

## ARTICLES

### POST-CRIMEAN TWISTER: RUSSIA, THE EU AND THE LAW OF SANCTIONS

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*EU-Russia relations have never been simple. On the one hand, these two international actors have common values and interests. On the other, they have a conflictual relationship, which has become particularly acute after the Ukrainian crisis that started in 2014. After Ukrainian crisis, the EU and Russia have entered a new era. Unfortunately, it is an era of brinkmanship. This brinkmanship is marked, prima facie, by mutual sanctions. After 20 years of partnership and good neighborliness it sounds illogically, but it is a reality. The strategic nature of the EU-Russia partnership has been placed in doubt.*

*The aim of this article is to show that the “war of sanctions,” which has frozen official contacts and negotiations have not achieved anything. This crisis can only be overcome through dialogue. However, at the moment, the main critics of the EU sanctions amongst EU Member States are too weak to convince the other members to lift them.*

*The article concerns the modern legal aspects and modern legal circumstances surrounding EU-Russia relations in the light of recent events and the deterioration of relations between Russia and the EU in general. In this framework, an account is given of the EU's reaction to the Ukrainian conflict in the context of the EU Common Foreign and Security Policy and of the EU restrictive measures as well as in the context of the Russian countersanctions. A special attention is paid to the EU Court of Justice case-law in the field of the restrictive measures.*

*Keywords: European Union; Russia; law; bilateralism; restrictive measures; sanctions; EU Court of Justice.*

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## Introduction<sup>1</sup>

In 2017, the EU and Russia celebrate the 20<sup>th</sup> anniversary of the EU-Russia Partnership and Cooperation Agreement (PCA)<sup>2</sup> entering in force. However, current situation, even legally, is not as cloudless and as hopeful as it was 20 years ago. The PCA has become obsolete; most of its provisions are out of force. In spite of the depletion of the EU-Russia legal basis, the negotiations on a New Basic Agreement have stagnated. In best case scenarios, it has led to the increase of soft law instruments.

After the Ukrainian crisis of 2014, the EU and Russia have entered a new era. The Russian Ministry of Foreign Affairs stressed in its official Statement regarding the anniversary of the PCA that the strategic nature of the EU-Russia partnership has been placed in doubt.<sup>3</sup> This was clearly expressed by the EU High Representative, Mogherini, in 2014<sup>4</sup> and more recently by the European Parliament in the Resolution of 10 June 2015. The European Parliament stressed that the EU cannot envisage a return to "business as usual" and has no choice but to conduct a critical re-assessment of its relations with Russia. It highlighted that due to its actions in Crimea and in Eastern Ukraine, Russia can no longer be treated or considered as a "strategic partner."<sup>5</sup>

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<sup>1</sup> Certain conclusions of this article were presented within the framework of the International Conference "Development of Russian Law-IX: Russian Law and Globalization" at the University of Helsinki, 7 October 2016, and during the open lecture at the Princeton University, 24 March 2016.

<sup>2</sup> Agreement on Partnership and Cooperation Establishing a Partnership between the European Communities and Their Member States, of One Part, and the Russian Federation, of the Other Part, OJ L 327, 28 November 1997, p. 3–69.

<sup>3</sup> Statement by the Russian Ministry of Foreign Affairs regarding the anniversary of the signing of the Cooperation and Partnership Agreement between Russia and the EU, 24 June 2014 (Jun. 1, 2017), available at [http://www.mid.ru/en/press\\_service/spokesman/official\\_statement/-/asset\\_publisher/t2GCdmD8RNlr/content/id/54686](http://www.mid.ru/en/press_service/spokesman/official_statement/-/asset_publisher/t2GCdmD8RNlr/content/id/54686).

<sup>4</sup> Andrew Rettman, *Mogherini Backs Western Balkan Enlargement*, EUobserver, 2 September 2014 (Jun. 1, 2017), available at <https://euobserver.com/enlargement/125442>.

<sup>5</sup> European Parliament resolution of 10 June 2015 on the State of the EU-Russia Relations (2015/2001 (INI)), pt. 2.

Unfortunately, the new era of the EU-Russia relations is an era of confrontations, an era of brinkmanship. It is likely that this contestation might breed even more brinkmanship further down the road. The Ukrainian crisis of 2014 is more likely a question of competition for the Parties than a question of conflict. After 20 years of partnership and good neighborliness, it sounds illogical, but it is a reality. This brinkmanship is marked by mutual sanctions between the EU and Russia. The EU-Russia bilateral sanctions have led to mutual disbenefits but they have failed to succeed in crushing the EU-Russia balanced relations in main sectors of economic interconnections such as energy, investments and manufactured goods trade. Of course, a new era of the EU-Russia relations won't be smooth and simple. It is down but not out.

This article concerns the modern legal aspects and modern legal circumstances surrounding the EU-Russia relations in the light of recent events and the deterioration of relations between Russia and the EU in general. In this framework, an account is given of the EU's reaction to the Ukrainian conflict in the context of the EU Common Foreign and Security Policy and of the EU restrictive measures as well as in the context of the Russian countersanctions. Special attention is paid to the EU Court of Justice case-law in the field of the restrictive measures.

## 1. Pre-Sanctions Experience in the EU-Russia Relations

The years of the EU-Russia strategic partnership brought a number of positive results, especially in creating a comprehensive legal basis between the parties. Modern EU-Russia relationships are essentially based on three legal layers. The first layer is the EU-Russia PCA and other EU-Russia bilateral agreements. The second layer consists of "roadmaps" for the establishment of four EU-Russia Common Spaces, which should be considered soft law instruments. The third layer covers the Russian legislation and the EU *acquis* within the EU-Russia sectoral cooperation.<sup>6</sup>

Unfortunately, due to its diversified nature, this legal framework is not sustainable and has in the meantime become significantly depleted. Russia's WTO accession in 2012 resulted in many provisions of the EU-Russia PCA having become outdated.<sup>7</sup> To accommodate this new legal context, the EU and Russia concluded a number of sectoral trade agreements in 2011 but their effective implementation may face difficulties due to the lack of a new EU-Russia framework agreement.<sup>8</sup>

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<sup>6</sup> Paul Kalinichenko, *Legislative Approximation and Application of EU Law in Russia in Legislative Approximation and Application of EU Law in the Eastern Neighbourhood of the European Union: Towards a Common Regulatory Space?* 246, 247 (P. Van Elsuwege, R. Petrov (eds.), Abingdon, Oxon; New York: Routledge, 2014).

<sup>7</sup> Peter Van Elsuwege, *Towards a Modernisation of EU-Russia Legal Relations?*, 5 CEURUS EU-Russia Papers 2 (2012).

<sup>8</sup> EU and Russia Sign Bilateral Agreements Ahead of Russia's WTO Accession Ceremony (16 December 2001) (Jun. 1, 2017), available at [http://eeas.europa.eu/delegations/wto/press\\_corner/all\\_news/news/2011/20111216\\_kdg\\_rf\\_signature.htm](http://eeas.europa.eu/delegations/wto/press_corner/all_news/news/2011/20111216_kdg_rf_signature.htm).

