughout the history of EU sanctions has been the Council's persistent effort to retain certain targets on the list to ensure the effectiveness of the sanctions,²⁷ despite procedural, legal, and factual obstacles. Over time, the Council has developed a range of techniques to navigate this recurring challenge, each giving rise to specific legal questions and, in many cases, judicial scrutiny.

A first strategy has been to exploit the absence of clear de-listing criteria, which provides flexibility in retaining targets on the list when circumstances evolve. One manifestation of this strategy is the use of (non-legally binding) recitals in CFSP Decisions, which allows the Council to explain and amend the narrative underpinning designations.²⁸ In the context of sanctions against Syria, the Council has adapted the recitals to the rapidly evolving situation in that country. Caught between growing calls to lift most sanctions against Syria after the fall of Al-Assad to enable reconstruction,²⁹ concerns over a possible power vacuum in the country, and the objective of maintaining some former members of the regime and other human rights violators on the list,³⁰ the Council operated a double shift. While, after an initial period of suspension,³¹ the Council lifted the most significant part of the sanctions,³² it also amended the recitals of the restrictive measures to justify why some Syrian businesspersons linked to the Al-Assad regime were retained on the list. Initially justified as preventing these individuals from financially or materially supporting the regime, these asset freezes now rest on the premise that the targets have amassed substantial wealth and power due to this connection, remain influential and therefore may compromise Syria's peaceful transition.³³ Notwithstanding the non-binding nature of recitals, this illustrates the Council's effort to strengthen designations against changes of circumstances, with possible implications in future litigation, as the ECJ often uses recitals as interpretative tools.

A second strand within the Council's practice has involved the broadening of listing criteria, for instance by relying on presumptions or indirect links to sanctioned activity, as attempted, *inter alia*, in the context of the sanctions against Myanmar and Syria. This approach met limited success in *Tay Za*, where the Court rejected the use of presumptions against family members of leading businesspersons and emphasised that, in the light of the

²⁵ For recent examples, see Case T-714/20, *Ovsyannikov v Council*, EU:T:2022:674, paras. 84–6; Case T-193/22, *OT v Council*, EU:T:2023:716, para. 168; case T-343/24, *Albot v Council*, ECLI:EU:T:2025:931, para. 86.

²⁶ On the political dimension of sanctions, see P J Cardwell, "EU External Relations Law and Policy in the Post-Lisbon Era" *EU External Relations Law and Policy in the Post-Lisbon Era* (Springer 2011).

²⁷ C Eckes, "The Law and Practice of EU Sanctions" in S Blockmans and P Koutrakos, *Research Handbook on the EU's Common Foreign and Security Policy* (Edward Elgar Publishing 2018); E Chachko, "Foreign Affairs in Court: Lessons from CJEU Targeted Sanctions Jurisprudence" (2019) 44 *Yale Journal of International Law*; Antonino Ali, "Assessing the Legality of the EU Sanctions Imposed on the Russian Federation from 2022" in K Kirkham (ed), *The Routledge Handbook of the Political Economy of Sanctions* (Routledge 2023).

²⁸ On the relevance of recitals in the interpretation of CFSP Decisions, see Case T-125/22, *RT France v Council*, ECLI:EU:T:2022:483, *inter alia*, paras. 155 and 161.

²⁹ H Sallon, "Lifting Sanctions Against Syria is Key to Stabilizing the Country", *Le Monde*, (2025); CIRLIG Carmen-Cristina, "Time to Lift the International Sanctions on Syria?" [2025] *European Parliament*.

³⁰ Schreiber, "Lifting Sanctions, Holding the Line: Shaping EU Credibility in Post-Assad Syria", *PRIF Spotlight* (2025).

³¹ Council Decision (CFSP) 2025/406 amending Decision 2013/255/CFSP.

³² Council Decision (CFSP) 2025/1096 amending Decision 2013/255/CFSP.

³³ *Ibid*, recitals 8 to 13.

Kadi judgment, a sufficient link must exist between targeted individuals and the sanctioned country.³⁴ However, this technique proved more successful in the context of the Syria sanctions, particularly against leading businesspersons operating in that country. The ECJ upheld the Council's shift from conduct-based to status-based designations, lowering the burden of proof to retain individuals on the list even when their personal conduct could not necessarily be directly linked to restrictive measures (e.g., shifting from the "support criterion" to the "leading businessperson criterion").³⁵

Finally, the Council has displayed increased efforts to adjust to, and comply with, the duty to state reasons and its burden of proof as developed by the case law. In the context of counter-terrorism sanctions, the Council has relied on past events documented by national authorities, anchoring listings in historical conduct rather than ongoing behaviour.³⁶ In the sanctions against Iran, it reworded or introduced new listing criteria *a posteriori* to match available evidence.³⁷ In some cases, the Council slightly (if not superficially) adjusted certain statements of reasons,³⁸ or reclassified the same facts under different criteria.³⁹ And, the Court of Justice generally afforded the Council discretion in such adaptations,⁴⁰ though certain judgments imposed stricter limits, emphasising the sufficiency of evidence and procedural safeguards.⁴¹ In the sanctions targeting former Ukrainian leaders prosecuted for embezzlement, the Council sought updated evidence to maintain the listings.⁴² However, in most cases on the restrictive measures linked to embezzlement (in Ukraine but also in Tunisia and Egypt), the Court annulled the listings due to insufficient factual basis,⁴³ causing a rapid decline of those sanctions regimes.

Collectively, these strategies demonstrate the Council's ongoing efforts to reconcile the political goal of retaining targets on the list with the legal and procedural requirements of sanctions within a "community based on the rule of law."⁴⁴

The restrictive measures targeting Russian individuals display both continuity and innovation. Building on historical techniques, the Council has adopted new methods in the design and application of listing criteria to retain Russian targets on the sanctions list amid ongoing hostilities. The Council has sought to prevent de-listing in the unprecedented context of a war ongoing at the EU's borders, emphasising the symbolic, political and practical significance of retaining targets on the list. The design of the listing criteria, examined in the next section, is a clear indicator of that.

