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EU SANCTIONS REGULATIONS: FROM PROPOSAL TO ENFORCEMENT[1]

The article explores the evolution and enforcement of European Union (EU) sanctions regulations, with a focus on their growing integration into the EU's Common Foreign and Security Policy (CFSP) since the early 1990s. It posits a shift from broad sanctions to more targeted measures against individuals and entities linked to policies or actions triggering sanctions. This transition is studied through an analysis of EU sanctions types, their legal framework, and their interplay with international trade rules. The methodology involves a detailed examination of EU documents, guidelines, and treaty provisions.

Key words: EU law, targeted approach, autonomous sanctions, Common Foreign and Security Policy, National Competent Authority, European Commission.

Problem setting. In the contemporary global landscape, the enforcement of The European Union (EU) Sanctions Regulations has emerged as a pivotal issue. The evolution of these regulations, from their initial conception to their current enforcement, presents a complex and multifaceted problem. Despite the existence of a robust legal framework and the efforts of various stakeholders, challenges persist in the effective implementation and enforcement of these sanctions. These challenges are not only legal and political but also have significant economic and social implications. The complexity of the issue is further compounded by the diverse interests and perspectives of the Member States, each with its unique geopolitical context and priorities**.**

Analysis of recent research and publications. Recent studies and publications have extensively explored the EU sanctions policy, as a foreign and security instrument, the definition of sanctions according to EU law, their balance with international law (human rights and trade regulations), the implementation and monitoring of the EU sanctions regimes and the different types of sanctions. Among the most significant studies are the works of such authors as Biersteker (2013), Russell (2018), Bendiek, Ålander, and Bochtler (2020), Portela (2022, 2023), Lonardo (2023), Immenkamp (2024) and others.

However, these studies have often overlooked the nuanced dynamics of the sanctions imposed process, the role of Member States in EU enforcement, and the role of the European Commission, and there remains a gap in understanding the shift from broad, sweeping measures to a more targeted approach focusing on individuals and entities. This gap underscores the need for a more comprehensive and in-depth analysis. Furthermore, the rapidly changing geopolitical landscape and the evolving nature of international conflicts necessitate a continuous reassessment of the effectiveness and relevance of EU sanctions.

Objectives of the paper. This paper aims to address this gap by providing a detailed examination of EU Sanctions Regulations. The objectives of this paper are threefold: to provide a comprehensive overview of the problem sets, to critically analyze recent research and publications, and to elucidate the objectives of the paper, which include exploring the sanctions imposed process, understanding the role of Member States in EU enforcement, and examining the role of the European Commission. In doing so, this paper seeks to contribute to the ongoing discourse on EU sanctions and provide valuable insights that could inform policy-making and future research.

Main findings. *1. EU sanctions: legal background.* Before the 1980s, the European Community did not impose its own sanctions. Instead, individual Member States were responsible for implementing sanctions mandated by the United Nations Security Council (UNSC), a responsibility that continues to this day as part of their UN membership obligations. Up until 1980, the UNSC had only imposed sanctions on two countries: Rhodesia in 1965 and South Africa in 1977. However, the conclusion of the Cold War facilitated consensus-building at the UN, leading to what has been referred to as the 'sanctions decade' throughout the 1990s (Immenkamp, 2024, p. 2).

Since the early 1990s, financial and economic sanctions have become an increasingly integrated aspect of the Common Foreign and Security Policy (CFSP). The establishment of the European Security and Defence Policy (ESDP) in 1999, the Stability Pact for South Eastern Europe in 1999, the two rounds

of enlargement in 2004 and 2007, and the more than 20 civilian, military, and civil-military missions or operations undertaken until 2009 were considered by many as milestones along the path to a common European foreign and security policy (Bendiek, Ålander, & Bochtler, 2020). In 2004 the European Council adopted Basic Principles on the Use of Restrictive Measures (Sanctions), where Member States of the EU underscored their collective goal of employing sanctions to safeguard human rights, uphold democracy, enforce the rule of law, and promote good governance in accordance with the principles of the UN Charter and CFSP. Additionally, they aimed to use these measures to combat the threats posed by weapons of mass destruction and terrorism (Portela, 2022, p. 2).

At the UN level, sanctions are defined as 'measures not involving the use of armed force … employed to give effect to [UN Security Council] decisions' (Article 41 of the UN Charter). EU-level sanctions are not explicitly defined in European law, but they serve a similar purpose in implementing the decisions either of the UN Security Council or the Council of the EU (Immenkamp, 2024, p. 2).