In 2006 Russia initiated negotiations on a New Basic Agreement between Russia and the EU to replace the PCA. This initiative was generally supported by the EU. Negotiations began in 2008.<sup>9</sup> Between 2008 and 2011, the parties agreed on several key points of the future agreement, but in December of 2011 they decided to delay the negotiations. During the EU-Russia Summit in Yekaterinburg in June 2013, the parties agreed to reconsider the negotiation process.<sup>10</sup> However, the Ukrainian crisis pulled the New Basic Agreement negotiation process from the EU-Russia agenda.<sup>11</sup>

At the same time, the EU-Russia PCA continues to set out the basic principles of EU-Russia relations. Art. 2 of the PCA considers respect of human rights and other democratic principles of the Helsinki Act 1975 and the Charter of Paris for a New Europe 1990 as an essential element of the partnership. Although these provisions do not take into account the Russian membership in the Council of Europe and the Convention for the Protection of Human Rights and Fundamental Freedoms 1950 as well as the adoption of the EU Charter of Fundamental Rights in 2000, they constitute an important aspect of the “shared values” between Russia and the EU.<sup>12</sup> Moreover, Russian courts in practice recognize a direct link between these provisions of the PCA and the provisions of the Constitution of Russia 1993.<sup>13</sup>

The principles and other provisions of the Helsinki Act 1975 have always impacted on the relations between Russia and the EU and its Member States. In particular, the good neighbourliness principle is manifestly reflected in such common measures as the facilitation of visa treatment,<sup>14</sup> encouraging local cross-border traffic<sup>15</sup> and supporting cross-border cooperation programmes. Russia signed new agreements

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<sup>9</sup> Joint Statement of the EU-Russia Summit on the Launch of Negotiations for a New EU-Russia Agreement, Khanty-Mansiysk, 27 June 2008, 11214/08 (Presse 192).

<sup>10</sup> Yekaterinburg Hosts EU Russia Summit 3–4 June (Jun. 1, 2017), available at [http://eeas.europa.eu/top\\_stories/2013/030613\\_eu-russia\\_en.htm](http://eeas.europa.eu/top_stories/2013/030613_eu-russia_en.htm).

<sup>11</sup> See European Council Conclusions of 21 March 2014, EUCO 7/14.

<sup>12</sup> Päivi Leino & Roman Petrov, *Between “Common Values” and Competing Universals – The Promotion of the EU’s Common Values through the European Neighbourhood Policy*, 5(15) *European Law Journal* 654, 669–670 (2009).

<sup>13</sup> Roman Petrov & Paul Kalinichenko, *The Europeanization of Third Country Judiciaries through the Application of the EU Acquis: The Cases of Russia and Ukraine*, 60(2) *International and Comparative Law Quarterly* 325, 337–339 (2011).

<sup>14</sup> Agreement between the European Community and the Russian Federation on the Facilitation of the Issuance of Visas to the Citizens of the European Union and the Russian Federation, OJ L 129, 17 May 2007, p. 27–34.

<sup>15</sup> Regulation (EC) No. 1931/2006 of the European Parliament and of the Council of 20 December 2006 Laying Down Rules on Local Border Traffic at the External Land Borders of the Member States and Amending the Provisions of the Schengen Convention, OJ L 405, 30 December 2006, p. 1–22.

with Latvia<sup>16</sup> and Estonia<sup>17</sup> on the delimitation of borders. The EU created a special instrument to facilitate the production of transit documents for Russian citizens transiting EU territory from the Kaliningrad region to other parts of Russia and back.<sup>18</sup> Both parties in the framework of the Common Space on Freedom, Security and Justice have made beneficial practical steps in the field of border migration control and combating cross-border crime. Russia has never been a part of the European Neighbourhood Policy but the Parties have historically tried to implement good neighbourliness in the practice of their partnership

## 2. The EU Sanctions Due to the Crimean Crisis

A new era in the EU-Russia relations started during the Ukrainian crisis of 2013–2014. The political games of the Ukrainian President Yanukovich, who was preparing the New Association Agreement with the EU and, at the same time, was searching for ways to enter the Eurasian Economic Union to acquire double benefit from a discordance between two integration projects, led to the worst case scenario. After the rebellion in Kiev and Yanukovich's escape from the country, Ukraine faced challenges of centrifugal forces from its East and South ends which were supported by Russia.

The Crimean Autonomy and City of Sevastopol refused to recognize a new Ukrainian Government in Kiev. They declared its independency on 11 March 2014<sup>19</sup> clashing with the Ukrainian Constitution 1996 and appointed the referendum on their union with Russia within 5 days. Earlier in the beginning of March the leaders of the self-declared *Crimean Republic* appealed to Russia to "protect" them from the new Kiev Government.<sup>20</sup> The Russian President, Putin, requested from the Federal

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<sup>16</sup> Договор между Российской Федерацией и Латвийской Республикой о российско-латвийской государственной границе, Собрание законодательства РФ, 2008, № 7, ст. 555 [Treaty between the Russian Federation and the Republic of Latvia on the Russian-Latvian State Border, Legislation Bulletin of the Russian Federation, 2008, No. 7, Art. 555].

<sup>17</sup> Договор между Российской Федерацией и Эстонской Республикой о российско-эстонской государственной границе [Treaty between the Russian Federation and the Republic of Estonia on the Russian-Estonian State Border], not officially published (Jan. 31, 2017), available at [http://www.mid.ru/foreign\\_policy/international\\_contracts/2\\_contract/-/storage-viewer/bilateral/page-35/44211](http://www.mid.ru/foreign_policy/international_contracts/2_contract/-/storage-viewer/bilateral/page-35/44211).

<sup>18</sup> Council Regulation (EC) No. 693/2003 of 14 April 2003 Establishing a Specific Facilitated Transit Document (FTD), a Facilitated Rail Transit Document (FRTD) and Amending the Common Consular Instructions and the Common Manual, OJ L 99, 17 April 2003, p. 8–14.

<sup>19</sup> Декларация о независимости Автономной Республики Крым и города Севастополь от 11 марта 2014 г. [Declaration on Independency of the Autonomous Republic of Crimea and the City of Sevastopol of 11 March 2014] (Jun. 1, 2017), available at <http://www.rada.crimea.ua/app/2988>.

<sup>20</sup> Обращение Председателя Совета Министров АРК Сергея Аксенова [Communication from Sergey Aksyonov, Chairman of the Minister's Council of the Autonomous Republic of Crimea] (Jun. 1, 2017), available at [http://www.rada.crimea.ua/news/01\\_03\\_14](http://www.rada.crimea.ua/news/01_03_14).

Council, a mandate to use military force outside the Russian Federation<sup>21</sup> and received a positive response.<sup>22</sup> The Russian military forces had already stationed in Sevastopol in accordance with the Russian-Ukrainian Agreement 1997.<sup>23</sup> The Russian army supported the self-independent Crimean Government incognito, wearing no insignia, without any official information and without any shoot.<sup>24</sup>

The urgent Referendum of 16 March 2014 held at the barrels of the Russian troops “doing back the Crimean self-defense forces” demonstrated results in a “managed democracy” style. Almost 97% of population of Crimea and almost 96% of population of Sevastopol had given their votes towards a union to Russia.<sup>25</sup> Of course, the Russian officials immediately recognized the results of the referendum<sup>26</sup> and accepted the proposal of a new Crimean government to enter the Russian Federation and signed the Treaty on Admitting the Republic of Crimea to the Russian Federation of 18 March 2014.<sup>27</sup> On 21 March 2014 the State Duma adopted the Federal Constitutional Law “On Admitting the Republic of Crimea to the Russian Federation and Establishing

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<sup>21</sup> Vladimir Putin Submitted Appeal to the Federation Council (Jun. 1, 2017), available at <http://eng.kremlin.ru/news/6751>.

<sup>22</sup> Постановление Совета Федерации Федерального Собрания Российской Федерации от 1 марта 2014 г. № 48-СФ «Об использовании Вооруженных Сил России на территории Украины», Собрание законодательства РФ, 2014, № 9, ст. 862 [Ordinance of the Federal Council of the Federal Assembly of the Russian Federation No. 48-SF of 1 March 2014. On Using the Military Forces of Russia within the Territory of Ukraine, Legislation Bulletin of the Russian Federation, 2014, No. 9, Art. 862]. This document was repealed by Постановление Совета Федерации Федерального Собрания Российской Федерации от 25 июня 2014 г. № 296-СФ, Собрание законодательства РФ, 2014, № 26 (ч. II), ст. 3442 [Ordinance of the Federal Council of the Federal Assembly of the Russian Federation No. 296-SF of 25 June 2014, Legislation Bulletin of the Russian Federation, 2014, No. 26 (part. II), Art. 3442].