³⁴ Case C-376/10 P, *Tay Za v. Council*, EU:2012:138, paras. 60–9 and 166–8.

³⁵ See, for instance, Cases T-5/17, *Sharif v Council*, EU:T:2019:216; C-540/18 P, *HX v Council*, ECLI:EU:C:2019:707.

³⁶ See, for instance, Case T-316/14, *PKK v Council*, EU:T:2018:788.

³⁷ Cases T-89/14, *Export Development Bank of Iran v Council*, EU:T:2016:693; and T-65/14, *Bank Refah Kargaran v Council*, EU:T:2016:692.

³⁸ Case T-207/15, *National Iranian Tanker Company v Council*, EU:T:2016:471.

³⁹ *Ibid.*

⁴⁰ With respect to counter-terrorism sanctions, see Case C-46/19 P, *Council v PKK*, EU:C:2021:316. With respect to the restrictive measures against Iran, see Case C-248/17 P, *Bank Tejarat v Council*, EU:C:2018:967, paras. 66–71; joined Cases T-14/14 and T-87/14, *Islamic Republic of Iran Shipping Lines v Council*, EU:T:2017:102, paras. 79–83.

⁴¹ With respect to counter-terrorism sanctions, see joined Cases T-316/14 RENV and T-148/19, *PKK v Council*, EU:T:2022:727. With respect to country-specific sanctions, for a recent example, see Case T-238/24, *Karic v Council*, EU:T:2025:907, paras. 91–93, where the Court recalled that past events cannot be ruled out as a matter of principle, provided that they are still relevant to justify the listing at the time of the initial designation or the re-listing.

⁴² For a detailed overview of the cases, see Celia Challet and Dorin-Ciprian Grumaz, "EU Restrictive Measures and Third Countries" Evidence' (2023) 28 *European Foreign Affairs Review*.

⁴³ See Cases C-530/17 P, *Azarov v Council*, EU:C:2018:1031; T-151/18, *Ben Ali v Council*, EU:T:2020:514; joined Cases T-335/18, T-338/18 and T-327/19, *Mubarak v Council*, EU:T:2022:226.

⁴⁴ See Case 294/83, *Parti écologiste "Les Verts" v European Parliament*, ECLI:EU:C:1986:166.

III. Designing the listing criteria

The wording of listing criteria significantly determines their scope, their subsequent interpretation by the Court of Justice and, ultimately, how easily a person can be retained on the sanctions list. The Russia sanctions exemplify how amending listing criteria facilitates the immobilisation of names and assets subject to freezing measures, a practice which is not devoid of legal questions. This section examines two aspects: the Council's ability to repeatedly revise listing criteria (1), and the increasingly appealing use of presumptions (2).

I. Drafting and re-drafting the listing criteria

Listing criteria, also known as designation grounds, are not static but *living* provisions in EU restrictive measures. They are regularly adjusted by the Council in response to evolving policy needs such as increasing pressure on a state or countering circumvention risks. In the Russia sanctions, the wording of these criteria has changed substantially. While in 2014, the Council relied on a maximum of five criteria, it may now use up to fifteen.⁴⁵ It added new grounds for designation since February 2022 and amended the wording of previously adopted criteria to expand the scope of their application.

What distinguishes the Russian sanctions regime is the particularly visible way in which the Council has resorted to re-drafting listing criteria regarding a specific category of individuals: the so-called Russian oligarchs, more formally referred to as *leading businesspersons* in Russia.

Leading entrepreneurs have been listed under criterion (g), initially adopted on 25 February 2022 to target persons and entities “providing a substantial source of revenue to” the Russian Government.⁴⁶ At the time, the criterion focused not on all leading businesspersons but only on those *involved in certain economic sectors* which provide a substantial source of revenue to the Russian government. However, in June 2023, the Council amended criterion (g). After assessing that “a relationship of mutual benefit and support exists between the Government [...] and leading businesspersons operating in Russia,”⁴⁷ the requirement to engage in specific economic sectors and provide a substantial source of revenue to policymakers was strongly limited. The Council found that Russia’s government “systematically allowed prominent Russian businesspersons to accumulate their wealth through the exploitation of natural and other public resources.”⁴⁸ In view of “this relationship of interdependence,” it was necessary that criterion (g) cover *leading businesspersons operating in any economic sector* of Russia.⁴⁹ In addition, the Council assessed that the listing criterion should be extended to allow for the designation of “*other businesspersons who are involved in [certain] economic sectors*” providing a substantial source of revenue to the Russian Government.⁵⁰

Thus, the scope of the listing criterion (g) was considerably expanded after February 2022. Today, it covers not only *leading businesspersons* operating in Russia (as well as their

⁴⁵ See Art. 2(1) Council Decision 2014/145/CFSP and Art. 3(1) Council Regulation (EU) No 269/2014, as amended.

⁴⁶ See Recital 11 Council Decision (CFSP) 2022/329 of 25 February 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

⁴⁷ See Recital 4, Council Decision (CFSP) 2023/1094 of 5 June 2023 amending Decision 2014/145/CFSP

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

immediate family members or other natural persons benefitting from them), but also other, not necessarily leading, *businesspersons*.⁵¹

Admittedly, this is not the first time that the Council has decided to list prominent entrepreneurs. Already in the Syria sanctions, it justified targeting leading businesspersons operating in that country by the “close control exercised over the economy by the political regime” and the fact that only “an inner cadre of leading businesspersons” was able to maintain their leading status through close ties with, support to, and influence on the political leaders.⁵² Yet, the Russia sanctions mark the first time that the Council designs a listing criterion that targets *both* leading *and* non-leading businesspersons operating in a third country, which blurs the line of *who can be targeted*, and raises new questions.

