

Mandates of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights; the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights; the Special Rapporteur on the independence of judges and lawyers and the Independent expert on the promotion of a democratic and equitable international order

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights; Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights; Special Rapporteur on the independence of judges and lawyers and Independent expert on the promotion of a democratic and equitable international order, pursuant to Human Rights Council resolutions 54/15, 52/17, 53/12 and 57/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **a reported change in European Union's approach to the provision of legal services in the context of its restrictive measures framework, which may adversely impact on the work of legal professionals and violate internationally established principles of access to justice, fairness and due process.**

A more comprehensive analysis on the issue of the impact of unilateral sanctions on access to justice and the right to effective remedies can be found in the 2024 thematic report to the 79th session of the General Assembly by the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights ([A/79/183](#)). It was also addressed in detail at the International Conference on sanctions, business and human rights, which took place in Geneva in November 2024.

According to the information received:

The complexity and proliferation unilateral sanctions programs and regulations have made intricate their navigation and understanding, even among experienced professionals operating in such contexts, such as regulatory lawyers and legal professionals. This complexity, as well as the frequent changes in the scope and purpose of such unilateral measures heighten the risk of misinterpretation, with possible inadvertent omissions and imprecise advice which may result in possible violations of sanctions-related restrictions, with consequent implications for both the legal professional and the client.

Permanent Delegation of the European Union
to the United Nations Office and other international organizations in Geneva

Pressure on legal professionals and on the performance of their duties in sanctions contexts and environments has been further intensified with the adoption in 2024 of the EU Directive 2024/1226 “on the definition of criminal offences and penalties for the violation of Union restrictive measures”. This Directive explicitly ascertains the “clear risk” of the services of legal professionals “being misused for the purpose of violating Union restrictive measures” and prohibits any legal advice which is provided for the purposes of violating Union restrictive measures, any intentional participation of legal professionals in such prohibited conduct, or even mere knowledge that the client is seeking advice for the purpose of violating Union restrictive measures.

The EU restrictive measures frameworks provide for several restrictions and prohibitions with regards to the designated natural or legal persons, entities or bodies, including freezes of assets and of economic resources (tangible or intangible, movable or immovable) while they also prohibit any attempt to make funds or economic resources directly or indirectly available to or for the benefit of these designated natural or legal persons, entities or bodies. Nevertheless, they allow for the release of certain frozen funds or economic resources for the listed persons’ and their families’ basic needs as well as “for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services.”

The said regulations do not define the scope of the term “legal services”, neither clarify whether or not they should be strictly limited to legal advice and representation during judicial proceedings only. At the same time, the EU Directive 2024/1226 appears to adopt a broad interpretation by authorising the provision of legal advice beyond the strict contentious matters during the judicial proceedings by including also “advice on instituting or avoiding such proceedings”, thus allowing for legal advice on the interpretation of EU law and of the EU restrictive measures frameworks, other regulatory guidance, as well as other legal operations.

However, in October 2022 the EU Council adopted Regulation 2022/1904 amending Regulation 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine. The new regulation inserted article 5n and in particular article 5n(2) prohibiting providing, directly or indirectly, a list of services including “legal advisory services” to the “Government of Russia” or to “legal persons, entities or bodies established in Russia.”

The EU Council interprets “legal advisory services” as covering “*the provision of legal advice in non-contentious matters, including commercial transactions, involving the application or interpretation of law; participation with or on behalf of clients in commercial transactions, negotiations and other dealings with third parties; and preparation, execution and verification of legal documents*”. Such services are prohibited when aimed at legal persons or entities established in Russia, including Russian subsidiaries of EU companies, unless such services fall under certain exceptions, subject also to prior authorization by the competent national authorities of the EU Member States. These exceptions under which the “legal advisory services” can be provided,

include *inter alia* services necessary for the exercise of the right of defence in judicial proceedings and the right to an effective remedy (5n(5)); and, services strictly necessary to ensure access to judicial, administrative or arbitral proceedings in a EU Member State, as well as for the recognition or enforcement of a judgment or an arbitration award rendered in a EU Member State (5n(6)). With this article the EU Council appears to distinguish and differentiate between the advisory work of the legal professionals on the one hand and their litigation/legal representation duties on the other.