<sup>23</sup> Соглашение между Российской Федерацией и Украиной о статусе и условиях размещения Черноморского флота Российской Федерации на территории Украины, Собрание законодательства РФ, 1999, № 31, ст. 3991 [Agreement between the Russian Federation and Ukraine on Status and Conditions of Dislocation of the Black Sea Fleet of the Russian Federation on the Territory of Ukraine, Legislation Bulletin of the Russian Federation, 1999, No. 31, Art. 3991].

<sup>24</sup> Answering the question about “little green men” V. Putin recognized that “the Russian servicemen did back the Crimean self-defense forces. They acted in a civil but a decisive and professional manner.” Direct Line with Vladimir Putin (Jun. 1, 2017), available at <http://eng.kremlin.ru/news/7034>.

<sup>25</sup> Official Results of the Crimean Referenda 2014 (Jun. 1, 2017), available at <http://www.rada.crimea.ua/en/referendum/resultaty>.

<sup>26</sup> Указ Президента Российской Федерации от 17 марта 2014 г. № 147 «О признании Республики Крым», Собрание законодательства РФ, 2014, № 12, ст. 1259 [Decree of the President of the Russian Federation No. 147 of 17 March 2014. On Recognition of the Republic of Crimea, Legislation Bulletin of the Russian Federation, 2014, No. 12, Art. 1259].

<sup>27</sup> Договор между Российской Федерацией и Республикой Крым о принятии в Российскую Федерацию Республики Крым и образовании в составе Российской Федерации новых субъектов от 18 марта 2014 г., Собрание законодательства РФ, 2014, № 12, ст. 1259 [Treaty on Admitting the Republic of Crimea to the Russian Federation and Establishing New Subjects within the Russian Federation of 18 March 2014, Legislation Bulletin of the Russian Federation, 2014, No. 12, Art. 1259].

Two New Regions of the Russian Federation – the Republic of Crimea and the City of Federal Significance of Sevastopol” which came into force on 25 March 2014.<sup>28</sup>

The world community refused to recognize the Crimean independency and the results of the Referendum in March which criticized the Russian position in this case. Considering the US’s reactions, the 3–4 March 2014 EU Council and 21 March 2014 European Council, adopted their conclusions stressing that the EU had condemned Russia for the “illegal annexation” of Crimea and would never recognize it.<sup>29</sup> The EU postponed all negotiations and cancelled regular Summits with Russia. The European Commission was engaged to work out the sanctions against Russia according to Art. 29 of the Treaty on European Union (TEU) and Art. 215 of the Treaty on the Functioning of the European Union (TFEU), as well as to support sanctions at an international level.

Although the UN Security Council could not take any decision on Crimea due to the Russian veto and China’s distinct position on the matter, on 27 March 2014 the UN General Assembly adopted their Resolution 68/262 where the Crimean Referendum was recognized as “having no validity.”<sup>30</sup> Declaiming against separatism, the British Premier Minister, Cameron, referred to the Crimean Referenda as “farcical.”<sup>31</sup>

There is no debate in the academic community outside Russia: scholars consider the activity of Russia in the *Crimean* case as an “illegal annexation.”<sup>32</sup> Müllerson agrees that the Russian activity in Crimea is characterized as “aggression” in accordance with the UN Resolution 1974 and is in breach of the Helsinki act 1975.<sup>33</sup> However, Müllerson notes that “Russia had good teachers”<sup>34</sup> in the *Kosovo* case<sup>35</sup> and is trying to follow the Kosovo formula, “illegal but legitimate” in the *Crimean* case.<sup>36</sup>

<sup>28</sup> Федеральный конституционный закон от 21 марта 2014 г. № 6-ФКЗ «О принятии в Российскую Федерацию Республики Крым и образовании в составе Российской Федерации новых субъектов – Республики Крым и города федерального значения Севастополя», Собрание законодательства РФ, 2014, № 12, ст. 1201 [Federal constitutional law No. 6-FKZ of 21 March 2014. On Admitting the Republic of Crimea to the Russian Federation and Establishing Two New Regions of the Russian Federation – the Republic of Crimea and the City of Federal Significance of Sevastopol, Legislation Bulletin of the Russian Federation, 2014, No. 12, Art. 1201].

<sup>29</sup> Council of the European Union Conclusions of 4 March 2014 “Relations with Ukraine,” COEST 62, 7208/14; European Council Conclusions of 21 March 2014, EUCO 7/14.

<sup>30</sup> UN General Assembly Resolution 68/262, Territorial Integrity of Ukraine, A/RES/68/262.

<sup>31</sup> David Cameron: Russia May Face EU Sanctions within Days, BBC News UK Politics, 10 March 2014 (Jun. 1, 2017), available at <http://www.bbc.com/news/uk-politics-26517583>.

<sup>32</sup> See James A. Green, *Editorial Comment: The Annexation of Crimea: Russia, Passportisation and the Protection of Nationals Revisited*, 1(1) *Journal on the Use of Force and International Law* 3 (2004); Enrico Milano, *The Non-Recognition of Russia’s Annexation of Crimea: Three Different Legal Approaches and One Unanswered Question*, 1 *Questions of International Law* 35 (2014); Antonello Tancredi, *The Russian Annexation of the Crimea: Questions Relating to the Use of Force*, 1 *Questions of International Law* 5 (2014).

<sup>33</sup> Rein Müllerson, *Ukraine: Victim of Geopolitics*, 13(1) *Chinese Journal of International Law* 133, 141 (2014).

<sup>34</sup> *Id.* at 143.

<sup>35</sup> Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, ICJ Advisory Opinion of 22 July 2010, General List No. 141.

<sup>36</sup> Müllerson 2014, at 140–141.



Russian academics differ in the appraisal of the Crimean situation.<sup>37</sup> Some of them are recognizing the illegal nature of the annexation of Crimea,<sup>38</sup> and others are support the Russian official position on *reunification* of Russia and Crimea.<sup>39</sup> They often make historical evaluations. Indeed, Crimea was detached from the Russian Soviet Federative Socialist Republic and was handed over to the Ukrainian Soviet Socialist Republic on the grounds of outrage of the Communist Party by the Decision of Presidium of Supreme Soviet of the USSR 1954 without any legitimate procedures, consultations or plebiscites.<sup>40</sup> It stands to reason that Gorbachev qualified the Crimean referenda as an act of “correct mistakes” of the Soviet past.<sup>41</sup>

Some Russian academics agree with Müllerson that the key for understanding the *Crimean* case lays in a corridor of the International Court of Justice (ICJ) opinion on *Kosovo*.<sup>42</sup> The next question to be raised is whether it really makes sense to search for parallels with the Scottish Referenda on independency in September 2014 or with the aborted “unconstitutional” Independence Referendum in Catalonia in October 2014 in context to the *Crimean* case.<sup>43</sup> It is obvious that we are living in an era of new challenges for international law.

*Maidan* and followed conflicts within the territory of Ukraine, including the issue of Crimea, have poisoned both the Ukrainian-Russian relations and the EU-Russia relations. The EU has introduced political and economic sanctions against Russia.

<sup>37</sup> At the same time, an academic legal qualification of the Crimean events 2014 remains under serious political pressure in Russia. See Elena Lukyanova, *On the Rule of Law in the Context of Russian Foreign Policy*, 3(2) Russian Law Journal 10 (2015).

<sup>38</sup> Vladislav Inozemtsev, *Why Economic Growth Doesn't Matter in Russia*, The Moscow Times, 24 June 2014 (Jun. 1, 2017), available at <https://themoscowtimes.com/articles/why-economic-growth-doesnt-matter-in-russia-36703>.