Given the unprecedentedly wide scope of the new criterion (g), it is unsurprising that its legality has been contested before the ECJ, with sanctioned Russian oligarchs challenging their listing. In the rapidly evolving case law on the (in)famous criterion (g), the Court has been asked to interpret and clarify its scope of application. Several cases are currently pending before the General Court (GC) and the Court of Justice. It would be beyond the scope of this section to give a comprehensive account of all these cases. However, the *OT* case⁵³ deserves a short commentary as an indicative point of reference for how the EU judiciary has started to interpret and apply criterion (g) vis-à-vis sanctioned individuals.⁵⁴

Like many other Russian oligarchs, the applicant was designated under criterion (g) and challenged its listing before Luxembourg. Like many other applicants, he initially contested the application of the *original* criterion (g), and subsequently brought actions against the application of the *amended* criterion (g). This prompted the GC to shed light on the wording of the criterion.

First, in relation to the *original* criterion (g), the GC found the notion of “leading businessperson” sufficiently clear and precise, satisfying the degree of foreseeability required by EU law: the criterion refers to individuals who are “influential on account of their *importance in the sector* in which they are involved and the importance of *that sector* for the Russian economy.”⁵⁵ The Court further clarified that the individuals’ leading position “must be understood as referring to their importance in the light, in particular, of their professional status, the importance of their economic activities, the extent of their capital holdings or their functions within one or more undertakings in which they pursue those activities.”⁵⁶ Importantly, the GC stressed that the listing criterion does not require the Council to demonstrate a personal connection between the targeted individual and the Russian Government, or the decision to continue the military aggression against Ukraine.⁵⁷ Rather, criterion (g) pursued clearly circumscribed objectives: exerting maximum pressure on Russia and increasing the costs of its military aggression. The Court considered that there is “a rational connection” between targeting leading businesspersons *involved in certain economic sectors* and these objectives.⁵⁸

⁵¹ See Council Decision (CFSP) 2023/1094 of 5 June 2023 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

⁵² See Recital 6 Council Decision (CFSP) 2015/1836 of 12 October 2015 amending Decision 2013/255/CFSP concerning restrictive measures against Syria.

⁵³ Case T-193/22, *OT v Council*, ECLI:EU:T:2023:716. Followed by Case T-286/23, *OT v Council*, ECLI:EU:T:2024:606, under appeal, and Case T-1095/23, *OT v Council*, ECLI:EU:T:2025:744, under appeal.

⁵⁴ A similar reasoning can be found in other judgments such as Case T-305/22, *Rashnikov v Council*, EU:T:2023:530; or Case T-282/22, *Mazepin v Council*, EU:T:2023:701; or Case T-333/22, *Khan v Council*, ECLI:EU:T:2023:758; or Case T-313/22, *Abramovich v Council*, ECLI:EU:T:2023:830.

⁵⁵ Case T-193/22, *OT v Council*, para. 45 (emphasis added).

⁵⁶ *Ibid*, para. 143 (emphasis added).

⁵⁷ *Ibid*, para. 145.

⁵⁸ *Ibid*, para. 49 and 139.

Second, in relation to the *amended* criterion (g), the GC confirmed that the applicant, like many other Russian oligarchs, should remain on the EU sanctions list. The Court stressed that the 2023 amendment did not redefine the notion of “leading businessperson,” but rather *broadened* the scope of application to encompass *all* leading businesspersons active in Russia, *regardless* of whether their economic sector provides substantial income to the Russian Government.⁵⁹ The Court endorsed the Council’s reasoning that this extension was justified by structural interdependence between the state and prominent business actors within Russia’s economy.⁶⁰ Targeting these leading entrepreneurs showed, once again, a rational connection to the objective to exert pressure on the Russian government.⁶¹

Notably, the GC clarified that the amended criterion does *not* establish a presumption of association between sanctioned oligarchs and the Russian government.⁶² On the contrary, the Court emphasised that the listing criterion is an objective, autonomous and sufficient criterion which justifies the inclusion of entrepreneurs who are leading in their economic sector and operate in Russia (i.e., two cumulative conditions), “*without there being any need to provide evidence of a link between the target and the Russian regime, or between being a leading businessperson and providing support to that regime or benefiting from it.*”⁶³ It follows that the Council may identify leading businesspersons and add them to the sanctions list without the need to produce any evidence to establish a link between the target and the government, as the existence of a relationship of interdependence between them is an inherent factor of the new listing criterion (g).⁶⁴

The GC thus confirmed, in essence, that criterion (g) is a broad status-based criterion, based not on the premise – perhaps overly optimistic – that leading businesspersons, as well as other individuals operating in key economic sectors for the Russian economy, will exert pressure on the Kremlin to secure their own delisting. To date, this position has been consistently upheld in all judgments before the General Court.⁶⁵ This rationale has allowed the Council to list and maintain a wide group of individuals on the sanctions list. In fact, the amended criterion (g) provides the Council with a broader legal basis for the adoption and renewal of designations, while enabling it to *de facto* immobilise private wealth within the EU. Under this criterion, an individual’s position within certain economic or social structures in Russia is deemed sufficient to justify the maintenance of their designation. This risks blurring the line between preventive freezing and *de facto* immobilisation of assets.

In addition, there is a notable tension regarding the expectations placed on targeted individuals. While the Council is not required to demonstrate a close connection between Russian oligarchs and political leaders in order to list them, it nevertheless anticipates that the former will exert influence over the latter. Beside any discussion on whether such influence could realistically materialise, the Council appears to rely on criterion (g) as a

⁵⁹ Case T-1095/23, *OT v Council*, ECLI:EU:T:2025:744, para. 122. A similar reasoning may be found in Case T-289/23, *Khan v Council*, ECLI:EU:T:2025:560, Case T-297/23, *Timchenko v Council*, ECLI:EU:T:2025:352, Case T-1105/23, *Abramovich v Council*, ECLI:EU:T:2025:839. As recently confirmed by the Court of Justice in the joined Cases C-111/24 P, C-35/24 P, C-711/23 P, C-704/23 P, *Pumpyanskiy v Council*, ECLI:EU:C:2026:245

⁶⁰ *Ibid.*, para. 123.

⁶¹ *Ibid.*

⁶² Differently from sanctions imposed on leading businesspersons operating in Syria.

