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Titolare della Cattedra Jean Monnet 2017-2020 (Commissione europea)
"Judicial Protection of Fundamental Rights in the European Area of Freedom, Security and Justice"

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INTERNATIONAL SANCTIONS OF THE EUROPEAN UNION IN SEARCH OF EFFECTIVENESS AND ACCOUNTABILITY

Alfredo Rizzo*

SUMMARY: 1. Introduction. – 2. Expanding Criminal procedural Law to International sanctions. – 2.1. Setting the scene. – 2.2. Effet Utile as a basic standard for Union's competences and policies – 3. From *Kadi* to *Rosneft* and beyond. – 3.1. The right for individuals to Challenge Union sanctions. – 3.2. Recent developments on Action for Damages against Union Restrictive measures. – 4. The trend: the Union Global Human Rights Sanctions Regime. – 5. Brief conclusions.

1. Introduction

The issue of international sanctions adopted by the Union, with specific reference to those addressed on individuals and private undertakings (art. 215 para. 2 Treaty on the Functioning of the European Union, TFEU), is increasingly relevant and expanding on several areas of law. In order to prove how Union law is evolving in this field, the paper suggests tackling three main topics.

The first one deals with a recent proposal from the Commission to adopt criminal procedural law tools aimed at granting effective and uniform implementation of sanctions regimes inside each Union's member State.

The second one addresses on the developments of relevant case-law expanding and strengthening individuals' capacity to challenge Union's restrictive measures, providing with a fast overview of recent case-law at the Union's level on individuals' right to ask for damages against same Union's sanctions.

Finally, the trend towards a reinforcement of individuals' prerogatives in this area of law, will be examined in the last field of analysis, by comparison with the Human Rights Sanctions Regime (HRSR) adopted by the Union two years ago. The wideness of same regime's scope might encroach with some procedural individual rights, as both relevant Treaty's provisions (Art. 263, para. 4 and art. 275, para. 2 TFEU) and related case-law amply prove.

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The interaction between mentioned topics might show the trend in this area of Union law, in search of increasing effectiveness beside the still debated question of a true and plain Union's accountability for the safeguard of third parties' rights.

2. Expanding Criminal procedural Law to International sanctions

2.1. Setting the scene

Following the Lisbon reforms on cooperation in the criminal law area, the Union has adopted some acts addressing individuals' misconducts, tackling also and more deeply than the past some procedural issues arising from the need that relevant Union's acts dealing with the definition of true "*supranational*" crimes be adequately implemented at the national level. On this, one should not forget the relevant legislation of the Union on freezing (in Italian, *sequestro*) and confiscation of assets [1] as procedural means applicable in cases of crimes listed under art. 83 TFEU[2]. The present legislative trend on restrictive measures in the Union should be put in this framework as well. In fact, the Commission has recently submitted a Proposal for a Council Decision on adding the breach of Union restrictive measures to the areas of crimes laid down in Article 83(1) TFEU[3]. On the substance, the same Commission stresses the need for a common action at Union level, particularly when it comes considering the many disparities at the national levels on procedural means for the fight of relevant crimes.

In addition, the Commission has also presented a Proposal for a Directive on the establishment of minimum standards on traceability and identification, freezing, confiscation and management of assets in the context of criminal proceedings[4]. The proposal for a directive (based on article 87 TFEU, on police cooperation, in addition to articles 82 par. 2 and 83 same treaty) is aimed at strengthening the links of intra-European coordination in investigative and judicial activities concerning all procedural tools concerning the aggression, in instrumental or definitive form (e.g., by virtue of an

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[1] Directive 2014/42/EU of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union based on both Art. 82(2) and Art. 83(1) TFEU), *OJ L 127, 29.4.2014, p. 39,* Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders *OJ L 303, 28.11.2018, p. 1.* On this, see Notice of the Ministry of Justice of Italy, Dept. for Justice affairs, 18 February 2021 - Implementation of Regulation (EU) 2018/1805 on the mutual recognition of freezing and confiscation orders February 18, 2021, prot. m_dg_DAG.18 / 02 / 2021.0035566.U accessible here https://www.giustizia.it/giustizia/it/mg_1_8_1.page?facetNode_1=0_10_35&facetNode_2=1_1%282021%29&contentId=SDC322010&previsiousPage=mg_1_8

[2] Terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.

[3] European Commission, Proposal for a Council Decision on adding the violation of Union restrictive measures to the areas of crime laid down in Article 83(1) of the Treaty on the Functioning of the European Union, COM (2022) 247 of 25 May 2022.

[4] Proposal of 25 May 2022, COM 2022 fin. 245.

established crime, see article 240 of the Italian Criminal Code), of assets deriving directly or not from criminal activities such as listed in art. 2 of the same proposal. In the second paragraph of art. 1 of the proposal, it is clearly established that the directive aims to put in place rules that facilitate the effective implementation of the restrictive measures of the Union and the subsequent recovery of the related assets to prevent, ascertain or investigate behaviors constituting the violation of restrictive measures of the Union and, in particular, the violation of restrictive measures addressed on natural or legal persons pursuant to art. 215 par. 2 TFEU. In the explanatory section of the proposal, it is clearly recalled that the Union had already adopted restrictive measures against Russia and Belarus in March 2014, expanding them in response to the illegal annexation of Crimea and Sevastopol by Russia itself. These measures, adopted on the basis of Article 29 of the Treaty on European Union (TEU, rule concerning particular Council decisions of a "geographical" or "thematic" nature) and Article 215 TFEU, follow a "comprehensive" approach , using both sectoral measures, referring to certain areas of activity, and individual measures, aimed at limiting the activities of individuals, legal or natural persons, also in the form of freezing or confiscation of assets.