As mentioned in Sanctions Guidelines (2018) the restrictive measures should be formulated considering the obligation under Article 6(3) of the Treaty on European Union (TEU) for the EU to uphold fundamental rights, which are safeguarded by the European Convention on Human Rights and are derived from the constitutional traditions shared among Member States (Council of the EU, 2018, p. 9–10).

Special attention requires the international trade regulations balance versus the EU sanctions. EU Sanctions by their nature should adhere to the international commitments of the Union and its Member States, particularly the World Trade Organization (WTO) Agreements. As stated by Sanctions Guidelines (2018) the General Agreement on Tariffs and Trade (GATT) and the General Agreement on Trade in Services (GATS) are applicable when limiting actions that impact trade in goods or services with third countries. Article XXI of GATT permits import and export restrictions that are either relevant to arms and military equipment or imposed in line with obligations under the UN Charter for the maintenance of international peace and security. Article XIV bis of GATS provides a similar exemption. Trade-restricting measures that do not fall under these categories must fulfill the conditions stipulated in Article XX of GATT and Article XIV of GATS, respectively, and in certain instances, could be at odds with WTO rules (Council of the EU, 2018, p. 11).

2. Principles, types, and categories of sanctions. There are three different major types of EU sanctions applied in combination with other sanctions regimes.

Initially, the EU acts as an *executor* of UN sanctions (*implementer*). All UN members are required to enforce sanction measures adopted under Chapter VII of the UN Charter, and the EU legislates such measures through a Council decision

under the CFSP, followed by the adoption of a regulation. Consequently, EU measures are 'embedded' in universally applicable UN sanctions, legitimized by the UN Security Council, and theoretically implemented by all UN member states. These measures merely enforce United Nations Security Council (UNSC) decisions, leaving no room for independent action or initiative by the EU.

Secondly, the EU imposes autonomous sanctions that extend beyond those of the UN, often referred to as *'supplementary'* measures. These sanctions serve to reinforce the UN sanctions regimes. They are frequently derived from the language used in UN Security Council (UNSC) resolutions. For instance, when the UNSC encourages member states to 'exercise vigilance' in enforcing sanctions under Chapter VII, the EU may opt to impose additional, supplementary sanctions. The EU's sanctions on Iran since 2010, the Democratic People's Republic of Korea, Libya in 2011, and Côte d'Ivoire exemplify this category of EU sanctions.

Thirdly, the EU imposes autonomous sanctions when UN sanctions are not in place. These sanctions are utilized when the UN Security Council fails to reach a consensus due to the veto of a Permanent Member. They also function as a tool of EU foreign policy, serving to express disapproval of perceived unacceptable actions and to reassert EU principles on the global stage. The EU's sanctions on Syria, Russia, Ukraine, Burma/Myanmar, Zimbabwe, Belarus, China, Uzbekistan, and the Comoros exemplify this type of EU sanction (Biersteker & Portela, 2015, p. 1–2).

EU sanctions, as part of its Common Foreign and Security Policy (CFSP), are divided into two primary categories: 1) general measures, which target specific sectors and can have a wide-ranging impact on the overall economy; 2) measures applied against identified individuals and entities, as specified in an annex to the legislation. As noted by Lonardo (2023), this fundamental classification carries significant implications: while sanctions against individuals and entities are subject to examination by the Court of Justice of the EU (CJEU), broader economic sanctions escape judicial review. The Court differentiates between general provisions and measures aimed at specific natural or legal persons named in the concerned act (Lonardo, 2023, p. 78).

Another categorization, given by Eckes (2022), pertains to the organizational structure of a given sanctions regime. This typically manifests as a *geographical or country-specific* regime, which involves imposing restrictions that affect individuals, entities, and certain sectors confined to a specific territory, usually a country. The majority of sanctions regimes fit into this category. However, following the adoption of a counterterrorism sanctions list by the United Nations Security Council (UNSC) after the events of September 11, 2001, *thematic*

or horizontal sanctions regimes have gained prominence (Eckes, 2022, pp. 255–269).