⁶³ Case T-1095/23, *OT v Council*, para. 173. See, by analogy, Case C-241/19 P, *Haswani v Council*, EU:C:2020:545, para. 66.

⁶⁴ It is for the applicant to adduce, in support of their plea of illegality, any evidence capable of establishing that such a relationship of interdependence is *manifestly incorrect* and that it thus renders the criterion (g) partially unlawful. See Case T-297/23, *Timchenko v Council*, para. 83 and 105.

⁶⁵ And recently confirmed by the Court of Justice in the joined Cases C-111/24 P, C-35/24 P, C-711/23 P, C-704/23 P, *Pumpyanskiy v Council*, ECLI:EU:C:2026:245.

flexible instrument to justify asset freezes, even in the absence of direct evidence of support for the regime that other listing criteria would require. As it has been argued, “status-based sanctions are essentially a shortcut to activity-based sanctions.”⁶⁶ In practice, this approach makes such designations more difficult to challenge, with the result that assets may remain frozen for extended periods, *de facto* immobilised.

Finally, the rationale attached to criterion (g) constrains the usual paths to delisting. Asset freezes are intended to be temporary and lifted once they induce the desired change in behaviour. However, the Council seems to frame the path to delisting as a change in status in Russia, requesting oligarchs to relinquish their wealth (e.g., by resigning from their positions or selling their shares in key companies). This objective seems problematic but also possibly counter-productive, as it could result in the transfer of assets to individuals with even closer ties to the Kremlin (and outside the EU’s jurisdictional reach).

Nonetheless, the drafting and redrafting of the listing criterion (g) has, at least for the time being, ensured that Russian oligarchs are likely to remain on the sanctions list, and their assets frozen, for the foreseeable future.

2. Introducing presumptions to complement the listing criteria

It is generally the task of the Council to establish that a designation is well founded (i.e., “taken on a sufficiently solid factual basis”), and not the task of the targeted person to adduce evidence of the contrary.⁶⁷ Yet, this principle is not absolute, as the Council may also resort to “indirect evidence,” such as indicia or presumptions.⁶⁸

The use of presumptions is particularly frequent when the Council encounters difficulties in finding direct evidence with regard to a specific conduct or a category of individuals. In these circumstances, the Council may lower the evidentiary threshold, shifting the burden of proof on the target. In the context of the Syria sanctions, a (rebuttable) presumption was introduced to target leading businesspersons operating in the country, minimising the Council’s duty to adduce evidence. A Syrian leading businessperson may remain on the sanctions list irrespective of whether the Council proves that they are influential in their country, “*unless* there is sufficient information that they are not, or are no longer, associated with the regime or do not exercise influence over it or do not pose a real risk of circumvention.”⁶⁹ In practice, the burden of proof shifts from the Council to the designated individual, who can only secure de-listing by providing sufficient evidence to rebut the presumption.⁷⁰ This entails a considerable burden of proof for applicants seeking the annulment of their designation.⁷¹

Interestingly, in the Russia sanctions, the Council denies that Russian oligarchs are targeted on the basis of a (rebuttable) presumption. Despite the fact that the wording of the listing criterion (g) seems to draw inspiration from the criterion contained in the Syria

⁶⁶ Anton Moiseienko, *Doing Business with Criminals: Between Exclusion and Surveillance* (Cambridge University Press 2025) 179.

⁶⁷ See joined Cases C-584/10 P, C-593/10 P and C-595/10 P, *Commission and Others v Kadi (Kadi II)*, EU:C:2013:518, para. 119 and 121.

⁶⁸ F Filpo, “Evidence Standards in the Judicial Review of Restrictive Measures” (2020) 20 ERA Forum 615.

⁶⁹ Art. 27(3) Council Decision 2013/255/CFSP, as amended. The CJEU has clarified that presumptions always remain rebuttable (or relative) presumptions – while it has prohibited the use of irrebuttable (or absolute) presumptions. In fact, ‘an excessive standard of proof may not be imposed on the applicant [...], see Case T-186/19, *Zubedi v Council*, ECLI:EU:T:2020:317 para. 71.

⁷⁰ The same burden of proof characterises the designations of members of the al-Assad and Makhlof families.

⁷¹ Successful applicants are exceptional. See Case T-249/20, *Sabra v Council*, ECLI:EU:T:2022:140. Although the applicant still had some business interests in Syria, the evidence showed that he had rebutted the presumption that he was linked with the Syrian regime, he did not support or benefit from the regime, had distanced himself from it and was openly critical of it.

sanctions, the Council argues that the two criteria are not intended to function in a similar manner. The GC has confirmed that Russian entrepreneurs can be targeted insofar as two *cumulative elements* are satisfied, namely (i) that the person concerned is a leading businessperson and (ii) that he or she operates in Russia. The Court excludes the existence of any presumption or shift of the burden of proof.⁷²

Nevertheless, while criterion (g) itself does not allow to base listings on presumptions, the Council has more recently introduced new provisions with the view of preventing delisting and countering circumvention schemes. In May 2025, it amended the designation grounds in the Russia sanctions by establishing two distinct presumptions:⁷³ first, a *presumption of continuity* in the sense that modifications in ownership structures (such as divestments, corporate restructuring or resignations) do not alter the socio-economic situation of designated businesspersons if these changes occur *after* the initial listing; second, a *presumption of evasive intent* which considers any transfers involving leading businesspersons that occurred on or after 24 February 2022 as contributing to the obfuscation of ownership or control, thereby significantly frustrating EU restrictive measures.⁷⁴ Together, these presumptions allow the Council to respond to the (allegedly systematic) practice of transferring shares or resigning from leading functions by “freezing” the status of sanctioned businessperson as of 24 February 2022 (or the day of their initial designation) and immobilising their assets in the EU. Notwithstanding any subsequent attempt to divest or relinquish their properties, change position, or downgrade their socio-economic status in Russia, sanctioned businesspersons will not be (easily) delisted. In practice, the target will remain on the EU sanctions list, unless he or she claims a change “supported by recent and reliable information that can reasonably be viewed as sufficient to consider that the situation [...] has changed in a relevant manner, thereby demonstrating that such persons no longer meet the relevant criteria.”⁷⁵ In the words of the GC in *OT*, the applicant is “best placed” to provide evidence to support a change of status (such as details about the sale of shareholding).⁷⁶