<sup>39</sup> Толстых В. Воссоединение Крыма с Россией: правовая квалификация, 5(72) Евразийский юридический журнал 40 (2014) [Vladislav Tolstykh, *Reunification of Crimea with Russia: Legal Qualifications*, 5(72) Eurasian Law Journal 40 (2014)]; Толкачев К. «Крымский вопрос» и современное право: дискуссия о легитимности референдума, 5(72) Евразийский юридический журнал 90 (2014) [Konstantin Tolkachev, *Crimean Issue» and the Modern Law: A Discussion on the Legitimacy of the Referendum*, 5(72) Eurasian Law Journal 90 (2014)].

<sup>40</sup> In 1994 Russia signed the Budapest Memorandum on Security Assurances in Connection with Ukraine's Accession to the Non-Proliferation Treaty. However, the Crimean question was not directly mentioned in this political document.

<sup>41</sup> Gorbachev Says Outcome of Crimea Referendum Corrected Historical Mistakes, The Moscow Times, 18 March 2014 (Jun. 1, 2017), available at <https://themoscowtimes.com/news/gorbachev-says-outcome-of-crimea-referendum-corrected-historical-mistake-33066>.

<sup>42</sup> Кожеуров Я. Провозглашение независимости Крыма не нарушает международное право, Российский совет по международным делам, 11 марта 2014 г. [Yaroslav Kozheurov, *Declaring the Crimean Independency Doesn't Infringe the International Law*, Russian International Affairs Council, 11 March 2014] (Jun. 1, 2017), available at <http://russiancouncil.ru/blogs/riacexperts/1031/>.

<sup>43</sup> Ksenia Zubacheva, *Just How Different is Scotland from Crimea?*, Russia Direct, 18 September 2014 (Jun. 1, 2017), available at <http://www.russia-direct.org/content/just-how-different-scotland-crimea>.



All the “packages” of the sanctions were coordinated by the EU with its Atlantic partners – the USA and Canada. Russia has responded to them accordingly.

The “first package” of the EU sanctions against Russia were introduced in accordance with the Council Conclusions on the Ukraine case of 3–4 March 2014 after the above-mentioned events regarding Crimea. The EU Council's conclusions supported international sanctions against Russia (canceling the G8 summit in Sochi, suspending negotiations on entering Russia to the OECD, supporting efforts at the UN level) and introducing sanctions at EU-Russia bilateral level. At EU-Russia level, the group of the EU sanctions against Russia include:

- suspending negotiations on the New Basic Agreement;
- suspending visa dialog;
- canceling the next EU-Russia summit, and
- sanctions on the ground of the Commission proposal according to Art. 29 of the TEU and Art. 215(2) of the TFEU.<sup>44</sup>

Sanctions in accordance with Art. 29 of the TEU and Art. 215(2) of the TFEU were imposed *via* two legal acts which were adopted on 17 March 2014. This group of acts include the Council Decision 2014/145/CFSP<sup>45</sup> and the Council Regulation (EU) 269/2014.<sup>46</sup> They involved visa bans and asset freezes for Russian officials and companies and contained similar lists of 21 Russian persons who had been engaged in the Crimean events.<sup>47</sup> On 21 March 2014 after the Crimean admission to Russia, an additional 12 new names appeared on the list.<sup>48</sup> Notably, Russia is not mentioned in the title of these acts.

The “second package” of the EU sanctions were implemented in May 2014 as a reaction to the Russian position on Crimea and South and East Ukraine. Measures

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<sup>44</sup> However, negotiations on the NBA and visa matters were practically suspended earlier. EU didn't revise processes of entering in force of a New Enlargement Protocol to the EU-Russia PCA or renewal the EU-Russia S&T Agreement.

<sup>45</sup> Council Decision 2014/145/CFSP of 17 March 2014 Concerning Restrictive Measures in Respect of Actions Undermining or Threatening the Territorial Integrity, Sovereignty and Independence of Ukraine, OJ L 78, 17 March 2014, p. 16–21.

<sup>46</sup> 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, OJ L 78, 17 March 2014, p. 6–15.

<sup>47</sup> Annex to the Council Decision 2014/145/CFSP and Annex I to the Council Regulation (EU) No. 269/2014.

<sup>48</sup> Council Implementing Decision 2014/151/CFSP of 21 March 2014 Implementing Decision 2014/145/CFSP Concerning Restrictive Measures in Respect of Actions Undermining or Threatening the Territorial Integrity, Sovereignty and Independence of Ukraine, OJ L 86, 21 March 2014, p. 30–32; Council Implementing Regulation (EU) No. 284/2014 of 21 March 2014 Implementing Regulation (EU) No. 269/2014 Concerning Restrictive Measures in Respect of Actions Undermining or Threatening the Territorial Integrity, Sovereignty and Independence of Ukraine, OJ L 86, 21 March 2014, p. 27–29.

of the “second package” consist of expanding the list of banned physical persons as well as including Crimean legal entities in it.<sup>49</sup>

The EU support of the military anti-terrorist operation, which was implemented by President Poroshenko after his election in May against the self-declared *Donetsk People’s Republic* and the *Lugansk People’s Republic*, backed by the Russian “volunteers,”<sup>50</sup> and the Russian position in relation to the East Ukrainian *separatists* have been the primary cause for the subsequent terms of the EU sanctions against Russia. The EU restricting measures of the “third package” included three groups of action.

The First group of measures was adopted on 23 June 2014. It was covered by the Council Decision 2014/386/CFSP<sup>51</sup> and the Council Regulation (EU) 692/2014.<sup>52</sup> These documents contained restrictions on economic activities relating to trade, including brokerage and insurance services, and development projects in Crimea and Sevastopol, including financial and technical assistance. Projects in the fields of transport, infrastructure and energy have fallen directly under the prohibitions. Nevertheless, in the light of Art. 10 of the Regulation 692/2014 these prohibitions were mainly addressed to European companies.<sup>53</sup>

### 3. The EU Sanctions Due to the Donbass Crisis

However, the most significant EU sanctions against Russia were introduced after the tragedy with the *Malaysian Airlines Flight MH17* which had been shot down in the rebel controlled areas of Ukraine on 17 July 2014.<sup>54</sup> Prior to this, the European

<sup>49</sup> Council Decision 2014/265/CFSP of 12 May 2014 Amending Decision 2014/145/CFSP Concerning Restrictive Measures in Respect of Actions Undermining or Threatening the Territorial Integrity, Sovereignty and Independence of Ukraine, OJ L 137, 12 May 2014, p. 9–12; Council Implementing Regulation (EU) No. 477/2014 of 12 May 2014 Implementing Regulation (EU) No. 269/2014 Concerning Restrictive Measures in Respect of Actions Undermining or Threatening the Territorial Integrity, Sovereignty and Independence of Ukraine, OJ L 137, 12 May 2014, p. 3–5.

<sup>50</sup> Answering the question about Russian soldiers within the Ukrainian territory, the Russian Foreign Minister Lavrov recognized only that “there are many volunteers there, many of them are Russians”. Interview by Russian Foreign Minister Sergey Lavrov to Bloomberg TV, 21 September 2014 (Jun. 1, 2017), available at [http://www.mid.ru/bdomp/brp\\_4.nsf/e78a48070f128a7b43256999005bcb3/aa16d47f7f3fe55b44257d03004c4fb3!OpenDocument](http://www.mid.ru/bdomp/brp_4.nsf/e78a48070f128a7b43256999005bcb3/aa16d47f7f3fe55b44257d03004c4fb3!OpenDocument). See also footnote 62.