In broad terms, the trend towards a widening of Union's competences in the area of freedom security and justice (AFSJ) was significant in the field of e.g., cooperation on civil law matters, even before Lisbon treaty amendments[5]. With specific reference to judicial cooperation on criminal law, in the post-9/11 scenario, the overlap between aims under the Common foreign and security policy (CFSP) and those under mentioned AFSJ increased in the frame of anti-terrorism aims of the "second wave" of Union's legislative acts that sanctioned individuals (see art. 215 para. 2 TFEU) held to be responsible for the performance of – or the support to – grave terrorist acts with an international relevance, also under the terms of related UN Security Council resolutions. In that context, the Court of Justice of the European Union (CJEU) notoriously proclaimed the Union's legal system "autonomy" thanks to the possibility for sanctions' addressees to protect their basic procedural (and, as the case may be, substantive) rights presumably breached by relevant Union's acts enacting restrictive measures under relevant treaties' provisions

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[5] In the Court of Justice of the Union's (CJEU) view, same Union's competence has progressed so as to allow the same organization to perform an *external exclusive* competence even beyond the criteria normally required for such a competence to arise, see CJEU Opinion 1/03 of 7 February 2006, *Competence of the Community to conclude the new Lugano Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters* ECLI:EU:C:2006:81 (E. CANNIZZARO, *Le relazioni esterne dell'Unione europea: verso un paradigma unitario?,* in *il Diritto dell'Unione europea*, 2007, p. 223). The 16 September 1988 Lugano Convention *OJ L 339, 21.12.2007, p. 3,* which is the subject of opinion 1/03, extended to the countries members to the European Free Trade Agreement (EFTA), the 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, OJ L 299, 31.12.1972, p. 32, *ex multis*, F. POCAR (ed.), *La Convenzione di Bruxelles sulla giurisdizione e l'esecuzione delle sentenze*, Milan, 1995; S. M. CARBONE, C. TUO, *Il nuovo spazio giuridico europeo in materia civile e commerciale. Il Regolamento 1215/2012,* Turin, 2016; A. RIZZO, *La dimensione esterna dello Spazio di libertà sicurezza e giustizia. Sviluppi recenti e sfide aperte*, in *Rivista* 2017, p. 147. On the "*large extent*" criterion, CJEU Opinion 2/91 of 19 March 1993, *ILO Convention n. 170*, EU:C:1993:106 (p. 25) and CJEU of 4 Sept. 2014, C-114/12, *European Commission v. Council of the European Union,* ECLI:EU:C:2014:2151; *ex multis,* A. ROSAS, *EU External Relations: Exclusive Competence Revisited* in *Fordham International Law Journal*, 2015, p. 1073 (part. p. 1085).

(art. 263 para. 4 and art. 275 para. 2 TFEU)[6]. The nexus was particularly stressed by the CJEU in some cases concerning the fight of terrorism in a post-*Kadi* scenario[7].

The interaction between the Union's sanctions policy (under both CFSP and art. 215 TFEU), on the one hand, and objectives pursued in the AFSJ, on the other, is made even clearer by the above-mentioned proposal under discussion. On the other hand, questions of definition of mentioned topics arises.

First of all, it should be kept in mind that, in the pre-Lisbon framework, the approach of the Union to restrictive measures against non-EU nationals or companies was in most cases based on free movement of capitals objectives, as originally established under art. 60 of the Treaty of the European Community (TEC). In the same vein, other restrictive measures have been based on commercial policy objectives. One known example of this is offered by the *Centro-Com* decision[8], when the CJEU had to assess the annulment of a regulation that laid down trade embargoes against the former Federal Republic of Yugoslavia [9], adopted by the Community to contribute to the achievement of purposes under related United Nations Security Council resolutions[10].

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[6] For sanctions against individuals, see, in the pre-Lisbon context, CJEU 3 September 2008, C-402/05 P & C-415/05 P, Kadi, EU:C:2008:461, para 326 and the too abundant literature on this seminal case; see, *ex multis,* M. GATTI, *Conflict of Legal Bases and the Internal-External Security Nexus: AFSJ versus CFSP*, S. POLI, *Effective Judicial Protection and Its Limits in the Case Law Concerning Individual Restrictive Measures in the European Union* and A. ROSAS, *EU Sanctions, Security concerns and Judicial control*, in E. NEFRAMI, M. GATTI (eds.) *Constitutional issues in EU External Relations Law,* Luxemburg, 2018, respectively, p. 89, p. 287 and p. 307. See also A. ROSAS, *Terrorist listing and the Rule of Law. The Role of the EU Courts*, in *European University Institute Working papers,* Robert Schuman Center for Advanced Studies, Florence, 2011, n. 11.

[7] See CJEU 19 July 2012 C-130/10, *European Parliament v. Council,* ECLI:EU:C:2012:472, paras. 61 and 63; " (…) *while admittedly the combating of terrorism and its financing may well be among the objectives of the area of freedom, security and justice, as they appear in Article 3(2) TEU, the objective of combating international terrorism and its financing in order to preserve international peace and security corresponds, nevertheless, to the objectives of the Treaty provisions on external action by the Union"*; on those objectives, the Court clarified what follows: "*Given that terrorism constitutes a threat to peace and international security, the object of actions undertaken by the Union in the sphere of the CFSP, and the measures taken in order to give effect to that policy in the Union's external actions, in particular, restrictive measures for the purpose of Article 215(2) TFEU, can be to combat terrorism*". For some critical remarks on the Court's assessments, M.E. BARTOLONI, *Tutela dei diritti fondamentali e basi giuridiche di sanzioni UE nei confronti di persone, o enti non statali, collegati con attività terroristiche*, in *Diritti umani e diritto internazionale,* 2013, vol. 7, p. 222.

[8] CJEU of 14 January 1997, C-124/95, *R. v. H.M. Treasury and Bank of England ex parte Centro-Com* ECLI:EU:C:1997:8. In this regard, see also the Court decisions, 30 July 1996, case C-84/95, *Bosphorus Hava Yollari Turizm,* ECLI:EU:C:1996:312 , and CJEU 27 February 1997, case C-177/95, *Ebony Maritime and Loten Navigation* , ECLI:EU:C:1997:89. This jurisprudence has confirmed a practice based on art. 113 EEC Treaty (later 133, now 207, of the TEC) establishing various trade measures with restrictive character and addressed to, *inter alia,* the former Republics of the former Soviet Union, some ex-socialist countries of Central Eastern Europe and some members of the former Federal Republic of Yugoslavia.

[9] Regulation 1432/92 of 1 June 1992 prohibiting trade between the European Economic Community and the Republics of Serbia and Montenegro, in OJ L 158, 11.6.1992, p. 1.

[10] According to the Court, the purposes of common commercial policy were apt to justify Community interventions affecting other policies, including those relating to the "second pillar" of the treaties (Common Foreign and Security Policy). In that case, a direct comparison – that is, without the filter of the "second pillar" (CFSP) measures – was made between UN resolutions and EU regulations. Moreover, on questions dealing with the links between the national restrictive measures and those under relevant EU regulation, the Court ruled that the second ones should prevail each time such restrictions pursue same aims

It might then be considered, also under remarks above, to what extent the current proposal from the Commission, aimed, as we have seen, at implementing restrictive measures by means of criminal procedural law tools (at least when such measures are not respected in the Member States) applies also where same restrictive measures have a mostly economic character [11]. A first "empirical" answer to this question might be that the Commission is committed in "centralizing" the implementation of such measures, in the light of the risk that the variety of approaches at the national levels might impair the same restrictive measures' effectiveness. This leads us back to a long-lasting debate dealing with the *effet utile* criterion applicable to the Union's legislative acts or provisions fit to restrict individuals' freedoms.

