

The European Union (EU) has the power to adopt restrictive measures, which are preventive, temporary and reversible. Restrictive measures are based on Article 29 of the Treaty on European Union (TEU) for decisions under the Common Foreign and Security Policy (CFSP), and Article 215 of the Treaty on the Functioning of the European Union (TFEU) for implementing those measures through EU regulations.

Regarding compatibility with the Charter of Fundamental Rights of the European Union (the EU Charter), listed individuals and entities are entitled to judicial protection under EU law, primarily under Article 47 of the EU Charter. That Article guarantees the right to an effective remedy and a fair trial. Restrictive measures, such as asset freezes or travel bans, can be challenged before the Courts of the EU by the designated individuals and entities. The Courts ensure a review of the lawfulness of all Union acts in the light of the fundamental rights that form an integral part of the EU legal order. The listed individuals are informed about the possibility of such recourse individually or through a notice published simultaneously with the legal acts.

On the other hand, Article 52(1) of the EU Charter permits limitations on EU Charter rights if such limitations are provided for by law, respect the essence of the right and are necessary and proportionate to objectives of general interest (such as peace, international security, EU foreign policy goals). The EU restrictive measures meet these criteria, since they are adopted on a clear Treaty basis, pursue objectives of general interest recognised by the Union, respect the essence of the rights and are proportionate to the objectives they pursue.

The decision-making process you are referring to, where the Council can take decisions to impose restrictive measures on natural persons, is based on Article 29 TEU under the CFSP, and Article 215 TFEU for implementing those measures through EU regulations.

As regards respect for the right to be heard and due process, according to the established case-law, ‘in the case of the initial decision placing a person’s or an entity’s name on the list of persons and entities whose funds are frozen, the Council is not required to inform the person or entity concerned beforehand of the grounds on which it intends to rely in order to list that person or entity. So that its effectiveness may not be jeopardised, such a measure must, by its very nature, be able to take advantage of a surprise effect and to apply immediately’¹.

Furthermore, in accordance with its obligations the Council consistently ensures the communication of its decisions, including the grounds for listing to the listed persons. This communication is done either directly, if the address is known, or through the publication of a notice, providing such persons with an opportunity to present observations, including through legal representation.

¹ See judgment of 27 July 2022, RT France v Council, T-125/22, EU:T:2022:483, paragraph 80 and the case-law cited.