<sup>51</sup> Council Decision 2014/386/CFSP of 23 June 2014 Concerning Restrictions on Goods Originating in Crimea or Sevastopol, in Response to the Illegal Annexation of Crimea and Sevastopol, OJ L 183, 24 June 2014, p. 70–71.

<sup>52</sup> Council Regulation (EU) No. 692/2014 of 23 June 2014 Concerning Restrictions on the Import into the Union of Goods Originating in Crimea or Sevastopol, in Response to the Illegal Annexation of Crimea and Sevastopol, OJ L 183, 24 June 2014, p. 9–14.

<sup>53</sup> *Id.* Art. 10.

<sup>54</sup> According to the conclusions of the Dutch Safety Board’s accident investigation, the aircraft was shot down with a Soviet-designed 9M38 Buk missile. See Crash of Malaysia Airlines flight MH17, Dutch Safety Board, The Hague (October 2015) (Jun. 1, 2017), available at <https://www.onderzoeksraad.nl/uploads/phase-docs/1006/debcd724fe7breport-mh17-crash.pdf>. However, the role of Russia in this incident is

Council Conclusions of 16 July 2014 had already prescribed to enlarge the restrictive measures against Russia and asked the EIB and the Commission to re-assess and suspend new social-economic projects with Russia.<sup>55</sup> Adopted on 31 July 2014, the Council Decision 2014/512/CFSP<sup>56</sup> and the Council Regulation (EU) No. 833/2014<sup>57</sup> directly concerned Russia as a state and aimed to introduce the sectoral economic restriction in the EU-Russia relations. These measures form the second group of the EU restrictions in the framework of the “third package” of sanctions against Russia.

This group of sanctions is not heterogeneous. It means that measures taken were a result of a compromise between the EU Member States. First of all, in the banking sector, Decision 2014/512/CFSP and Regulation 833/2014 imposed restrictions on the purchasing of European financial instruments to the Russian state participation banks.<sup>58</sup> A list of these banks is contained in Annex I to the Decision 2014/512/CFSP and in Annex III of the Regulation 833/2014. They include five of the largest banks of Russia.<sup>59</sup> Imposed by the EU Council, restrictions refer to using the financial instruments – not relating to lending, attracting deposits and transferring payments but not affecting branches of the credit institutions. Secondly, these measures have prohibited supplying arms and military equipment from the EU to Russia (Art. 2 of the Decision 2014/512/CFSP). Thirdly, they have prohibited supplying the dual-use goods from the EU to Russia, (Art. 3 of the Decision 2014/512/CFSP).<sup>60</sup> Fourthly, the documents have introduced a prior approval (authorization) for trade in products and technologies with Russia within energy industry.

The third group of sanctions is aimed at expanding the ban list.<sup>61</sup> After this amendment the EU black list accounted 118 positions. It has covered 95 persons, 9 associations and groups and 14 legal entities, including one bank.

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still unclear legally. Besides, it is obvious that the Ukrainian authorities are partly responsible for the tragedy: the incident happened within the Ukrainian territory and Ukrainian official had not closed the flight routes above the zone of combat activity. On these grounds family members of the wreck passengers have broken actions against Ukraine before the European Court of Human Rights. See *Ioppa v. Ukraine* (communicated case), applications no. 73776/14, 973/15, 4407/15 and 4412/15.

<sup>55</sup> European Council Conclusions of 16 July 2014, EUCO 147/14.

<sup>56</sup> Council Decision 2014/512/CFSP of 31 July 2014 Concerning Restrictive Measures in View of Russia's Actions Destabilising the Situation in Ukraine, OJ L 229, 31 July 2014, p. 13–17.

<sup>57</sup> Council Regulation (EU) No. 833/2014 of 31 July 2014 Concerning Restrictive Measures in View of Russia's Actions Destabilising the Situation in Ukraine, OJ L 229, 31 July 2014, p. 1–11.

<sup>58</sup> Art. 1 of the Council Decision 2014/512/CFSP; Art. 5 of the Council Regulation (EU) No. 833/2014.

<sup>59</sup> They are *Sberbank*, *VTB Bank*, *Gazprombank*, *Vnesheconombank (VEB)*, *Rosselkhozbank*.

<sup>60</sup> List of these goods is contained in the relevant EU Regulation 2009.

<sup>61</sup> Council Decision 2014/508/CFSP of 30 July 2014 Amending Decision 2014/145/CFSP Concerning Restrictive Measures in Respect of Actions Undermining or Threatening the Territorial Integrity, Sovereignty and Independence of Ukraine, OJ L 226, 30 July 2014, p. 23–26; Council Implementing Regulation (EU) No. 826/2014 of 30 July 2014 Implementing Regulation (EU) No. 269/2014 Concerning Restrictive Measures in Respect of Actions Undermining or Threatening the Territorial Integrity, Sovereignty and Independence of Ukraine, OJ L 226, 30 July 2014, p. 16–19.

In September 2014 the deteriorating situation in eastern Ukraine and violent fighting between the Ukrainian army and the so-called “pro-Russian rebels” pushed the EU to add to the conditions of the terms of the sanctions.<sup>62</sup> These additions to the EU sanctions against Russia included new restrictions through amendments of existing EU acts. However, these measures were adopted by the Council at the same time the First Minsk arrangements on ceasing fire were reached. It has put such sanctions under question since the beginning of its implementation. Russia refrained from any responding measures.

Firstly, The EU ban list has expanded by 24 new persons.<sup>63</sup> Secondly, the EU Council has introduced three new ban lists: (a) List of Russian enterprises of defense industry, which were excluded from the EU investments and credit market, (b) List of Russian enterprises of energy industry, which were excluded from the EU investments and credit market, (c) List of Russian enterprises of defense industry, which were under prohibition in relation to export dual-use goods from the EU.<sup>64</sup> Moreover, the EU novels have stepped the restrictive measures up concerning the access of several of the largest Russian banks to the EU financial market.

All sets of sanction terms are repeatedly extended and updated. They exist until present day.

#### 4. Russia's Countersanctions

Russia did not seriously react on the first two sets of sanctions. The State Duma and the Federal Council adopted their Statements from where they had condemned

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<sup>62</sup> The EU and Ukrainian authorities distrust Russia in cases of using its military forces in the Ukrainian East. Russian authorities officially reject all apprehensions and explain the detention of the Russian soldiers within the Ukrainian territory as confusion at the Ukrainian-Russian boarder. See Heather Saul, *Ukraine Crisis: Russian Soldiers Captured in Conflict Area Crossed Border “By Accident,”* The Independent, 26 August 2014 (Jun. 1, 2017), available at <http://www.independent.co.uk/news/world/europe/ukraine-crisis-russian-paratroopers-captured-in-conflict-area-crossed-border-by-accident-9690752.html>.

<sup>63</sup> Council Decision 2014/658/CFSP of 8 September 2014 Amending Decision 2014/145/CFSP Concerning Restrictive Measures in Respect of Actions Undermining or Threatening the Territorial Integrity, Sovereignty and Independence of Ukraine, OJ L 271, 12 September 2014, p. 47–53; Council Regulation (EU) No. 959/2014 of 8 September 2014 Amending Regulation (EU) No. 269/2014 Concerning Restrictive Measures in Respect of Actions Undermining or Threatening the Territorial Integrity, Sovereignty and Independence of Ukraine, OJ L 271, 12 September 2014, p. 1–2; Council Implementing Regulation (EU) No. 961/2014 of 8 September 2014 Implementing Regulation (EU) No. 269/2014 Concerning Restrictive Measures in Respect of Actions Undermining or Threatening the Territorial Integrity, Sovereignty and Independence of Ukraine, OJ L 271, 12 September 2014, p. 8–13.