2.2. Effet utile as a basic standards for Union's competences and policies

Indeed, provisions addressing individuals' behaviors for the sake of protecting specific interests and objectives were established in the Treaties. In the mid-eighties of the last century, there was a debate concerning how competition rules as enshrined in the EC Treaty might have been transposed into the Italian legal system, if by means of administrative law or, alternatively, by means of criminal law instruments. In the end, the failure to provide for criminal sanctions in the 1990 Italian antitrust law was due to various reasons. The description of a case related to an infringement of competition law, in fact, presents margins of ambiguity that are incompatible with the need to fully comply with the determination of the crime and the need that the crime's consequences must be assessed as much precisely as possible in legal terms. It is known, however, that the European Court of Human Rights (ECtHR) has applied the right to defense and the right to an effective remedy to the acts of the European Commission aimed at sanctioning violations of competition rules under relevant EU law: this fact exemplifies how the administrative measures aimed at implementing competition rules follow an approach that is comparable to that followed under criminal law, although with different effects (e.g., no procedural criminal law measures are applicable)[12]. We will not dwell on this,

(international security, see art. 11 of Regulation 1432/96) as that pursued under national legislation. See *ex multis* B. CORTESE, *International Economic Sanctions as a Component of Public Policy for Conflict-of-Laws Purposes*, in L. PICCHIO FORLATI, L.-A. SICILIANOS (eds.), *Economic Sanctions in International Law / Les sanctions économiques en droit international - Hague Academy of International Law, The Law Books of the Academy,* 2004, vol. 23, The Hague, p. 717, in part. p. 725.

[11] For a first critical comment on this, see M. GESTRI, *Sanctions Imposed by the European Union: Legal and Institutional Aspects*, in N. RONZITTI (ed.), *Coercive diplomacy, Sanctions and International Law,* Leiden, 2016, p. 71, in part. p. 90 ff.

[12] See in point European Court of Human Rights (ECtHR), 27 September 2011 *Menarini Diagnostics S.R.L v Italy,* Appl. N. 43509/08, paras. 40-45 : "*l'AGCM a prononcé en l'espèce une sanction pécuniaire de six millions d'euros, sanction qui présentait un caractère répressif puisqu'elle visait à sanctionner une irrégularité, et préventif, le but poursuivi étant de dissuader la société intéressée de recommencer. En outre, la Cour note que la requérante souligne que le caractère punitif de ce type d'infraction ressort aussi de la jurisprudence du Conseil d'Etat … A la lumière de ce qui précède et compte tenu du montant élevé de l'amende infligée, la Cour estime que la sanction relève, par sa sévérité, de la matière pénale*". With

because the rules on competition law are, at least up to the Lisbon reform, the only types of rules at the EU Treaties' level (so-called "primary law") aimed at fighting *contra legem* behaviors according to the Treaties' objectives.

The legislative activity at the Union's level is another important aspect to analyze. At this level there is a long-standing practice of the legislative institutions to put in place acts and provisions that entail specific obligations directly into national legal systems via the implementation of such rules by national authorities. The direct effect of the (then) Economic European Community (EEC) regulations into Member States' legal systems implies that the States must grant full effectiveness to the relevant provisions enshrined in such European sources in their own legal systems. This was clearly stated ever since the *Amsterdam Bulb* case, when, beside the "horizontal" character of EU regulations, i.e., their direct efficacy towards individuals in the absence of any act of transposition by national authorities[13], the ECJ referred also to article 5 of the EEC Treaty dealing with the duty of fair cooperation for national authorities. The latter are forced to take all appropriate measures, whether general or particular, to ensure the implementation of relevant regulation's provisions. The case at hand dealt with an EC regulation on the international marketing of flowers bulbs. In that context, the Court acknowledged that such objective might be pursued also by means of sanctions with a criminal law meaning, in accordance with each Member State's legal system and legislation. However, on that occasion, the Court didn't find any duty for member States to choose a specific means of their legislation for implementing the obligations stemming from an EC legislative act. Such kind of duty was subsequently made clearer in the *Greek Maize* Case decision[14]. The decision on this case indicates more specifically and clearly – although in a broad sense – the characters of national measures aimed at implementing the relevant

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this regard, the ECtHR refers in particular to the judgment of 21 February 1984, *Öztürk c. Allemagne,* series A n° 73. The criminal character of competition law fines has been accepted by EU courts, see e.g., CJEU of 8 July 1999, C-199/92 P, *Hüls AG v. Commission*, ECLI:EU:C:1999:358, at para. 150: " [...] *given the nature of the infringements in question and the nature and degree of severity of the ensuing penalties, the principle of the presumption of innocence applies to the procedures relating to infringements of the competition rules applicable to undertakings that may result in the imposition of fines or periodic penalty payments*". This approach has been later confirmed by the CJEU 28 June 2005, case C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, *Dansk Rørindustri v. Commission*, ECLI:EU:C:2005:408, under para. 202: "*the principle of non-retroactivity of criminal laws, enshrined in Article 7 of the ECHR as a fundamental right, constitutes a general principle of Community law which must be observed when fines are imposed for infringement of the competition rules and that that principle requires that the penalties imposed correspond with those fixed at the time when the infringement was committed".* For an overview, D. GERARDIN, D. HERNY, *The EC fining policy for violations of competition law: An empirical review of the Commission decisional practice and the Community courts' judgments,* The Global Competition Law Center, College of Europe, Working Paper 03/05, 2005; A. CORDA, *Legislazione antitrust e diritto penale: spunti problematici in ambito europeo,* in *Criminalia*, 2009, p. 485; C. TELEKI, *Due Process and Fair Trial in EU Competition Law,* the Hague, 2021.

[13] The Court of Justice stressed that: "*The direct application of a Community regulation means that its entry into force and its application in favor of or against those subject to it are independent of any measure of reception into national law*", CJEU 2 February 1977, *Amsterdam Bulb BV v. Produktschap voor Siergewassen,* 50/78, ECLI:EU:C:1977:13.