The combination of these new presumptions raises, once again, the following question: what is the *ultimate objective* of criterion (g)? If it is intended to induce a change in behaviour, one might expect that credible and demonstrable divestments or resignations would be accepted as evidence of change. Yet, the practice suggests a different logic: the Council prioritises the *immobilisation of private wealth*. The fact that certain changes in circumstances such as resignations from managerial positions are often considered insufficient,⁷⁷ and that transfers of shares have been viewed with suspicion,⁷⁸ further illustrates the prolonged imposition of asset freezes on sanctioned businesspersons (through the continued renewal of their designation).

⁷² See Case T-297/23, *Timchenko v Council*, para. 87.

⁷³ See Council Decision (CFSP) 2025/904 of 13 May 2025 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

⁷⁴ See Recital 5, *ibid.*

⁷⁵ See Recital 6, *ibid.*

⁷⁶ See Case T-1095/23, *OT v Council*, para. 134 and 138. See also Case T-644/22, *Timchenko and Timchenko v Council*, EU:T:2024:621, para. 64.

⁷⁷ See Case T-607/22, *Kozitsyn v Council*, ECLI:EU:T:2024:635; Case T-283/22, *Moshkovich v Council*, ECLI:EU:T:2023:849.

⁷⁸ See Case T-193/22, *OT v Council*, para. 183 “it must be considered that, in the absence of proof of the sale of the shares, as alleged by the applicant, to a third person not linked to him, the Council rightly took the view that the applicant’s individual situation had not changed in such a way that the items in the evidence file in connection with the initial inclusion of his name on the lists at issue are now out of date”. See also Case T-289/23, *Khan v Council*, ECLI:EU:T:2025:560; Case T-271/22, *Melnichenko v Council*, ECLI:EU:T:2025:47.

IV. Making use of the listing criteria

While the design of listing criteria can be strategically shaped by the Council to keep targets on the list, it is often complemented by other sanctioning practices which underscore the dynamic interaction between the decision-making of the Council and the judicial review of the ECJ. In the context of the sanctions against Russia, the Council has used several strategies to keep targets on the list, each of which entails legal shortcomings and invites discussion. The paper analyses two strategies: the frequent re-listing of individuals and legal entities – irrespective of their successful litigation before the ECJ (1) and the use of multiple listing criteria against the same target to maximise the chance to keep the designation in force (2).

1. Listing and re-listing

The Council's willingness to keep certain individuals on the EU sanctions list, often despite judicial annulments, is an established phenomenon. The Council frequently re-lists applicants who have successfully challenged their designations before the CJEU, leading to so-called "second" or even "third" challenges.⁷⁹

In principle, EU law does not preclude such practice. While Article 266 TFEU compels the Council to "take the necessary measures to comply with the judgment of the Court of Justice," such measures need not involve de-listing. It is established case law that the principle of *res judicata* attached to an annulment judgment extends "only to the matters of fact and law actually or necessarily settled."⁸⁰ The institution which adopted the annulled decision may adopt a new decision on different grounds.⁸¹ Admittedly, as the Court acknowledged, "Article 266 TFEU does not address, as such, the issue whether it is still possible for the Council to re-list on the basis of reasons other than those in the annulled acts."⁸² The Luxembourg judges have thus left "the door open for" the Council "to fix the identified procedural flaws and re-designate persons and entities that prevailed in court,"⁸³ making the designations *de facto* immune from judicial review.

However, this practice has faced criticism. Based on the Opinion of some Advocate Generals, it would seem that the Court maintained a balance between giving the Council a "second chance" to review listings⁸⁴ and forcing it to grant "unconditional immunity" to applicants who won in court.⁸⁵ Scholars, however, have underlined the shortcomings of re-listing, questioning its use based on new criteria or a merely reworded statement of reasons – particularly when the initial listing was annulled for insufficient reasoning or factual basis.⁸⁶ As the Council is not required to demonstrate that it relies on new or newly discovered facts,⁸⁷ it has been suggested that maintaining annulled designations should be conditional upon the existence of new and relevant evidence.⁸⁸

⁷⁹ Chachko (n 27) 4.

⁸⁰ Case C-281/89, *Italy v Commission*, EU:C:1991:59, para. 14.

⁸¹ Case C-41/00 P, *Interporc v Commission*, EU:C:2003:125, paras 30–32; Case T-461/16, *Kaddour v Council*, EU:T:2018:316, para. 68.

⁸² Case C-248/17 P, *Bank Tejarat v Council*, EU:C:2018:967, para.69.

⁸³ Chachko (n 27) 4.

⁸⁴ Opinion of Avocat general Tanchev in C-600/16 P, *National Iranian Tanker Company v Council*, ECLI:EU:C:2018:966, para. 119.

⁸⁵ Opinion of Avocat general Sharpston in C-225/17 P, *Islamic Republic of Iran Shipping Lines v Council*, ECLI:EU:C:2018:720, para. 122. For a more extensive analysis of the legal discussions surrounding the principle of *res judicata* in the area of restrictive measures, see Challet, "Le principe d'autorité de la chose jugée dans le droit et le contentieux des mesures restrictives" in *L'autorité des jugements en droit européen* (Larcier, 2024), pp. 77–98.

⁸⁶ Eckes (n 27) 219.

⁸⁷ *Ibid.*

⁸⁸ Ali (n 27) 58.

More importantly, the practice of re-listings or maintaining names on the lists through amendment that were often “superficial”⁸⁹ raised concerns about its implications for the law of restrictive measures.⁹⁰ Some commentators went further and asked: “what is left of the principle of judicial review and the obligation to state reasons for a decision if the Council is no longer limited by the facts constituting the statement of reasons for listing, but can simply change the criterion of evidence of a connection in order to make it fit the available facts?”⁹¹

These assessments, which were made already before February 2022, remain relevant with respect to the Russia sanctions. The Council’s re-listing practice has been particularly visible, with three salient strategies.