Early European sanctions often included very wide-ranging measures, for example, an embargo on Argentine imports in 1982 following the country's occupation of the Falkland Islands. However, concerns about the humanitarian impact of the 1990–2003 UN trade embargo on Iraq have resulted in a shift by the EU and the UN to a more targeted approach. Therefore, as mentioned by Russell, EU sanctions are designed to exert maximum influence on those responsible for the concerning behavior, usually the political and military leaders of a regime, while striving to minimize negative humanitarian impacts wherever feasible. (Russell, 2018, p. 2). For this reason, the EU Council Sanctions Guidelines articulate that the EU's restrictive measures are designed to specifically *target* those who are identified as being responsible for, benefiting from, or supporting the policies or actions that have led to the EU's decision to impose sanctions. The specific measures employed are contingent on the objectives of the sanctions, demonstrating the EU's approach of targeted and differentiated responses. These measures encompass, among others, the freezing of funds and economic resources, travel bans, arms embargoes, embargoes on equipment that could be used for internal repression, various export and import restrictions, and flight bans (Council of the EU, 2018, p. 13, 14).

Sanctions are enforced through a blacklist, which includes designated individuals and entities listed in the annex of each sanctions regime. These restrictive measures prevent the targets from moving or actively using their assets, including bank accounts, other financial depots, and physical assets like real estate and vessels, within EU Member States. Furthermore, banks and operators incorporated in the EU are prohibited from transferring funds to bank accounts owned by blacklisted individuals. However, it's important to note that these freezes do not alter ownership rights (Portela & Olsen, 2023, p. 7).

3. Sanctions implementation and enforcement. The development of sanctions regimes is a complex process involving different actors. All decisions to adopt, amend, lift or renew sanctions are taken by the Council following examination in the relevant Council working groups.

The High Representative of the Union for Foreign Affairs and Security Policy (HR) plays a significant role in the development of the CFSP through his/her proposals. The HR, in conjunction with the Council, ensures the EU's actions in the CFSP area are unified, consistent, and effective.

The European External Action Service (EEAS) supports the HR/VP in fulfilling his/her mandate. It plays a crucial role in preparing, maintaining, and reviewing

sanctions, as well as in communication and outreach activities related to them. This is done in close collaboration with Member States, relevant EU delegations, and the European Commission.

In the Council's legislative process concerning sanctions, the EEAS has a specific role. This includes preparing proposals for a decision on behalf of the High Representative and jointly with the European Commission, proposals for regulations. These are subsequently reviewed and adopted by the Council. Decisions are binding on the Member States, while regulations are directly applicable within the European Union and bind individuals and entities, including economic operators (EEAS, 2023). In addition to its decision-making authority in matters related to the CFSP, the Council plays a significant role in overseeing the implementation of sanctions. This includes amending existing legal acts to address potential unforeseen adverse effects and unintended gaps. To accomplish this, the Council relies on information gathered through various feedback mechanisms, which provide insights into the practical implications of previously adopted sanctions decisions and regulations (Portela & Olsen, 2023, p. 36). One of the most significant among these is represented by the Working Party of Foreign Relations Counsellors (RELEX) / Sanctions group, which mainly consists of sanctions coordinators based in the capitals of Member States. Regular meetings in this group, typically held quarterly, offer a platform for representatives of Member State sanctions to coordinate with their counterparts based in capitals directly, the Council's Legal Service, the Commission, the EEAS, along with various invited third-party actors, including non-governmental organizations.

Another crucial responsibility of the Council is to ensure the legal soundness and feasibility of any adopted measures. Its Legal Service records and addresses litigation cases brought against the institution in EU courts, based on grievances by either individuals or legal entities from within or outside the Union. These proceedings typically argue that the rationale for a specific individual listing or the evidence provided is not legally adequate, or that a certain sectoral measure unfairly targets specific individuals or entities. When EU courts deem a specific sanction ground to be inadequate and annul the listing, the Council frequently re-adds the individual in question to the sanctions list, providing additional information in the statement of reasons following the court ruling.

The European Commission, as guardian of the treaties, is responsible for ensuring, through monitoring, that the regulations imposing restrictive measures adopted under Article 215 TFEU are implemented and enforced by the Member States, and for coordinating Member States' action (EUR-lex, Glossary). The European Commission also collaborates intimately with the National Competent

Authorities (NCAs), offering guidance and assistance to EU operators. This collaboration ensures that all business activities conducted in areas under EU sanctions comply with the law. The Commission and the NCAs regularly share information on various facets of sanctions enforcement, including the total value of frozen assets, exceptions granted, and any enforcement challenges that may arise within their jurisdiction (European Commission, 2022). The NCAs in the Member States have to assess whether there has been a breach of the legislation and take adequate steps (EEAS, 2023).