[14] CJEU 21 September 1989, C-68/88, *Commission v. Hellenic Rep.,* ECLI:EU:C:1989:339. See among many others, M. TIMMERMAN, *'Balancing effective criminal sanctions with effective fundamental rights protection in cases of VAT fraud: Taricco',* in *Common Market Law Review*, 2016, p. 779.

obligations deriving from a legislative act of the European Community. According to the ECJ, national measures should be *effective, proportionate and dissuasive.* In addition, the aims pursued by the relevant Union act should be "assimilated" under the implementing national acts. In the end, the Court agreed with the Commission: under the duty of sincere cooperation *"Member States are required* – that is to say, forced – *to penalize any persons who infringe Community law in the same way as they penalize those who infringe national law. The Hellenic Republic* [the member State who infringed relevant Community obligations] *failed to fulfil those obligations by omitting to initiate all the criminal or disciplinary proceedings provided for by national law against the perpetrators of the fraud and all those who collaborated in the commission and concealment of it"*[15]. The *Greek Maize* Case dealt with due payments to the Commission of the agricultural levies and default interests on the imports of Yugoslav maize. The Greek government omitted to specify that some quotas of maize commercialized from Greece into the European Community market came from former Yugoslavia instead of being produced directly in Greece. In the Court's reasoning a clear reference was made to criminal law as a feasible tool for Member States to make obligations stemming from EU legislative acts fully effective in their legal system under the so called *effet utile* criterion[16]. Furthermore, the case is also meaningful for us as it refers to *frauds* against specific Community's interests, that is to say, the duty of the national government concerned to correspond to the Commission the agricultural levies and default interests on the imports of Yugoslav maize (as such imports were, at the time, specifically regulated under the legislative act of the Community, because they were considered as Community's "own resources").

The above confirms that Union institutions aim at ensuring that restrictive measures, with particular reference to those addressed on individuals and undertakings under art. 215 n. 2 TFEU, be equipped with full effectiveness inside each Member State. The choice of placing relevant implementing measures under the criminal procedural law purview provides some guidance on how sanctions are meant at Union level, despite the still many differences in the Member states on how such measures should be applied, if under procedural administrative, criminal or civil law means.

3. From *Kadi* to *Rosneft* and beyond

3.1. The right for individuals to challenge Union sanctions

Following the Lisbon reforms (in addition to the mentioned reconsideration of the whole subject-matter after the *Kadi* case) several restrictive measures adopted at the

[15] See *Greek Maize* case, note 14 above, at para. 22.

[16] T. TRIDIMAS, *General principles of EU Law* Oxford 2006, p. 421; U. ŠADL, *The Role of* Effet Utile *in Preserving the Continuity and Authority of European Union Law: Evidence from the Citation Web of the Pre-Accession Case Law of the Court of Justice of the EU,* in *European Journal of Legal Studies*, 2015, p. 18; I. INGRAVALLO, *L'effetto utile nell'interpretazione del diritto dell'Unione europea*, Bari, 2017.

Union level have been challenged by the same measures' addressees before the General Court (GC) of the Union under the conditions set by art. 263 para. 4 TFEU. On several occasions the GC judgments have been subsequently brought to appeal before the CJEU. As a general remark, one should stress that both GC and the CJEU are inclined to widen the possibility for individuals to challenge measures adopted by the Union not only if such measures are apt to affect addressees' interests/rights but also whenever such measures lack some of the basic characters of acts adopted by public authorities. In this case, art. 296 TFEU comes into play, because of a general requirement for any act of Union's institutions, and in particular for those acts performing restrictive effects on individuals, to be reasoned [17] .

Legal action must be granted at same Union's level under the general provisions of the Charter of fundamental rights of the Union[18]. A debate on this is however proved ever since the different paths taken by Advocate General Jacobs, on the one hand, and the CJEU, on the other, in the well-known *Jego-Queré* case[19]. In the meanwhile, following Lisbon reforms, art. 275 TFEU has provided for a path devoted to actions for the annulment of restrictive measures contained in CFSP acts. Moreover, in *Rosneft* the CJEU acknowledged the opportunity for national judiciaries to submit a request for a preliminary ruling to the same CJEU, at least any time the national judiciaries are doubtful on the *validity* of the relevant act (or a *decision*) of the Union, including where such a question relates with a *decision* adopted under CFSP competences. In the court's

[17] One should recall in particular the *Kadi II* decision, CJEU 18 July 2013, joined cases C-584/10 P, C-593/10 P, C-595/10 P, ECLI:EU:C:2013:518, para. 116: *"the obligation to state reasons laid down in Article 296 TFEU entails in all circumstances, not least when the reasons stated for the European Union measure represent reasons stated by an international body, that that statement of reasons identifies the individual, specific and concrete reasons why the competent authorities consider that the individual concerned must be subject to restrictive measures"*, on this same decision see also, A. ROSAS, *EU Restrictive measures against third States: value Imperialism, Futile Gesture Politics or Extravaganza of Judicial Control?*, in *il Diritto dell'Unione europea*, 2019, n. 4, p. 637.

[18] The right for individuals and legal persons to challenge Union's acts has been extended, together with other fundamental rights established in the Charter of fundamental rights of the European Union, also to the area of international relations of the Union under articles 3(5) and 21 Treaty establishing the European Union, TEU (L. BARTELS, *The EU's Human Rights Obligations in Relation to Policies with Extraterritorial Effects,* in *European Journal of International Law,* 2015, vol. 25, n. 4, p. 1071), though in some other views (E. CANNIZZARO, *The EU's Human Rights Obligations in Relation to Policies with Extraterritorial Effects: A Reply to Lorand Bartels,* in *European Journal of International Law*, 2015, vol. 25, n. 4, p. 1093) the same treaties do not clearly provide the Union with sharp competences to "*export"* individual rights, such as that to challenge public authorities' decisions, into the field of international relations. Nonetheless, according to the Communication on Human Rights and Democracy at the Heart of EU External Action – Towards, a More Effective Approach, COM(2011)886 final, 12 Dec. 2011, at para. 7: "*EU external action has to comply with the rights contained in the EU Charter of Fundamental Rights which became binding EU law under the Lisbon Treaty, as well as with the rights guaranteed by the European Convention on Human Rights.*"

[19] CJEU 1 April 2004, C-263/02 P, ECLI:EU:C:2003:410. Indeed, as is known, while, according to Jacobs, right to challenge a legislative act of the Union must be attributed to anyone "*individually concerned by a Community measure where, by reason of his particular circumstances, the measure has, or is liable to have, a substantial adverse effect on his interests.*", the Court, on the other hand, departed from same Jacobs indications in accordance with the allegedly "*complete system of protection*" under the Treaty establishing the European Community (TEC), see *ex multis*, K. LENAERTS, *The Rule of Law and the Coherence of the Judicial System of the European Union,* in *Common Market Law Review,* 2007, vol. 44, p. 1625.

reasoning: "*a reference for a preliminary ruling on the validity of a measure plays an essential part in ensuring effective judicial protection, particularly, where, as in the main proceedings, both the legality of the national implementing measures and the legality of the underlying decision adopted in the field of the CFSP itself are challenged within national legal proceedings"*[20] .