<sup>64</sup> Council Decision 2014/659/CFSP of 8 September 2014 Amending Decision 2014/512/CFSP Concerning Restrictive Measures in View of Russia's Actions Destabilising the Situation in Ukraine, OJ L 271, 12 September 2014, p. 54–57; Council Regulation (EU) No. 960/2014 of 8 September 2014 Amending Regulation (EU) No. 833/2014 Concerning Restrictive Measures in View of Russia's Actions Destabilising the Situation in Ukraine, OJ L 271, 12 September 2014, p. 3–7.

the EU for the sanctions against Russian officials.<sup>65</sup> “You should be ashamed,” answered the Russian Ministry of Foreign Affairs, spotting Cold War-style language.<sup>66</sup>

Besides, Russia responded to the EU sanctions against the economic sectors. In accordance with the Russian President’s Decree of 6 August 2014,<sup>67</sup> the Russian Government introduced certain special economic measures aimed to provide security.<sup>68</sup> These measures included the banning of importing agricultural products, raw and food from countries which had introduced sanctions against Russia before. Thus Russia blocked European agricultural exports to Russia totalling 11.8 billion euros.<sup>69</sup>

More recently, in May 2015 Russia imposed travel bans on 89 EU citizens, including politicians and officials from EU member states such as Germany, Poland, the Baltic states, UK and Sweden who criticized Moscow’s annexation of Crimea. The decision was taken in response to hostile acts against the Russian Federation, including the blacklisting of Russian citizens.<sup>70</sup>

<sup>65</sup> Заявление Государственной Думы Федерального Собрания Российской Федерации от 18 марта 2014 г. «О санкциях Соединенных Штатов Америки и ЕС», Собрание законодательства РФ, 2014, № 12, ст. 1226 [Statement of the State Duma of the Federal Assembly of the Russian Federation of 18 March 2014. On the United State of America and the EU Sanctions, Legislation Bulletin of the Russian Federation, 2014, No. 12, Art. 1226]; Заявление Совета Федерации Федерального Собрания Российской Федерации от 21 марта 2014 г. «Относительно санкций Соединенных Штатов Америки и ЕС», Собрание законодательства РФ, 2014, № 12, ст. 1205 [Statement of the Federal Council of the Russian Federation of 21 March 2014. Concerning the United State of America and the EU Sanctions, Legislation Bulletin of the Russian Federation, 2014, No. 12, Art. 1205].

<sup>66</sup> Comment by the Information and Press Department of the Russian Ministry of Foreign Affairs Regarding EU’s Sanctions against Russia, 29 April 2014 (Jun. 1, 2017), available at [http://www.mid.ru/bdcomp/brp\\_4.nsf/e78a48070f128a7b43256999005bcb3/7ca65ced1928e8e44257cca00558fca!OpenDocument](http://www.mid.ru/bdcomp/brp_4.nsf/e78a48070f128a7b43256999005bcb3/7ca65ced1928e8e44257cca00558fca!OpenDocument).

<sup>67</sup> Указ Президента Российской Федерации от 6 августа 2014 г. № 560 «О применении некоторых специальных экономических мер, направленных на обеспечение безопасности Российской Федерации», Собрание законодательства РФ, 2014, № 32, ст. 4470 [Decree of the President of the Russian Federation No. 560 of 6 August 2014. On Application of Certain Special Economic Measures Aimed to Provide Security of the Russian Federation, Legislation Bulletin of the Russian Federation, 2014, No. 32, Art. 4470].

<sup>68</sup> Постановление Правительства Российской Федерации от 7 августа 2014 г. № 778 «О мерах по реализации Указа Президента Российской Федерации от 6 августа 2014 г. № 560 «О применении некоторых специальных экономических мер, направленных на обеспечение безопасности Российской Федерации», Собрание законодательства РФ, 2014, № 32, ст. 4543 [Ordinance of the Government of the Russian Federation No. 778 of 7 August 2014. On Measures to Implement the Decree of the President of the Russian Federation of 6 August 2014 No. 560 “On Application of Certain Special Economic Measures Aimed to Provide Security of the Russian Federation,” Legislation Bulletin of the Russian Federation, 2014, No. 32, Art. 4543]. However, the Russian Government mitigated the sanction later.

<sup>69</sup> Delphine d’Amora, *Putin Strikes Back against Sanctions with Food Import Bans*, The Moscow Times, 6 August 2014 (Jun. 1, 2017), available at <http://www.themoscowtimes.com/business/article/putin-orders-agricultural-import-bans-on-countries-that-sanctioned-russia/504675.html>.

<sup>70</sup> Available at <http://www.ft.com/intl/cms/s/0/d2fee02a-077b-11e5-a58f-00144feabdc0.html?siteedition=intl>.

Furthermore, the Russian economic countersanctions were contested in the Supreme Court of Russia. For the first time, it refused to exclude some seafood products from the Russian ban list for imported products in the case of the *Murmansk Rybokombinat* company in 2014.<sup>71</sup> In 2015, the Supreme Court of Russia rejected the claim of the Society for consumer rights protection "*Public control in action*" to annul President's and Government's acts on economic countersanctions.<sup>72</sup> The last thing, in March 2017 the Supreme Court considered the action of the *Oktoblu* company against the Customs body decision grounded on the Government's act on economic countersanctions. The result was similar; the Supreme Court dismissed the action.<sup>73</sup> Although these attempts were unsuccessful, they vividly demonstrate that the sanctions always concern both of Parties.

### 5. What is Wrong with the Sanctions?

It sounds rather strange but, in wider context, EU sanctions against Russia have always stood behind the EU-Russia relations. Of course, EU anti-dumping sanctions and sanctions within the framework of the EU competition policy<sup>74</sup> are impossible to compare with the recently adopted restrictive measures pursuant to Art. 29 of the TEU and Art. 215 of the TFEU. However despite the more negative impact on the economies of the parties, new sanctions have not crushed the EU-Russia balanced relations in the main sectors of economic interconnections, e.g. energy supplies, investments in industry or trade in manufactured goods.

Sanctions always have consequences for both parties. The European business community has reacted to the EU sanctions against Russia in a lukewarm manner.<sup>75</sup> An angry statement was released by the *SWIFT* community.<sup>76</sup> The *UEFA* has demonstrated

<sup>71</sup> Решение Верховного Суда РФ от 11 ноября 2014 г. № АКПИ14-1124, Бюллетень Верховного Суда Российской Федерации, 2015, № 10 [Judgment of the Supreme Court of the Russian Federation No. AKPI14-1124 of 11 November 2014, Bulletin of the Supreme Court of the Russian Federation, 2015, No. 10].

<sup>72</sup> Определение Верховного Суда РФ от 11 ноября 2015 г. по делу № АКПИ15-1007 [Order of the Supreme Court of the Russian Federation of 11 November 2015 in the case No. AKPI15-1007], not officially published.

<sup>73</sup> Определение Верховного Суда РФ от 3 марта 2017 г. № 305-АД17-43 по делу № А40-146689/2015 [Order of the Supreme Court of the Russian Federation of 3 March 2017 No. 305-AD17-43 in the case No. A40-146689/2015], not officially published.

<sup>74</sup> The EU Commission launched the investigation against *Gazprom* in September 2012. If the Commission is able to prove the abuse of dominant position by *Gazprom*, Russian company will have to pay a penalty of about 8 billion euro. Antitrust: Commission Opens Proceedings against *Gazprom*, European Commission, Press release, 4 September 2012 (Jun. 1, 2017), available at [http://europa.eu/rapid/press-release\\_IP-12-937\\_en.htm](http://europa.eu/rapid/press-release_IP-12-937_en.htm).

<sup>75</sup> Association of European Businesses Urges EU to Refrain from Sanctions against Russia, ITAR-TASS, 30 August 2014 (Jun. 1, 2017), available at <http://en.itar-tass.com/economy/747335>.