The first strategy, which to date the Council has seldom used, consists in listing the same individual under an additional sanctions regime – either to ensure that the person remains subject to at least one set of restrictive measures, or because the alternative regime is more resilient to judicial scrutiny. A prominent example is former Ukrainian president Viktor Yanukovich, who was previously listed under the Ukrainian embezzlement sanctions and successfully challenged his listing in court multiple times. The Council retained him on the Ukraine embezzlement list for years before delisting him, but only after listing him under the Russia sanctions. This new listing was upheld by the General Court.⁹² While this approach leaves relatively little room for legal challenge – since the sanctions regimes are formally distinct – it remains open to criticism, particularly as much of the re-listing reasoning relied on pre-2022 facts.

The second, more prominent post-2022 strategy, involves progressively expanding the scope of criterion (g) (as analysed in Section 3.1.) and re-listing the same Russian businesspersons under broader designation grounds. Individuals who were originally targeted as *leading* businesspersons operating in certain economic sectors can now be designated irrespective of their involvement in these sectors. Alternatively, they can remain on the sanctions list for being “*simple* businessperson” involved in sectors providing a substantial revenue to the Russian government, irrespective of their prominent status in these sectors. The GC acknowledges that the two branches of the new criterion may overlap, as an influential businessperson who operates in a strategic sector may simultaneously fall under both categories of targeted entrepreneurs.⁹³ This practice gives the Council a wide margin of discretion to immobilise Russian private wealth in EU banks, but raises questions about the added value of distinguishing between “leading” and “non-leading” businesspersons, and whether the overlap undermines legal certainty for applicants.

The third strategy involves re-listing individuals under new listing criteria. A prominent example is provided by the *Aven* and *Fridman* cases,⁹⁴ where the applicants, two major oligarchs operating in Russia, successfully challenged the legality of their initial conduct-based designations under criteria (a) and (d)). They successfully argued that the Council did not establish that they provided material or financial support to Russian decision-makers or actions destabilising Ukraine. However, *while litigation was pending* before the GC, the Council re-listed them under different grounds (i.e., the criterion (g)). When the Court annulled the initial designations on 10 April 2025, it recognised that the “annulment does not extend [to the CFSP Decisions] which are not covered by these

⁸⁹ Chachko (n 27) 37.

⁹⁰ G Richard, S Michael and T Cornell, *Sanctions Law* (Hart Publishing 2019) 164.

⁹¹ C Beaucillon, “Opening up the Horizon: The ECJ’s New Take on Country Sanctions” (2018) 55 *Common Market Law Review* 387, 404.

⁹² Case T-643/22, *Yanukovich v Council*, EU:T:2025:838.

⁹³ See Case T-193/22, *OT v Council*, para. 184. If an individual was previously identified as a “leading entrepreneur”, they may now, *a fortiori*, be considered a (simple) entrepreneur and maintained on the sanctions list, see Case T-1105/23, *Abramovich v Council*, ECLI:EU:T:2025:839, para. 179.

⁹⁴ Case T-301/22, *Aven v Council*, ECLI:EU:T:2024:214, and Case T-304/22, *Fridman v Council*, ECLI:EU:T:2024:215.

proceedings,” namely the subsequent designations of the applicants.⁹⁵ These new designations, re-drafted by the Council on 14 March 2025, continue to be effective. As a result, the names of Mr. Aven and Mr. Fridman remain on the EU sanctions list, on a new legal basis,⁹⁶ despite their success in court. This illustrates that annulments may only have a limited impact. It has been argued that the re-listing practice places successful applicants in a state of “limbo,”⁹⁷ (or “litigation loop”), which forces them to initiate new proceedings to contest their subsequent designations, under new listing grounds.

In other cases, the Council has gone even further: rather than amending the listing criterion and thus re-drafting the statement of reasons, it reiterates the same legal basis and motivations, while continuously seeking out fresh evidentiary material to sustain the contested designation. This creates a constant race to produce more (and supposedly stronger) evidence in response to successful actions for annulment before the GC. The consequence is that the asset freeze on the applicants is renewed, which preserves the Council’s discretion from judicial review. The *Pumpyansky* litigation illustrates this determination: despite repeated annulments of his listing (in June 2024, April 2025 and September 2025),⁹⁸ the Council continuously re-lists Mr. Pumpyansky (and his family members), each time introducing new evidentiary elements. A similar pattern is seen in the *Khudaverdyan* litigation, where the Council insists that the applicant still exerted influence within the economic sector, without substantiating its claims with sufficiently solid proof.⁹⁹

The outcome of these different strategies is the same: the re-listed applicants remain subject to EU sanctions and their assets frozen (or better, immobilised). Litigation becomes an iterative process, whereby each annulment prompts the Council to present new pieces of evidence, while the applicant is obliged to reopen proceedings in order to obtain delisting. This has led some to argue that the judicial avenues for delisting before the Court have become “illusory.”¹⁰⁰ These examples question once again the Council’s compliance with Article 266 TFEU and the principle of *res judicata*. This issue is heightened by the ineffectiveness of actions for damages, which rarely succeed even after one or multiple annulments of listings.¹⁰¹ The *Klymenko* case represents the closest instance to an award of damages as a result of the Council’s keeping of the target on the list despite repeated annulment.¹⁰² However, even in that context, the Court determined that only the requirement of a “sufficiently serious breach” of EU law was satisfied – a determination open to critique given Klymenko’s repeated judicial successes.

Will this jurisprudential stance evolve in the future? The General Court’s judgment of 11 February 2026 in *Tokareva* could suggest that it might. After annulling for the third time the applicant’s listing which rested on unchanged evidence, the General Court held that the Council had infringed Article 266 TFEU and perpetuated an illegality that is “likely to undermine the legal order of the Union, one of the characteristics of which is respect for the value of the rule of law, as affirmed in Article 2 TEU and given concrete expression in

⁹⁵ Case T-301/22, *Aven v Council*, paras. 89–93.