While it remains doubtful if such a legal framework might be read extensively (at least not *literally* and even beyond the extensive reading under *Rosneft*), one should accept that the option for individuals to ask for damages presumably suffered from restrictive measures of the Union might follow the same logic of the *Rosneft* approach, that is to say, that of allowing individuals to challenge – at least for the sake of the main procedural rights granted under both the Charter on fundamental rights of the European Union and the European Convention on human rights (art. 6 and 13) – an act of the institutions, wide in scope as it may be, if it encroaches even just indirectly other individual/economic interests. However, in the many cases dealing with relations with Russian and Ukrainian persons who presumably infringed general obligations under the law of the Union in recent years and considering the fair balance between sanctions imposed by the Union alternatively on Russian and on Ukrainian nationals[21], one can infer that the CJEU has mostly acknowledged the right for individuals to protect their interests against the effects of same Union's measures, both in terms of the procedural right to challenge such restrictive measures before the Union's judiciary and, in a number of cases, because relevant Union acts breached several "substantive" rights of the targeted individuals, including property right or the right to get a fair administrative proceeding (including investigations and restrictive acts for misuse of public funds and corruption in the public sector).

The *Rotenberg* decision[22] exemplifies quite plainly above considerations. Mr. Rotenberg was targeted by Union sanctions on the ground that he, as a businessperson in Ukraine who benefitted from relationship with one of the Russian decision-makers responsible for the re-annexation of Crimea to Russia, in the context of the construction of a new bridge connecting Crimea to Russia: on this, the Council failed however to prove before General Court of the Union that the addressee of Council's measures did effectively control the said company. In addition, the sanctions were not sufficiently based on the proof that Russian government effectively started to plan annexation of Crimea before the conclusion of agreement with the relevant company in charge for such construction works. Consequently, the persons targeted by the sanctions could not have

[20] CJEU 28 March 2017, C-72/15, ECLI:EU:C:2017:236 see, *ex multis,* S. POLI, *The Common Foreign Security Policy after Rosneft: Still imperfect but gradually subject to the rule of law*, in *Common Market Law Review*, 2017, p. 1799.

[21] For an overview, S. POLI, *Le misure restrittive dell'Unione europea per sviamento di fondi pubblici alla luce della sentenza Azarov,* in *European Papers,* 2016, Vol. 1, No 2, p. 715; same A., *L'evoluzione del controllo giurisdizionale sugli atti PESC intesi a consolidare la rule of law: il caso delle misure restrittive sullo sviamento di fondi pubblici,* in *il Diritto dell'Unione europea*, 2019, n. 2, p. 301; C. MASSA, *EU's restrictive measures in Ukraine before the CJEU: taking stock*, in *Eurojus,* 2021, n. 1, p. 31.

[22] CJEU30 November 2016, T-720/14, *Arkady Romanovich Rotenberg v Council of the European Union*, ECLI:EU:T:2016:689.

been aware – at least not formally – of the involvement of those decision-makers in the preparation of the invasion of Crimea (and therefore would not have been eligible to be sanctioned). In this case, then, the whole of the proceeding, including investigations under administrative information on the true involvement of the addressee of the relevant restrictive measures, was ill-founded and apt to endanger same person's right to a fair administrative proceeding aimed at restricting its economic activity.

The judge in Luxembourg is however ready to confirm the legitimacy of Union's sanctions regimes as well, particularly where individuals' substantive rights cannot prevail on major public policy aims, such as those basically and in most cases pursued by those same regimes. In the *RT France* case[23], the right of an undertaking to prolong its broadcasting activities (related, in the complainant's view, with freedom of expression and information, freedom of enterprise and the principle of non-discrimination based on nationality) was confronted with the implementation of relevant restrictive regimes against Russia, due to connections between same companies, the Russian government and its activities, apt, in the Union institutions' view, at impairing Ukraine security and sovereignty. At para. 160 the GC has held that "... *a balancing of the interests at stake demonstrates that the inconveniences caused by the temporary ban on the broadcasting of content are not disproportionate to the objectives pursued, which in turn correspond to objectives of general interest*".

3.2. Recent developments on Action for damages against Union Restrictive measures

In above chapters we tried to illustrate how ever since the *Kadi I* and *II* decisions the Union has progressively expanded its efforts in this area of Law. For this, sanctions regimes against Russian and Ukraine nationals are particularly exemplar as true Union's regimes, autonomous from both international and national ones. This entails an increasing effort from Union's institutions on the path to ensure – as proved also by Commission's initiatives in the AFSJ [24] – effectiveness of its own sanctions' regimes: on the other side, autonomous sanctions under art. 215 TFEU entail that Union's accountability inevitably increases.

Following above considerations, one should assume that the opportunity for individuals to ask for damages suffered from Union restrictive measures follows the same logic of the Rosneft case, that is to say, that of allowing individuals to challenge an institutional act, as wide in scope as such act may be, if it breaches other individual interests, primarily as far as the procedural rights of individuals are concerned, but not only those rights. Though reaffirming the well-established *Foto-Frost*[25] approach to cases where the *validity* of an act of the Union is challenged before a national judiciary (who

[23] CJEU of 27 July 2022, T-125/22, ECLI:EU:T:2022:483.
[24] See *supra*, Chapter I.
[25] Judgment of 22 October 1987, 314/85, ECLI:EU:C:1987:452, for a recent overview M. MOSCHETTA, *Il rapporto tra rinvio pregiudiziale di validità e ricorso d'annullamento alla luce della "deroga TWD. Nota a commento della sentenza Georgsmarienhütte,* in *Eurojus,* 2019, p. 1.

must give effectiveness to Union legislative acts, unless where same judge raises doubts on such acts' legality, with the following duty for to raise the question before the sole jurisdiction of the Court in Luxembourg), the CJEU has extended this steady case law also to restrictive measures adopted under CFSP: this is also meaningful in the light of art. 40 Treaty on the European Union (TEU) which was meant to establish a "Chinese wall" between CFSP and other areas of Union law. So, under Rosneft dictum, this "wall" apparently protecting CFSP, is not so tough as it seemed and is even less solid in cases where the CJEU is called to assess, by means of a preliminary ruling under art. 267 TFEU and in the light of the *Foto-Frost* formula, the validity of Union's restrictive measures, even when the latter are inserted in CFSP acts[26].

