

Restrictive measures and the scope of judicial review in the EU legal order

Celia Challet – 9 June 2023

OUTLINE

1. The Court's take on individual listings: the case of family members
2. The request for a preliminary ruling on the ban on legal advisory services (*Jemerak*)

1. Individual listings of family members

- Previous Council practice of listing family members (Myanmar/Syria)
- Renewed emphasis on listing family members of targeted individuals due to the war in Ukraine
- At least 31 family members on the sanctions list linked to Ukraine's territorial integrity (criterion of 'association' with a listed individual)
 - Wide diversity of targeted family members: sons/daughters (16), sibling (1), a mother (1), spouses (7), former spouse (1) life partner (1), stepsons/daughters (2), mother-in-law (1), cousins (2), nephews (1), great-nephew (1)
- At least 13 family members have challenged their listing before the CJEU

1. Individual listings of family members

Setting the scene: the previous CJEU case law on the listing of family members

- *Tay Za* (C-376/10 P):
 - Requirement of a “sufficient link” between the listed individuals and the targeted country (and leaders)
 - Individuals cannot be designated on the sole basis of their family ties with leading business figures in a targeted country
- **Family members of targeted business persons** can be listed if they are ‘associated’ with their family member (e.g. *Foz*, T-296/20).
- **For family members of the leaders** of certain countries, rebuttable presumption that the sole family link allows to benefit from the regime (e.g. *Al Assad*, T-202/12)

1. Individual listings of family members

The *Mazepin* and *Prigozhina* cases

‘Nikita Mazepin is the son of Dmitry Arkadievich Mazepin, former General Director of JSC UCC Uralchem. He was a driver at Haas F1 Team until March 2022, sponsored by Uralchem.

He is a natural person associated with a leading businessperson (his father) involved in economic sectors providing a substantial source of revenue to the Government of the Russian Federation’

(CFSP Decision 2022/397)

‘Violetta Prigozhina is the mother of Yevgeny Prigozhin and owner of Concord Management and Consulting LLC, which belongs to the Concord group, founded and owned until 2019 by her son. She is the owner of other companies with links to his son. She is associated with Yevgeny Prigozhin’

(CFSP Decision 2022/265)

1. Individual listings of family members

The *Mazepin* and *Prigozhina* cases

- **General Court order in *Mazepin* (T-243/22):** sanctions partly suspended
 - No evidence that Nikita Mazepin could not have become a driver without his father's sponsorship + Council relied on past events
 - Nikita Mazepin's listing could not rest on the sole family link and thus seemed *prima facie* unlawful
- **General Court ruling in *Prigozhina* (T-212/22):** listing annulled
 - Council erroneously stated that the applicant still owned the companies mentioned in the statement of reasons
 - Prigozhina could not be considered as 'associated' with her son based on the sole family link
 - Reminder of the possibility to include specific family members listing criteria

1. Individual listings of family members

The *Mazepin* and *Prigozhina* cases

What (preliminary) conclusions to draw from the cases?

- An approach detrimental to the effectiveness of sanctions and the fight against circumvention?
- A realistic assessment of the ‘world’ of Formula 1 and of Russia’s political and economic system?
- Is the case law on Syria transposable to Russia?
- What impact on the Council’s current listing practice?
 - Difficulty to gather sufficient (accurate) evidence
 - Amendment of numerous statement of family members (13 March)
 - Amendment of the listing criteria (5 June): “leading businesspersons operating in Russia and their immediate family members”

2. The ban on legal advisory services

- Request for a preliminary ruling in *Jemerak* (C-109/23)
- Context of the case: refusal by a German notary to authenticate and execute a contract for the sale of title to an apartment between German buyers and a Russian company
 - Does the ban on legal advisory services to Russian legal persons apply to such notarial activities?

2. The ban on legal advisory services

- Referring court's arguments against the application of the prohibition to the notarial authentication of a contract for sale of title of an apartment:
 1. Notarial activities do not constitute 'legal advisory services': notaries do not provide a service but perform public functions delegated to them by the State
 2. Even if notarial activities were to be regarded as a service, they should benefit from an exemption under the ban on legal advisory services
 3. The application of the prohibition would "constitute a serious encroachment on the fundamental right to property, which, at least under German constitutional law, is also enjoyed by foreign legal persons"

2. The ban on legal advisory services

What room for the Commission's interpretation of the scope of restrictive measures?

- Commission [FAQs](#) on the notion of legal advisory services:
 - notarial activities are covered by the prohibition
 - the status of the provider of the services and whether seeking the service is mandated by law are irrelevant
 - the prohibition “applies for example to the authentication of contracts and other declarations directed at the performance of legal transactions”
- Referring court: the Commission's opinion “establishes such a significant degree of uncertainty as to the correct interpretation to be applied [...] that it precludes a court of a Member State from ruling on the basis of a contrary position”