⁹⁶ The applicants were initially listed under criteria (a) and (d), i.e., conduct-based criteria. Now, they are listed under criterion (g), i.e., a status-based criterion.

⁹⁷ A Rettmann, *Two Russian Bankers Left In EU Limbo, Despite Court Victory*, *EUobserver* (2024)

⁹⁸ See Case T-740/22, *Pumpyanskiy v Council*, ECLI:EU:T:2024:418; Case T-272/24, *Pumpyanskiy v Council*, EU:T:2025:351; and Case T-541/24, *Pumpyanskiy v Council*, ECLI:EU:T:2025:841. See also the Appeal Case C-696/23 P, *Pumpyanskiy v Council*, ECLI:EU:C:2026:245.

⁹⁹ See Case T-335/22, *Khudaverdyan v Council*, ECLI:EU:T:2023:500; and Case T-1116/23, *Khudaverdyan v Council*, ECLI:EU:T:2025:840.

¹⁰⁰ W Jullié, A Beauchemin and C Gosson, “Are we seeing the limits of the Council’s discretionary power in the field of sanctions law? The case of *Mazepin v Council*”, *EU Law Live*, (2023) Weekend Edition n°143.

¹⁰¹ On the highly exceptional success of actions for damages before the ECJ, see S Thanou, “Individual Restrictive Measures and Actions for Damages before the General Court of the European Union” (Springer 2020).

¹⁰² Case T-470/21, *Klymenko v. Council*, EU:T:2023:26.

Article 19 TEU.”¹⁰³ However, it will remain to be seen whether this approach is reiterated by the General Court (and the Court of Justice) in future cases. In the meantime, a troubling situation persists: applicants’ claims that judicial review of listings has become largely “illusory” are not without force, and the persistence of their designations contributes to the *de facto* immobilisation of private wealth.

2. Using several criteria against the same target

According to settled case law, if the CJEU considers that “*at the very least, one of the reasons*” put forward by the Council is sufficiently detailed, specific and substantiated, *that reason alone* suffices to support the designation.¹⁰⁴ The fact that *other reasons* may be insufficiently substantiated cannot justify the annulment of that designation,¹⁰⁵ and the ECJ is not required to examine the validity of all listing grounds.

This rule, rooted in the principle of procedural economy, has significant implications for the judicial review of sanctions. In fact, it affords the Council a wide margin of manoeuvre insofar as, if the application of *one* listing criterion survives judicial review, the contested designation is preserved – with no need for an assessment of other listing criteria. The Council may therefore be tempted to rely on several listing criteria *simultaneously* to ensure the resilience of its designations against potential annulment.

To the authors’ knowledge, the Council usually avoided the use of multiple listing criteria in the past. In the context of Syria sanctions, the Council *shifted towards* status-based criteria to lower the burden of proof which characterises conduct-based criteria, *without mixing the two listing grounds*. Under the Russia sanctions regime, however, the Council appears more inclined to *accumulate* designation grounds, thereby maximising resilience to judicial review. This practice is particularly visible with the simultaneous use of criterion (d) and criterion (g) against certain individuals: the former criterion encompasses sanctionable behaviours (that is to say, either providing support to or receiving benefits from the Russian government),¹⁰⁶ while the latter targets, in a comprehensive manner, businesspersons for their status in Russia.

The designation of Mr. Khan serves as a notable example in this regard.¹⁰⁷ Like many other Russian oligarchs, Mr. Khan challenged his designation, invoking errors of assessment in the use of criterion (g) *and* criterion (d). However, the GC has so far dismissed his pleas, confirming the legality of the contested designation under criterion (g), without examining the application of criterion (d).¹⁰⁸ Since the Court establishes that the applicant was lawfully listed under the criterion (g), it dismisses all other pleas as unfounded.¹⁰⁹ In doing so, the Court relied on the “one good reason” rule and prioritised procedural economy.

The question of whether the GC is obliged to assess *all listing criteria* when the applicants contest the validity of their designations is currently pending before the Court of Justice.¹¹⁰

¹⁰³ Case T-693/25, *Tokareva v Council*, EU:T:2026:118.

¹⁰⁴ See Case C-348/12 P, *Council v Manufacturing Support & Procurement Kala Naft*, EU:C:2013:776, para. 72.

¹⁰⁵ See A Cuyvers, “Give Me One Good Reason: The Unified Standard of Review for Sanctions after *Kadi II*” (2014) 51 *Common Market Law Review* 1759.

¹⁰⁶ Similar wording can be found in the Syria and Belarus sanctions.

¹⁰⁷ See Case T-333/22, *Khan v Council*, ECLI:EU:T:2023:758; and Case T-289/23, *Khan v Council*, ECLI:EU:T:2025:560.

¹⁰⁸ By contrast, the GC has imposed certain limits with regard to the *blurring of boundaries between different listing criteria or their interchangeable use*. Each criterion must retain an autonomous meaning, otherwise its *effet utile* would be undermined. The Council cannot argue that a listing criterion (criterion A) should be understood in a similar way to another listing criterion (criterion B). “Such an interpretation would have the effect of depriving [the criterion A] of practical effect in that it would become meaningless as compared with [the criterion B]”. See Case T-273/24, *Ezubov v Council*, ECLI:EU:T:2025:628, para. 47 and cited case law.

¹⁰⁹ Case T-289/23, *Khan v Council*, para. 192.

¹¹⁰ See, for instance, Case C-530/25 P, *Khan v Council*, pending.

Put differently, the issue is whether the Council may invoke *as much as possible* (potentially all fourteen) *listing grounds* to secure its designations before the GC's review, and thereby risk abusing its political discretion.