Meanwhile, recent case-law has progressively accepted the opportunity for individuals hit by Union's sanctions to submit an action for damages before same CJEU[27]. As is known and been amply discussed [28], in *Bank Refah Kargaran v. Council* [29] the same Court changed its previous approach also in the light of the changes meanwhile achieved through Lisbon's reforms in this field. So, the same Court confirmed its jurisdiction on action on damages when Union acts, including those adopted in the pursuit of CFSP aims, might directly harm physical or legal persons.

Following this trend, the CJEU tackled, in the *HTTS Hanseatic Trade Trust* saga, several aspects of individuals' right of action for damages against restrictive measures of the Union. In the 2019 decision[30], the Court gave some interesting insights and balanced quite fairly the opposite positions of the claimant and of the defendant institutions. After a long debate stemming from the rich Union legislation aimed at restricting the Islamic Republic of Iran activities on the proliferation of nuclear-atomic energy for military purposes, the case was raised by a German firm that was listed in Union's legislative acts addressed to an Iranian company. Indeed, the General Court (GC) on 2011[31] annulled a Union's legislative act as far as it concerned HTTS with effect as from a certain date (7 February 2012), so as to give the Council the opportunity to provide additional reasons for the re-listing of that company. In this regard, the General Court held that to annul that

[26] See, *ex multis*, P. KOUTRAKOS, *Judicial Review in the EU's Common Foreign and Security Policy*, in *International and Comparative Law Quarterly,* 2018, vol. 67, p. 1.

[27] This was earlier rejected by the same General Court of the Union of 23 November2011, T-341/07, *Sison* ECLI:EU:T:2011:687.

[28] *Ex multis*, C. ECKES, *Constitutionalising the EU Foreign and Security Policy: the ECJ accepts jurisdiction over claims for damages under the Common Foreign and Security Policy (CFSP),* in *VerfBlog* 2020/10/18, https://verfassungsblog.de/constitutionalising-the-eu-foreign-and-security-policy/, M.E. BARTOLONI, *Restrictive Measures under Art. 215 TFEU: Towards a Unitary Legal Regime? Brief Reflections on the Bank Refah Judgment,* in *European Papers,* 2020, Vol. 5, n. 3 p. 1359, N. BERGAMASCHI, *La sentenza Bank Refah Kargaran: l'evoluzione del controllo giurisdizionale sulla PESC*, in *European Papers,* 2020, Vol. 5, n. 3, p. 1371, T. VERELLEN, *In the Name of the Rule of Law? CJEU Further Extends Jurisdiction in CFSP (Bank Refah Kargaran)*, in *European Papers,* 2021, Vol. 1, N. 1, p. 17. For a broader view on action for damages in other areas on Union law, including CFSP, M. FINK, *The Action for Damages as a Fundamental Rights Remedy: Holding Frontex Liable,* in *German Law Journal*, 2021, n. 21, p. 532.

[29] CJEU of 6 October 2020, C-134/19 ECLI:EU:C:2020:793.

[30] CJEU of 10 September 2019, *HTTS Hanseatic Trade Trust & Shipping GmbH v Council*, C-123/18 P, ECLI:EU:C:2019:694.

[31] General Court of 7 December 2011, T-562/10, *HTTS v. Council,* EU:T:2011:716.

legislative act with immediate effect might have caused serious and irreparable harm to the effectiveness of the restrictive measures imposed by the regulation against Iran, since "*it cannot be excluded that, as regards the substance, the imposition of restrictive measures on [HTTS] could nonetheless be justified*"[32].

The story followed with a series of actions by same HTTS and the main addressees of the restrictive measures. Most, if not all, of relevant General Court decisions repealed the Union restrictive measures. On this background, HTTS raised an action for damages before the GC against the Union. The GC, however, quashed such request[33]. Among the many reasons, it might be interesting to mention here that the GC based its decision, on the one hand, on the need that the claimant proves that the defendant institutions committed a particularly *flagrant and inexcusable failure to comply with the law*[34], and, on the other hand, on the fact that the previous annulment of Union acts (as confirmed by all the previous abovementioned case-law) was as such not apt at giving rise to a non-contractual liability of same Union institutions: this is on the basis of a well-known understanding of the two kind of actions as mutually separated due to a true *autonomy* of the same action in damages as aimed at allowing individuals to challenge any Union acts specifically on such acts' presumptive harmful effects, *in conformity with general principles common to the Member States legal systems*[35]. Among the reasons for rejection of the action on damages, the GC mentioned the need to prove the effective ownership and control performed on the complainant by the main company (IRISL Gmbh) to which the sanctions regime was addressed as a whole. In fact, in GC's opinion, the Council, as a defendant, evidenced quite satisfactorily that, inter alia, the director of HTTS previously carried out the functions of legal director of IRISL and that HTTS had the same address as IRISL Europe GmbH. For GC, this amounted to a set of indicia that were sufficiently precise and consistent for it to conclude that it was at least plausible that HTTS was controlled by and/or was acting on behalf of IRISL[36].

Above all these issues, the CJEU in the subsequent 2019 decision[37] examined in particular if a sufficiently serious breach of a rule of law intended to confer rights on

[32] See judgment on note 32 above, paras. 41-42.

[33] General court of 13 December 2017, T-692/15, *HTTS v. Council,* ECLI:EU:T:2017:890.

[34] See in part. para. 46 of this judgment: "(…) *in assessing the conduct of the institution concerned, the Court, hearing an action for damages brought by an economic operator, is also required, having regard in particular to Article 215(2) TFEU, to take account of that fundamental objective of Union foreign policy, except where the operator is able to establish that the Council failed to comply with its mandatory obligations in a flagrant or inexcusable manner, or that it infringed, again in a flagrant or in excusable manner, a fundamental right recognised by the Union*".

[35] For an overview, *ex multis*, judgments CJEU 2 December 1971, 5/71, *Zuckerfabrik Schöppenstedt v Council,* ECLI:EU:C:1971:116, para. 3; 23 March 2004, C-234/02 P, *Ombudsman v. Lamberts* ECLI:EU:C:2004:174, in part. para. 49 ff.; General Court of 18 September 2014, T-168/12, *Georgias and Others v Council and Commission,* ECLI:EU:T:2014:781, para. 32.

