

Knockin' on heaven' door: the CJEU on the restrictive measures against Russia

**Dr. Kirill Entin, Centre for Comprehensive European and
International Studies (NRU “Higher School of Economics”)**



Approach

- A focus on ***autonomous*** restrictive measures adopted ***with regard to third countries***
 - Analysis of the judgments relating to Russian sanctions (*Rosneft, Kiselev, Rotenberg*) used as a case-study
 - Main goal – to underline and discuss the legal problems linked to the imposition of EU autonomous restrictive measures in the light of EU Law
-



Structure

- Part I – an overview of the different kinds of ‘sanctions regimes’
 - Part II – discussion of the legal basis and the procedure
 - Part III – jurisdiction of the CJEU
 - Part IV – analysis of the Court’s case-law in the light of the recent judgments
-



Procedure

Art.215 TFEU: a unique procedure constituting a 'bridge' between TEU and TFEU provisions

- The Council fails to take full advantage of it as the CFSP decision and the Regulation are identical.
 - Lists of targeted persons contained already in CFSP decision makes the Commission involvement and the QMV procedure for the adoption of the regulation useless – one of the arguments in the *Rosneft* case.
 - Possibility of having separate lists for travel restrictions and for fund-freezing measures.
 - Opportunities for the EU: stronger and more consistent sanctions policy.
-



Jurisdiction of the Court

- Art.275.2 TFEU enables the Court to control the legality of not only regulations, but also CFSP decisions
- *Rosneft* case: the CJEU accepts the possibility to challenge the validity of restrictive measures indirectly. But! the applicants still need to bring an action for annulment as well (TWD). sole advantage - duration of proceedings.
- *Rosneft* case: sectoral sanctions may be subject to review if they target the applicant individually (ex. individually named companies in the oil sector)



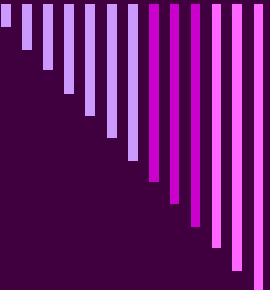
Human rights

- In principle full review - same standards for terrorist sanctions and those directed against third countries
 - Procedural rights (obligation to notify, obligation to state reasons). The Court checks, i.a., whether the statement of reasons is sufficient
 - Right to property;
 - Proportionality;
 - *Kiselev case*: freedom of expression. Does the qualification of the tv programs as propaganda matter?
-



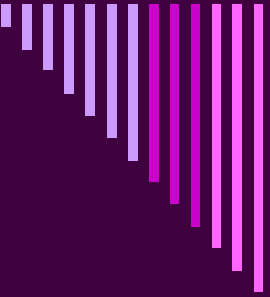
Checking whether the facts are materially accurate

- Burden of proof on the Council
 - *Rotenberg* case: the Court fails to prove that the applicant controls Giprotransmost through another company - interfax report merely referring to other articles
-



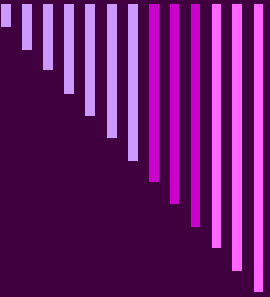
Checking whether the applicants fall under the listing criteria

- Limited review: broad discretion of the Council - manifest error of assessment standard
 - *Rotenberg* case and 'persons associated with the decision-makers' criterion:
 - Does it matter that the decision-makers themselves are not under sanctions?
 - Does the Council need to prove that the connection continued after the incriminated event?
 - *Rotenberg* and *Kiselev* cases: what does 'active support' mean?
-



Restrictive measures and the Partnership and Cooperation Agreement

- An agreement still in force and having direct effect (*Simutenkov case*)
 - Art.99 exception: 'nothing in the agreement is to prevent a party from taking measures it considers necessary for the protection of its essential security interests in times of war or serious international conflict...'
-



Restrictive measures and the Partnership and Cooperation Agreement II

- Notion of 'war or serious international tensions' interpreted in the *Rosneft* case as not requiring that the events directly affect the territory of the EU
 - Assessment of the seriousness of the situation and compatibility with the objectives pursued
-