In December 2022, lawyers and legal associations from European Union submitted three cases before the General Court of the European Union seeking annulment of the new article 5n of the EU Council Regulation 833/2014, arguing that the prohibitions contained in article 5n undermine the lawyers' duties, which include their capacity to provide legal advice, both in the context of actual or anticipated proceedings; threaten the professional secrecy, the independence of lawyers, the principles of proportionality and of legal certainty; and, hinder access to justice by reportedly depriving legal professionals from providing pre-litigation advice and other legal as well as out-of-court dispute resolution services.

In its judgment of 2 October 2024, the General Court dismissed these challenges by confirming the lawfulness and proportionality of the prohibition and ascertained its compatibility with EU fundamental rights. It stated that the prohibition applied only to legal advice that has no link with judicial proceedings. In addition, it did not concern the legal advice provided to natural persons. Furthermore, it confirmed the competence of EU Member States' authorities to grant authorisations for the exceptions under article 5n, by ensuring respect of the EU Charter of Fundamental Rights.

It also added that limitations need to be placed on the role of lawyers in ensuring compliance with and defending the rule of law. That role may be subject to restrictions justified by "objectives of general interest" pursued by the European Union, "provided that such restrictions do not constitute, in relation to the aim pursued, a "disproportionate and intolerable interference", impairing the very essence of the independence of lawyers and their fundamental role in a State governed by the rule of law, namely their contribution to the proper administration of justice and the protection and defence of the clients' interests.¹

Procedurally as well, legal professionals face serious challenges in performing their duties in sanctions-related cases, due to *inter alia* delays by competent authorities to grant the relevant authorisations; absence of response in certain cases; burdensome administrative procedures for delisting reviews at the EU level; submitting evidence and information to challenge the designation and rebut the designated person's alleged wrongdoing, in order to trigger the delisting review process. They are also affected by instances of over-compliance by banks, businesses and other entities who may refuse to process payments and provide other services critical for the performance of the legal functions.

¹ See Judgment of the General Court in Case T-797/22, paras. 132 and 43

While we do not wish to prejudge the accuracy of the received information, we wish to reiterate our concerns about the adverse impact that the EU restrictive measures may have on the work of legal professionals, on access to justice, due process and fairness in administrative and judicial proceedings, as well as on the enjoyment of the right to an effective remedy, protected and guaranteed by relevant international instruments and standards, including article 14 of the International Covenant on Civil and Political Rights (ICCPR).

We particularly note with concern the reported evolution of the EU's approach vis-à-vis the legal profession and lawyers involved in sanctions-related matters and advising and representing designated persons, including in judicial, administrative and arbitral proceedings. Of particular concern are the 2022 amendments to the EU Council's Regulation 833/2014, which appear to narrow the scope of the legal professionals' permissible activities and services, including by differentiating between legal service for contentious and non-contentious matters, and by prohibiting the latter. This development in conjunction with the mounting pressures against any alleged participation in perceived violations or circumventions of sanctions, following the adoption in 2024 of EU Directive 2024/1226 "on the definition of criminal offences and penalties for the violation of Union restrictive measures", may exacerbate uncertainty and fear among legal professionals, with possible negative implications on their independence and the effective performance of their functions and duties, as well as on the respect and protection of fundamental principles of justice, including inter alia due process, fairness, and the right to counsel.

Fragmenting the legal professionals' work and functions by categorizing certain core legal services and activities as permissible and others as prohibited may bring about ambiguity of interpretation and assessment, discouraging lawyers from undertaking sanctions-related cases, thus triggering overcompliance within the legal profession, with serious negative implications for access to justice and the rights of the affected by sanctions persons.