[36] At para. 57 the GC in its judgment of 2017, reminds that "*the Council must assess whether an entity is 'owned or controlled' on a case-by-case basis, by reference, inter alia, to the degree to which the entity concerned is owned or controlled, and that the Council has a certain margin of appreciation in this regard*" (CJEU of 13 March 2012, C-380/09, P, *Melli Bank v Council* ECLI:EU:C:2012:137, at paras. 40 to 42).

[37] See case CJEU of 10 September 2019, C-123/18 P, ECLI:EU:C:2019:694, in the point where same Court recalls that "*the requirement that there be a sufficiently serious breach of a rule of EU law, in order to give*

individuals occurred in the case at hand, considering that such breach implies that the institution concerned manifestly and gravely disregarded the limits set on its discretion[38].

In general, for the Court one of the problems met in the HTTS saga dealt with the fact that the "damage" claimed by the complainant against Union's institutions has, in general, a fluid meaning that may evolve in time. So, for the CJEU, the General Court didn't assess in a sufficiently careful way if the claimant suffered such a kind of damage as from the first acts adopted by the Council and during the whole of the developments around the position of IRISL as the main addressee of the sanctions' regime. This evaluation, in fact, should be assessed separately from the annulment of relevant acts of the Union dealing with the sanction regime in question.

In the more recent decision adopted on July 7th 2021[39] following the decision of the CJEU to refer back the case, the same GC stated that, though an action for damages should be considered as one of the more basic and general means of defense of individuals' rights against public authorities (at least in a developed legal system), the kind of infringement foreseen at art. 340 TFEU is not entirely comparable to what is "usually" accepted at the national level in this area of law (non-contractual liability). In fact, such infringement, in order for it to come under same art. 340 TFEU ambit, should be particularly *flagrant and inexcusable*. And this, in the same GC's view because the aims of Union's external action under art. 21 TEU can be achieved, inter alia, by means of restrictive measures, also at the cost, whenever required, of individuals' rights or economic interests, if such individuals infringed, even under a just *sufficient* evidence, obligations to which same Union is bound under same art. 21 TEU and stemming from relevant Union's sanctions regime.

The conclusion above is based inter alia on the premise that restrictive measures under current art. 215 TFEU do not share same characters of other means addressing individuals' behaviors contrary to basic Union's aims and obligations. In fact, in the Lisbon Treaty framework, the pursuit of wider political objectives (e.g., the protection of the international security and peace) as well as the interplay between CSFP and other Union's objectives, notwithstanding art. 40 TEU, is more clearly established; besides, such interactions are clearly stated also by the same General Court in the mentioned HTTP decision.

The *damage* possibly and often suffered by an individual under a sanctions regime based on art. 215 TFEU has a peculiar character in the context of the action for non-contractual liability of the Union, considering how such sanctions are mostly referred to major objectives pursued by the same organization. This might explain something on the

rise to a non-contractual liability of the Union, stems from the need to strike a balance between, on the one hand, the protection of individuals against unlawful conduct of the institutions and, on the other, the leeway that must be accorded to the institutions in order not to paralyze action by them. That balancing exercise proves all the more important in the field of restrictive measures, in which the obstacles encountered by the Council in terms of availability of information often make the assessment that it must carry out particularly difficult".

[38] See p. 20 of Advocate General Pitruzzella opinion of 5 March 2019, ECLI:EU:C:2019:173.

[39] General Court of 7 July 2021, T-692/15 RENV, ECLI:EU:T:2021:410, in part. paras. 42-66.

substance of Union system of defense of individual rights, though considering the significant effort in assessing that an action for damage is *as such* applicable to this area of Union law, regardless of the lack of any clear reference to such kind of action in the treaties.

4. The Trend: the Union Global Human Rights Sanctions Regime

In this context, at Union's level, the Global Human Rights Sanctions Regime (EU HRSR) under Council Regulation (EU) 2020/1998 concerning restrictive measures against serious human rights violations and abuses is currently in force[40].

It is first of all wise to notice that above acts are based on the one hand, on art. 29 TEU (CFSP) and, on the other, on article 215 TFEU.

This new legislative framework follows a "thematic" approach for grave international law and human rights violations. Such "new" approach to Union's sanctions ends the "country" or "individual" logic (art. 215 paras. 1 and 2 TFEU, giving relevance to sanctions' addressees) and applies in full an "substantive" logic. The HRSR is inspired on Statute of Rome approach (and also on a preventive approach) to crimes considered as relevant under international law due to their accepted character and gravity. However, it should be reminded that effectiveness in internationally prosecuting such crimes has been proved difficult in consideration of the many conditions under same Rome Statute, including the subsidiary character of the International Criminal Court jurisdiction[41]. More tangible progress on the prosecution of particularly serious breaches of international duties has been achieved under the Convention against torture: in fact, the Convention allows, without forcing, State parties to assume criminal jurisdiction over cases of torture on the basis of the nationality of the victim ("passive personality principle")[42].

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[40] Council Decision (CFSP) 2020/1999 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses, in OJ L 41/0I, 7.12.2020, p. 13; *Council Regulation* (EU) 2020/1998 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses, OJ L 41/I, 7.12.2020, p. 1. See ex multis C. ECKES, *EU global human rights sanctions regime: is the genie out of the bottle?*, in *Journal of Contemporary European Studies,* DOI: 10.1080/14782804.2021.1965556; H. AL-NASSAR, E. NEELE, S. NISHIOKA, V. LUTHRA, *Guilty Until Proven Innocent? The EU Global Human Rights Sanctions Regime's Potential Reversal of the Burden of Proof*, in *Security and Human Rights,* 2021, p. 1.

[41] Under such "subsidiary" character of the ICC competence, same ICC cannot precede national authorities' investigative and judiciary activities, unless such authorities have failed to initiate any of such activities notwithstanding relevant information from ICC Prosecutor office on the infringement of any of the Statute of Rome's obligations committed by national officials, M.M. EL-ZEIDY, *Admissibility in International Criminal Court,* in W.A. SCHABAS, N. BERNAZ (eds.), *Routledge Handbook of International Criminal Law*, UK, USA, Canada, 2011, p. 211.