<sup>76</sup> European Parliament Resolution, The *SWIFT* Statement of 18 September 2015 (Jun. 1, 2017), available at <https://www.swift.com/insights/press-releases/european-parliament-resolution>.

its own attitude to the political sanctions.<sup>77</sup> Russian countersanctions have led to inflated prices on food within the Russian domestic market and have cost an arm and a leg for Russian people even more so than the EU sanctions.<sup>78</sup>

Moreover, the adoption of sanctions has not led to a change in behavior by Russia but has attracted negative reactions from the business world. If anything, the EU restrictive measures have exacerbated EU-Russia relations and have led Russia into cooperating more actively with China, South Korea, Vietnam and other Asian countries.<sup>79</sup>

Apart from debates about the legality or illegality of the sanctions in international law,<sup>80</sup> it is crucial to point out the archaic of these actions nowadays. Indeed, when we impose unilateral restrictive measures, we enter terms that can be qualified as kind of retorsions (stop lists) or reprisals (countersanctions). These things are common for the classical era of international relations; they have been obsolete for a long time. Archaic behavior requires an alternative in terms of the principle of the peaceful settlement of international disputes, which is opposed to all types of “annexations,” “retorsions” and “reprisals.”

The sanctions imposed by the EU are questionable due to their unilateral nature. In fact, they were adopted outside the context of the UN Security Council. They may also be incompatible with EU legal standards. As stated by the conference of the representatives of the Member State governments,

respect for fundamental rights and freedoms implies, in particular that proper attention is given to the observance and the due process rights of the individuals or entities concerned [by restrictive measures]. For this purpose and in order to guarantee a thorough judicial review of decisions subjecting an individual or entity to restrictive measures, such decisions must be based on clear and distinct criteria. These criteria should be tailored to the specifications of each restrictive measure.<sup>81</sup>

<sup>77</sup> EU Unlikely to Sanction Russia's Big Sport Events, *Brampton Guardian*, 3 September 2014 (Jun. 1, 2017), available at <http://www.bramptonguardian.com/sports-story/4820800-eu-unlikely-to-sanction-russia-s-big-sport-events/>.

<sup>78</sup> Bruce Kennedy, *Who Will Russia's Food Sanctions Hurt More?*, *CBS MoneyWatch*, 7 August 2014 (Jun. 1, 2017), available at <http://www.cbsnews.com/news/will-russian-food-sanctions-affect-western-agriculture>.

<sup>79</sup> See the speech of Prime Minister Medvedev reported on the website <http://www.presstv.ir/Detail/2015/06/12/415487/Russia-West-sanction-Ukraine>.

<sup>80</sup> See John J.A. Burke, *Economic Sanctions against the Russian Federation are Illegal under Public International Law*, 3(3) *Russian Law Journal* 126 (2015); Yaroslav Kozheurov, *The War of "Sanctions" and the Law of International Responsibility*, 2(4) *Kutafin University Law Review* 306 (2015).

<sup>81</sup> See Declaration No. 25 on Articles 61 H and 188 K of the Treaty on the Functioning of the European Union, included in the Final Act of the Intergovernmental Conference, OJ C 306, 17 December 2007, p. 231–271.



Although the Council has a broad discretion to adopt CFSP decisions, including those freezing the assets of individuals, the Court of Justice has the authority to review these decisions, and where blacklisting an individual is based on facts that are materially inaccurate and there is a manifest error in the assessment of facts, the Court can annul that decision, as has happened in several cases.<sup>82</sup>

Although the Court considered these measures to be illegal, this has not prevented the Council from re-enacting them, after amending the statement of reasons at the basis of the listing. This is what happened in the *Ternavsky* case<sup>83</sup> concerning a Belarusian national.

Several Russian nationals have introduced annulment actions before the EU General Court, contesting the EU restrictive measures on human rights and other grounds (including the breach of the PCA)<sup>84</sup> or in terms of their legal basis.<sup>85</sup> In the *Rotenberg* case<sup>86</sup> the General Court demonstrated controversial results. Arkady Rotenberg is a Russian businessman, who is intimately affiliated with President V. Putin. In 2014 Rotenberg was introduced by the EU Council to the list of persons who are covered by the first set of sanctions. However, the Court upheld his claim partially. The Court recognized the whole scope of restrictive measures to be invalid against him in 2014, but confirmed the validity of the extension of these measures on him in March 2015 due the fact that Rotenberg's company was implementing projects for transport infrastructure between Crimea and the Krasnodar Region.

Besides, in the *Almaz-Antey* case<sup>87</sup> the General Court rejected the claims of the Russian company and retained the restrictive measures against it. The "Almaz-Antey" company is one of the largest producers of weapons in Russia, in particular, "ground-to-air" missiles, which were presented in Donbass in 2014. The Russian company denied any direct involvement in the process of the destabilization of Ukraine and demanded the defrosting of its assets for 2015–2016. However, the Court did not consider in detail the issue concerning manufactured weapons supplied to Donbass. The Court ruled that the risk of the company's illegal activity might be sufficient for a decision to freeze its assets.

A preliminary ruling before the Court of Justice was also initiated. This was raised in the UK by an oil company, *Rosneft*, owned in part by the British company

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<sup>82</sup> See Judgement of 9 July 2014 in Joined Cases T-329/12 and T-74/13, *Mazen Al-Tabbaa v. Council of the European Union*, nyr. See also Judgement of 16 July 2014 in case T-572/11, *Hassan v. Council of the European Union*, of 16 July 2014, nyr.

<sup>83</sup> See Judgement of 21 May 2015 in case T-163/12, *Ternavsky v. Council*, nyr.

<sup>84</sup> See the pending cases, T-715/14, *NK Rosneft and Others v. Council*, [2014] OJ C 431/40; T-720/14, *Rotenberg v. Council*, [2015] OJ C 7/37; T-734/14, *VTB Bank v. Council*, [2015] OJ C 16/43.

<sup>85</sup> Case T-732/14, *Sberbank of Russia v. Council*, [2015] OJ C 16/41.

<sup>86</sup> Case T-720/14, *Rotenberg v. Council*, [2016] ECLI:EU:T:2016:689.

<sup>87</sup> Case T-255/15, *Almaz-Antey Air and Space Defence v. Council*, [2017] ECLI:EU:T:2017:25.

BP and in part by the Russian state, which was affected by the sanctions against Russia. The UK Divisional Court raised questions on the validity of the CFSP decision regarding the restrictive measures against Russia<sup>88</sup> and on the interpretation of the EU Regulation implementing those measures.<sup>89</sup> Previously, on 31 May 2016 Advocate General Wathelet presented his Opinion in this case,<sup>90</sup> where he proposed to reject all the pleas of the Russian company. The court rarely discords from the Advocate General's conclusions.

After 10 months, the ECJ delivered its judgment in this case on 28 March 2017.<sup>91</sup> As expected, it acknowledged all basic conclusions of the Advocate General. Following the Advocate General Opinion, the Court confirmed its jurisdiction in this case.<sup>92</sup> Although the Advocate General Opinion contained some politically controversial evaluations regarding the Council motivations and reasons in imposing restrictive measures, the Court, in its judgment, did not analyze specific reasons and actions, but referred to a broad discretion of the Council powers to take political measures in the context of the CFSP. In fact, the Court resorted to the *political question* doctrine<sup>93</sup> confiding itself to a legal interpretation of the Treaties and related Council acts. It is also worth noting that the Court, for the second time in its practice, interpreted the EU-Russia PCA provisions in the *Rosneft* case.