Legal professionals already face serious challenges in navigating complex unilateral sanctions regimes and regulations, including the EU restrictive measures frameworks, given these regimes' very dynamic and technical nature. In addition, they may experience other serious procedural and operational difficulties and impediments, due to the dominant perceptions and distrust about their sanctions-related work, as well as due to overcompliance by other involved actors. In this context, actions such as the ones described above that further restrict their work and function by also highlighting the risks of abuse of this profession and the possible intentional malignant conduct in sanctions-related cases, based on the premise that lawyers may constitute the medium for sanctions circumvention, may compound uncertainty, fear and stigmatization, all of which thwart the principles of the legal profession, namely integrity, independence and adherence to the rule of law.

Furthermore, we note with regret that the October 2024 judgment by the EU's General Court confirmed the validity of the prohibitions under article 5n of the amended Regulation 833/2014, and dismissed the concerns expressed by the petitioning lawyers and law associations. We, nevertheless, acknowledge that the prohibition of non-contentious legal advisory services does not concern natural persons. However, we wish to highlight the ambiguity of the Court's argument with regards to the justification

of the imposed restrictions on the fundamental role of lawyers. Namely, the judgment states that such restrictions should be justified by “objectives of general interest pursued by the European Union”, and at the same time they should not constitute a “disproportionate and intolerable interference” on the independence of the legal professionals.

We wish to recall that EU’s restrictive measures have been frequently described as key foreign and security policy instruments.² They hardly undergo any parliamentary or judicial review and scrutiny prior to their adoption and enforcement. In this context, a possibly undefined or broadly interpreted “objective of general interest” may be anchored in the priorities set by the EU Council (the Council of EU Member States’ Foreign Ministers), which themselves may be informed by ad hoc security, political or other concerns. It is therefore our understanding that such objectives of general interest aligned with foreign and security policy objectives may ultimately prevail over any potential risks of violating relevant rule of law and human rights principles and standards enshrined in both international and EU law, including with regards to access to justice, integrity and independence of lawyers, due process and fairness.

At the same time, we wish to stress that formulations such as “disproportionate and intolerable interference” are again general and broad, and they may give rise to different interpretations and potentially arbitrary application of the prescribed restrictions. What may be “intolerable interference” for a lawyer or law firm, may be deemed “proportionate” for the national competent authority, which is responsible to enforce the prescribed restrictions, while differences in application may also be observed among different EU Member States based on their own distinct national security and foreign policy priorities.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please explain how the current regulatory frameworks on the EU restrictive measures enable the unhindered provision of legal services and the unrestrained performance of lawyers’ and other legal professional’s duties in sanctions-related matters.
3. Please explain whether the reported prohibition on non-contentious legal advisory service under Article 5n of the amended EU Council’s Regulation 833/2014 also covers any regulatory advice on the content and scope of EU law as well as on the EU restrictive measures, which is

² Briefing “EU sanctions: A key foreign and security policy instrument”, European Parliamentary Research Service, European Parliament, 12 April 2024, at [https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/760416/EPRS_BRI\(2024\)760416_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/760416/EPRS_BRI(2024)760416_EN.pdf)

provided outside any judicial, administrative or arbitral proceeding.

4. Please provide information on how the EU Directive 2024/1226 “on the definition of criminal offences and penalties for the violation of Union restrictive measures” may interact with the prohibitions of Article 5n of the amended Regulation 833/2014 and any other similar provisions under the EU restrictive measures frameworks.
5. Please provide information on specific measures proposed by the EU to mitigate overcompliance among legal professionals in the face of tightening criminal liability for (assistance in) circumvention of the EU restrictive measures and the reported parallel ambiguity around the scope of legal advisory services brought forward by article 5n of the amended Regulation 833 /20214.
6. Drawing from the EU General Court’s judgment of 2 October 2024, please provide clarity of the term “objectives of general interest”, as well as examples of the types of situations that such general interest may refer to. Please also provide information on the competent EU authorities responsible to define, assess, and review the type and scope of the general interest pursued by the EU.
7. Similarly, please provide clarity of the term “disproportionate and intolerable interference” and whether there is any existing EU guidance explaining such terms, given that the referenced cases in the EU General Court’s judgment of 2 October 2024 do not provide such a clarification or explanation.
8. Please provide information on the measures undertaken to effectively address sanctions’ overcompliance by banks and other entities, whose conduct may adversely affect the performance of lawyers and other legal professionals’ duties in sanctions-related matters.