In her Opinion delivered in June 2025, Advocate General Medina argued that “even if the General Court had found that the Council had misapplied [the criterion (d)] to the applicant, *the operative part* of the Council's decision [...] would not have been affected and the acts at issue would still have had to be declared lawful.”¹¹¹ In her view, the misapplication of one criterion does not necessarily lead to annulment of the contested designation if another criterion can sustain that listing decision. Should the Court of Justice follow this reasoning, it will allow the Council to keep an individual on the sanctions list insofar as “*at the very least, one of the reasons*” is sufficiently sustained (e.g., insofar as the criterion (g) alone is sufficiently sustained). Nonetheless, this reasoning highlights the tension between the principle of procedural economy and the applicants' right to effective judicial protection and reputation. As AG Medina noted, the scope of criteria (d) and (g) *differs* significantly, and the GC silence on one criterion cannot be presumed to endorse the Council's assessment.

The use of simultaneous listing criteria therefore raises unresolved questions: when the grounds for listing are potentially contradictory, such as the combination of conduct-based and status-based criteria, is it still acceptable to maintain that *only one good reason* suffices? From the perspective of effective judicial protection, should both listing criteria be *treated as distinct* listing decisions, requiring full judicial review, rather than allowing untested allegations to persist on the sanctions list?

V. Conclusions

This paper has illustrated the diversity of techniques on which the Council may rely to maintain targets on the sanctions list, to re-list them, or, at the very least, to prevent a lack of evidence or a merely superficial (or even deceptive) change in circumstances from jeopardising the listing. In other words, through this array of techniques – some of which predate the post-2022 Russia sanctions – the Council has sought, and in many cases succeeded, to render listings more resilient, both in relation to its regular review process and against potential judicial scrutiny by the Court of Justice.

The post-2022 Russia sanctions have confirmed these trends. Yet, they have also marked a new stage in the Council's resistance to de-listings and unfreezing Russian private wealth located in the EU. The various amendments to listing criteria and the presumptions they entail, combined with the Council's use of multiple (often overlapping) criteria whose interpretation it has deliberately blurred, have created a distinctive state of play with regard to the asset freezes targeting Russian leading businesspersons and their close associates. Beyond the impression that the Council experiences a certain unease toward these individuals, who are simultaneously difficult to categorise within sanctions frameworks (given their allegedly hybrid position between leading entrepreneurs and discreet supporters of political leaders) and particularly prone to evasion, it is evident that the Council is especially determined to preserve these asset freezes and to keep the concerned individuals on the list.

A theoretical example serves not only to summarise the paper's findings but also to illustrate how difficult it currently is for such individuals to secure de-listing and unfreeze their assets. A person may be listed as a leading businessperson under criterion (g), subsequently revised in broader terms after the initial drafting, and which may continue to

¹¹¹ See AG Medina's Opinion in cases C-111/24 P, *Khan v Council*, para. 61, referring to Case C-248/17 P, *Bank Tejarat v Council*, ECLI:EU:C:2018:967, para. 61.

expand over time to include a progressively wider group of entrepreneurs operating in Russia. The same person might simultaneously fall under additional listing criteria. The Council may then introduce an explicit presumption that effectively reverses the burden of proof on the businessperson, ensuring that the person cannot be de-listed due to a change in circumstances unless there is sufficient evidence of such a change. Before the Court, the target may contest their designation, and even successfully rebut the presumption introduced by the Council. However, even if the applicant prevails in court, the Council may – just as it can with any other sanctions target – retain them on the list under a different criterion, or even the same (already-contested) criterion, according to a slightly altered statement of reasons and different evidence. The odds therefore appear that such a businessperson operating in Russia will remain on the list for the foreseeable future, and their assets frozen in the EU for several years, *de facto* immobilised. As long as there is sufficient, reliable, and up-to-date evidence to satisfy *one* listing criterion, the Council remains relatively free to explore methods for maintaining targets on the list.

This strategy is, to a large extent, understandable in the current wartime context. One could reasonably argue that the conflict will not last indefinitely and that those individuals might eventually be de-listed once it ends – though given the broad wording of the listing criteria, even that outcome remains uncertain. At the same time, a sense of unease persists: the European Union has chosen, for political reasons, to target *Russian business elites* and has adapted its sanctions practice accordingly, despite evident factual and legal obstacles to sustaining these listings. In this way, the EU appears to be moving beyond the mere objective of inducing a change in behaviour. The current approach prioritises the *resilience* of listings, thereby enabling a form of prolonged freezing, leading to a *de facto* immobilisation of private assets. This risks becoming a long-term prohibition of movement in relation to private wealth, rather than a temporary means of economic coercion that can be promptly reversed, i.e., by releasing the assets. In this way, designations may resemble what has been defined as “crime-based sanctions” – this time the crime being not the individual behaviour (e.g., human rights abuses or corruption), but Russia’s unlawful aggression against Ukraine (and its lack of intention to repay the damages caused).

This development, in turn, raises a broader and more profound question: in the case of the Russia sanctions – or, more generally, in any sanctions regime employing similar strategies – do asset freezes still function as a *means* to achieve specific foreign policy objectives (however multiple or ambiguous those objectives may be),¹¹² or are they becoming an *end* in themselves, detached from individual conduct and designed to secure the long-term immobilisation of private wealth? While it is not for the authors to offer a definitive answer, the issue is clearly far from settled. Much will depend on the future jurisprudence of the Court of Justice, especially regarding the interpretation of amended listing criterion (g), used in combination with other criteria, and, should litigation arise, the amendments introduced in May 2025 (i.e., new presumptions of continuity and of evasive intent), will be of particular significance.

¹¹² B Bernatskyi, “Beyond a Single Purpose: The Complex Reasons Behind International Sanctions” (2026) Central European Journal of International and Security Studies; F Giumelli, “A Comprehensive Approach to Sanctions Effectiveness: Lessons Learned from Sanctions on Russia” (2024) 30 European Journal on Criminal Policy and Research 211; F Giumelli, “The Purposes of Targeted Sanctions” in T J Biersteker, S E Eckert and M Tourinho (eds), *Targeted Sanctions* (Cambridge University Press 2016).