Rotenberg was not the only individual from the ban list, who appealed to the EU Court of justice. In the *Kiselev* case,<sup>94</sup> the General Court also rejected all claims of the complainant. It seemed that the claim of the Russian pro-government journalist Dmitry Kiselev had to be satisfied against the backdrop of the judgment in the *Mikhalchanka* case,<sup>95</sup> where the Court excluded his Belarusian colleague from the EU's ban list. However, the Court pointed out that this was a different situation. In particular, the criterion of "active support," applied by the Council to the applicant, is broader than those, based on responsibility, at issue in the case that gave rise to

<sup>88</sup> Council Decision 2014/145/CFSP of 17 March 2014, *supra* note 45.

<sup>89</sup> Case C-72/15, *PJSC Rosneft Oil Company v. Her Majesty's Treasury and Others*, [2015] OJ C 155/12.

<sup>90</sup> Advocate General's Opinion in Case C-72/15, *PJSC Rosneft Oil Company v. Her Majesty's Treasury and Others*, [2016] ECLI:EU:C:2016:381.

<sup>91</sup> Judgment of the Court (Grand Chamber) of 28 March 2017 in Case C-72/15, *PJSC Rosneft Oil Company v. Her Majesty's Treasury and Others*, [2017] ECLI:EU:C:2017:236.

<sup>92</sup> Peter van Elsuwege, *Judicial Review of the EU's Common Foreign and Security Policy: Lessons from the Rosneft Case*, *Verfassungsblog*, 6 April 2017 (Jun. 1, 2017), available at <http://verfassungsblog.de/judicial-review-of-the-eus-common-foreign-and-security-policy-lessons-from-the-rosneft-case>.

<sup>93</sup> About application of this doctrine in courts see Louise Weinberg, *Political Questions and the Guarantee Clause*, 65 *University of Colorado Law Review* 849 (1994); Ildikó Marosi & Lóránt Csink, *Political Questions in the United States and in France* in *Studia Iuridica Caroliensia* Vol. 4 113 (M. Hoe (ed.), Budapest: Mátyás Kapa, 2009).

<sup>94</sup> Case T-262/15, *Kiselev v. Council*, [2017] ECLI:EU:T:2017:392.

<sup>95</sup> Case T-693/13, *Mikhalchanka v. Council*, [2016] ECLI:EU:T:2016:283.

the judgment in the *Mikhailchanka* case.<sup>96</sup> In addition, the restrictions imposed by European law do not interfere with his journalistic activities in Russia and do not violate his right to express his opinions as a Russian citizen in his state.

These recent developments turned out to be bitterly disappointing for Russian individuals and companies affected by the EU restrictive measures. Currently, all further attempts to challenge the restrictive measures imposed due to the crisis in Crimea and Donbass will be useless.<sup>97</sup> All claims of this kind will be dismissed in accordance with the conclusions of the *Rosneft* case and the General Court established practice.

### Conclusion

With the Ukrainian crisis, the deterioration in EU-Russia relations has reached its lowest point. The Parties have introduced mutual restrictive measures to each other. The EU has imposed two groups of sanctions against Russia due to the Crimean crisis and due to the situation in the South-East of Ukraine. Russia reacted to the second group of the EU sanctions by countersanctions.

Nevertheless, the EU-Russia relations have never deprived us of positive incentives and hopes.<sup>98</sup> The EU External Relations Council formulated five short term principles to relations with Russia in March 2016.<sup>99</sup> Furthermore, the idea of a Common economic area from the Atlantic to the Pacific is still on the agenda of Russian external activity in accordance to its Concept of foreign policy 2016.<sup>100</sup>

The “war of sanctions,” which has frozen official contacts and negotiations has not achieved anything. This crisis can only be overcome through dialogue. However, at the moment, the main critics of the EU sanctions amongst EU Member States (Austria,

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<sup>96</sup> Para. 78 of the Judgment of the General Court of 15 June 2017 in Case T-262/15, *Kiselev v. Council*.

<sup>97</sup> Гландин С. Европейское право ограничительных мер после первых российских дел в Суде Европейского Союза, 2(22) Международное правосудие 80 (2017) [Sergey Glandin, *The European Law of Restrictive Measures after First Russian Cases before the European Court of Justice*, 2(22) International Justice 80 (2017)].

<sup>98</sup> Paul Kalinichenko, *Shared Values and Interests in the Conflictual Relationship between the EU and Russia in The European Neighbourhood Policy – Values and Principles* 115 (Sara Poli (ed.), Abingdon, Oxon; New York: Routledge, 2016).

<sup>99</sup> The five principles guiding the EU’s policy towards Russia are: 1). Implementation of the Minsk agreement as the key condition for any substantial change in the EU’s stance towards Russia; 2). Strengthened relations with the EU’s eastern partners and other neighbours, including in Central Asia; 3). Strengthening the resilience of the EU (for example, energy security, hybrid threats, or strategic communication); 4). The possibility of selective engagement with Russia on issues of interest to the EU; 5). Need to engage in people-to-people contacts and support Russian civil society. See Outcome of the Council Meeting, 3457<sup>th</sup> Council Meeting, Foreign Affairs, Brussels, 14 March 2016 (7042/16, PR CO 16).

<sup>100</sup> See Concept of the Foreign Policy of the Russian Federation approved by President of the Russian Federation on 30 November 2016, para. 63 (Jun. 1, 2017), available at [http://www.mid.ru/en/foreign\\_policy/official\\_documents/-/asset\\_publisher/CptlCbB6Z29/content/id/2542248](http://www.mid.ru/en/foreign_policy/official_documents/-/asset_publisher/CptlCbB6Z29/content/id/2542248).

Greece, Finland, Italy and Spain) are too weak to convince the other members to lift them. Perhaps, the Brexit and Donald Trump's US Presidency will be able to have a political effect in order to abolish the second set of European sanctions and the Russian countersanctions. These sanctions can be lifted in the meantime. The EU sanctions of the first group will be kept for a long time.

Hopefully, both of the Parties will be able to cancel their mutual "war of sanctions." The sanction policy is unreasonable and destructive, especially, concerning the Minsk II Arrangements and the beginning of peaceful resolutions in *the Donetsk region* and *the Lugansk region* of Ukraine.

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### References

Burke J.J.A. *Economic Sanctions against the Russian Federation are Illegal under Public International Law*, 3(3) Russian Law Journal 126 (2015).

Green J.A. *Editorial Comment: The Annexation of Crimea: Russia, Passportisation and the Protection of Nationals Revisited*, 1(1) Journal on the Use of Force and International Law 3 (2004).

Kalinichenko P. *Shared Values and Interests in the Conflictual Relationship between the EU and Russia in The European Neighbourhood Policy – Values and Principles* 115 (S. Poli (ed.), Abingdon, Oxon; New York: Routledge, 2016).

Leino P. & Petrov R. *Between "Common Values" and Competing Universals – The Promotion of the EU's Common Values through the European Neighbourhood Policy*, 5(15) European Law Journal 654 (2009).

Lukyanova E. *On the Rule of Law in the Context of Russian Foreign Policy*, 3(2) Russian Law Journal 10 (2015).

Marosi I., Csink L. *Political Questions in the United States and in France in Studia Iuridica Caroliensia Vol. 4* 113 (M. Hoe (ed.), Budapest: Mátyás Kapa, 2009).

Milano E. *The Non-Recognition of Russia's Annexation of Crimea: Three Different Legal Approaches and One Unanswered Question*, 1 Questions of International Law 35 (2014).

Müllerson R. *Ukraine: Victim of Geopolitics*, 13(1) Chinese Journal of International Law 133 (2014).

Petrov R. & Kalinichenko P. *The Europeanization of Third Country Judiciaries through the Application of the EU Acquis: The Cases of Russia and Ukraine*, 60(2) International and Comparative Law Quarterly 325 (2011).

Tancredi A. *The Russian Annexation of the Crimea: Questions Relating to the Use of Force*, 1 Questions of International Law 5 (2014).

Weinberg L. *Political Questions and the Guarantee Clause*, 65 University of Colorado Law Review 849 (1994).

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