This communication and any response received from your Excellency’s Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency’s Government’s to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

Alena Douhan

Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights

Attiya Waris

Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

Margaret Satterthwaite

Special Rapporteur on the independence of judges and lawyers

George Katrougalos

Independent expert on the promotion of a democratic and equitable international order

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described. We reiterate our observation that sanctions-related procedures and decisions are of an executive and administrative nature. They, however, impose penalties and restrictions which are commensurable to criminal or civil penalties which are enforced following formal conviction through judicial proceedings. In this context, we wish to highlight specifically the international standards on due process and fair trial guarantees enshrined in the international human rights instruments, in particular the International Covenant on Civil and Political Rights (ICCPR).

Article 14(1) of the ICCPR sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law.

In addition, article 14 of the ICCPR provides a set of contain procedural guarantees that must be made available to persons charged with a criminal offence, including presumption of innocence; the right to be promptly and in detail informed about the nature and cause of the charge; to have adequate facilities for the preparation of the defence; to communicate with counsel of his own choosing; to be tried without undue delay; and the right of appeal. These guarantees must be respected by State parties, regardless of their legal traditions and their domestic law.

In its general comment No. 32 (2007), the Human Rights Committee states that deviating from the fundamental principles of fair trial, including presumption of innocence, is prohibited at all times, including in circumstances of emergency. Furthermore, it states that access to administration of justice must be effectively guaranteed to ensure that no individual is deprived, in procedural terms, of his/her right to claim justice. The right of access to courts and tribunals and equality before them is not limited to citizens of States parties, but must also be available to all individuals, regardless of nationality or statelessness, or whatever their status.

The availability or absence of legal assistance often determines whether or not persons can access the relevant proceedings or participate in them in a meaningful way and determines the persons' ability to pursue the vindication of their rights under the Covenant in proceedings available to them (paras. 10 and 11).

Similarly, the right to equality before courts and tribunals also ensure equality of arms, which ensures that each party is given equal opportunity to contest all the arguments and evidence adduced by the other party (para. 13).

General comment No. 32 refers also to the notion of fair trial which includes the guarantee of fairness of proceedings, which entails the absence of any direct or indirect influence, pressure or intimidation or intrusion from whatever side and whatever motive (para. 25), as well as the avoidance of undue delays (para. 27).

Everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. The presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle. It is a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused (para. 30).

The right to be informed of the charge “promptly” requires that information be given as soon as the person concerned is formally charged with a criminal offence under domestic law, or the individual is publicly named as such (para. 31).

Article 14 3(b) of ICCPR provides that accused persons must have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing. This provision is an important element of the guarantee of a fair trial and an application of the principle of equality of arms. According to Human Rights Committee, “adequate facilities” must include access to documents and other evidence. This access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory (para. 32).

We wish to recall the UN Basic Principles on the Role of Lawyers of 7 September 1990, and particularly those presented under “Guarantees for the functioning of lawyers”. Specific reference is made here to the responsibility of Governments to ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Finally, we refer to the Guiding Principles on Sanctions, Business and Human Rights developed by the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, and in particular section 28 on “Legal services” referring to the protection of the provision of legal services in sanctions-related proceedings as precondition for the protection of the right to an effective remedy; and, the protection of legal professionals in the course of their performance of their legal duties in sanctions-related cases.