[42] D. M. AMANN (ed.), *Benchbook on International Law*, in part. *Jurisdictional, Preliminary, and Procedural Concerns,* American Society of International Law, 2014, p. II-A 1, accessible https://www.asil.org/benchbook. Indeed, under art. 5(1)(c) of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at: https://www.refworld.org/docid/3ae6b3a94.html [accessed 6 October 2022]), States are authorized but not obliged to establish criminal jurisdiction on the basis of the passive personality principle. Considering that, in the case of torture, we are dealing with international *ius cogens*

Above difficulties do not arise in the Union's framework according to, on the one hand, the serious obligations member states of the Union must comply with under Union legislative acts and, on the other, the fact that any infringement of such obligations should be directly sanctioned by national authorities, be them administrative or judiciary, exception made for other kind of EU obligations stemming from Union acts such as directives, whose full implementation by the Member States is monitored by Union institutions under, e.g., infringement proceedings[43]. Anyhow, such problematic issues become more evident exactly under a broader approach to sanctions. On the one hand, wider sanctions regimes allow institutions to autonomously assess whether to sanction (or not) one or more specific infringements occurred "horizontally" in different geographical areas and against a not always definite list of individuals. On the other side, such approach may prove being inaccurate in the light of the relevant means of procedural law applicable in such cases, even considering the possibility that "horizontal" sanctions hit third parties not directly involved into such regimes. It should then be addressed the question of to what extent such broader regimes are consistent with other relevant Union treaties objectives, including procedural standards dealing with individuals' right of access to both administrative and judicial means of redress. On the other hand, HRSR is clearly inspired on a preventive (and presumptive) approach, as such potentially harmful also for individuals not directly or not *instantly* involved by the regime. This might be challenging in either directions.

As for an action in annulment, in many cases the evidence of being *individually* hit by the restrictive measures under an HRSR might be impossible to prove for anyone who admittedly suffered indirect or only subsequent effects (as such implicitly arising from any broad sanction regimes) from implementation of same HRSR. This falls in the logic of legislative acts of the Union and action for redress against such acts[44].

As for a reimbursement action, in general, as we have mentioned, the plaintiff must fulfil a *particularly rigorous burden of proof,* including, beside the proof of the Union institutions' liability and of the causal link between the Union legislative source and the damage, that such *damage* be particularly meaningful, beyond what is normally accepted at national level in similar cases. Indeed, as the same *HTTS* case proved, a claimant who presumably suffered damages from the sanctions' regime, should demonstrate that the Council committed a particularly *grave violation of a rule aimed at conferring rights on individuals*. In such cases, the GC repeated that the error in law of the institutions should be, as mentioned, *blatant and flagrant.* On the opposite, the Council of the Union, in order to react to same action for damages, must provide *indications* of an only *sufficient link*

obligations under the meaning of art. 53 of the Vienna Convention on the Law of the Treaties, this should enlighten enough on the difficulties to acknowledge international jurisdiction on the other crimes with international law relevance but still not clearly placed (at least in broad terms) amongst *ius cogens* obligations.

[43] On this, see also what has been described above, on the Union's competence in the field of judicial cooperation on criminal law and on the *effet utile* criterion.

[44] See CJEU of 1 April 2004, *Jego Queré* and P.K. LENAERTS, *The Rule of Law and the Coherence of the Judicial System of the European Union*, see *supra* n. 19.

between the claimant (though if the relevant measures were principally addressed to another company), his/its funds and the regime to be fought[45] .

Also, and once more, in both cases – action for annulment and action for damages – the Union institutions and the CJEU might refer to art. 21 Treaty of the European Union (TEU) with the view of justifying negative consequences, even significant ones, deriving, for some operators, from decisions implementing acts adopted by the Union for the purpose of achieving EU general goals such as those under mentioned art. 21 TEU.

So, under procedural law meaning, the above framework coming from the HRSR, looks rather (maybe too much) in favor of the institutions of the Union.

5. Brief conclusions

Though the European Union acts can as such pursue general aims that, in some cases, might go beyond the boundaries normally surrounding a legislative act at the national level, it remains unclear to what extent this might be stretched under same Union law and in particular to what extent relevant (mostly procedural, and sometimes substantive) rights of individuals could suffer from such a broad understanding of the European Union prerogatives in this field. The HRSR raises doubts exactly in such direction and considering the many limitations for action of individuals against legislative acts of the Union, both as an action for annulment and as an action for damages (though considering the differences between the two kinds of action). In this context, action in damages seems reasonably extendable to CFSP decisions, if connections between such decisions and the subsequent acts under art. 215 TFEU result direct as far as the claimed damages are concerned, and exactly in order that same action in reimbursement be fully legitimized. It is wise to remind that latter observation, in strict legal terms, applies irrespective of whether such an action for damages may succeed (or not) on the substance.

According to a recent Commission's proposal, sanctions adopted at European Union level might be enforced in the same Union (i.e., in the Member states) by means of procedural law tools established under mentioned art. 83 TFEU. Such a possibility, if it would pass the subsequent institutional proceedings, will further strengthen the interaction between the different areas of law (sanctions regimes and criminal procedural law) certainly providing for a more consistent and effective legal framework. However, it seems questionable if such a proposal might as such be referred also to restrictive measures with "purely" commercial/economic policy aims. On the other hand, same proposal raises issues related to the protection of corresponding procedural rights of individuals involved by the effects of the measures (confiscation, freezing of assets, other investigative tools, etc.) "instrumental" to the enforcement of relevant sanctions under art. 215 para. 2 TFEU. Again, the relevant decisions adopted by national authorities in accordance with relevant EU acts will remain subjected to judicial review, with a greater

[45] See Chapter II.2, above.

possibility that the CJEU be involved e.g., under the reference for a preliminary ruling as a tool for “genuine” reading of the relevant EU legislation (art. 267 TFEU), whenever interpretative doubts around such instrumental measures might arise before same national judiciaries.

ABSTRACT: The paper investigates how the effectiveness of the European Union’s action and its accountability are tackled in the field of international sanctions regimes. This is particularly meaningful for sanctions targeting individuals and private companies, considering the negative outcomes that international sanctions have, sometimes even just indirectly, on both. While, on the one hand, the Court of Justice of the EU has expanded the right to claim damages that individuals might suffer from sanctions, the enactment of more general regimes (such as the Global human rights sanctions regime) might have adverse effects on those individuals’ defense rights. In this context, the Commission is in search of solutions to provide the Union’s sanctions with full effectiveness also by means of criminal procedural law tools.

KEYWORDS: International sanctions – Judicial Cooperation on criminal law – non-contractual liability – Global Human Rights Sanctions Regime.