Typically the competent authorities of Member States are responsible for: the determination of penalties for violations of the restrictive measures; the granting of exemptions; receiving information from, and cooperating with, economic operators (including financial and credit institutions); reporting upon their implementation to the Commission; for UN sanctions, liaison with Security Council sanctions committees, if required, in respect of specific exemption and delisting requests (European Commission, 2008).

This system is delineated in two principal documents: the 'Guidelines on implementation and evaluation of restrictive measures in the framework of the EU', initially adopted in 2003 and revised in 2018; and the 'Best Practices on Effective Implementation of Financial Restrictive Measures', first introduced in 2015 and updated in 2022. Both documents focus on the standardization of terminology and shared definitions for legal tools. The political dimensions of sanctions policy are addressed separately in the 'Basic Principles for the Use of Restrictive Measures', which is the EU's policy framework mentioned earlier (Portela & Olsen, 2023, p. 14).

The European Parliament's (EP) active involvement in the enforcement and comprehensive implementation of sanctions was clearly highlighted in its annual report on the execution of the Common Foreign and Security Policy (CFSP) in January 2023 (European Parliament, 2023). This underscores the Parliament's commitment to ensuring the effectiveness of these measures in achieving their intended objectives. As Portela and Olsen (2023) referred despite not having a formal role in the adoption processes of the CFSP, the EP primarily seeks to exert influence on EU restrictive measures through informal dialogues with representatives from other EU institutions, governments, and parliaments of Member States, as well as through public communication and the adoption of formal resolutions in the EP's plenary sessions. Moreover, the AFET (European Parliament's Committee on Foreign Affairs) occasionally includes specific sanctions-related topics on its agenda. The implementation of sanctions is closely monitored by Members of the European Parliament (MEPs) who have interests not only in the targeted countries

and sectors, but also in broader issues that are subject to EU sanctions regimes, such as human rights, cyber-security, chemical weapons, and terrorism (Portela & Olsen, 2023, p. 38).

Conclusions of the research. The comprehensive study of EU sanctions regulations from their inception in the 1980s to the present day reveals a significant evolution. Initially, Member States implemented United Nations Security Council (UNSC) sanctions at a national level. However, over the decades, sanctions have become an integral part of the Common Foreign and Security Policy (CFSP), reflecting the growing role of collective action in international relations.

This research confirms the hypothesis that EU sanctions have evolved into a vital instrument for upholding and restoring international peace and security. They serve as a tool for safeguarding human rights, democracy, the rule of law, and good governance, and for countering threats such as weapons of mass destruction and terrorism. This aligns with the principles of the UN Charter and the Treaty on European Union (TEU), demonstrating the EU's commitment to international law and multilateralism.

An unexpected finding of the study is the shift towards a more targeted approach to sanctions. This approach focuses on those responsible for the policies or actions that prompt the EU's decision to impose restrictive measures. This shift was influenced by concerns about the humanitarian impact of broad sanctions, as seen in the 1990–2003 UN trade embargo on Iraq. This finding underscores the EU's commitment to minimizing the unintended consequences of sanctions on civilian populations.

The research also highlights the complexity of developing sanctions regimes, involving various actors such as the Council, the High Representative of the Union for Foreign Affairs and Security Policy (HR), the European External Action Service (EEAS), the European Commission, and even the European Parliament. It underscores the central role of EU Member States in implementing and enforcing EU sanctions, and the European Commission's responsibility for ensuring these regulations are implemented and enforced. This reflects the unique institutional structure of the EU, where decision-making is centralized but implementation remains largely in the hands of Member States.

This research contributes to legal scholarship by providing a comprehensive understanding of EU sanctions regulations, from initiative to enforcement. The practical implications of the findings lie in their potential to inform policy-making and legal practices related to EU sanctions. They provide valuable insights for practitioners, including policymakers, legal advisors, and those involved in the implementation and enforcement of sanctions.

Future research could delve deeper into the effectiveness of the targeted approach to sanctions and explore the potential impacts of EU sanctions on international trade

regulations. Such research could provide valuable insights for enhancing the effectiveness of EU sanctions in achieving their intended objectives. It could also contribute to the ongoing debate on the balance between the need for effective sanctions and the need to minimize their impact on trade and humanitarian conditions. This would further enrich the academic discourse on EU sanctions and contribute to the development of more effective and humane sanctions policies.

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ПРАВОВЕ РЕГУЛЮВАННЯ САНКЦІЙ ЄС: ВІД ІНІЦІАЦІЇ ДО ВВЕДЕННЯ В ДІЮ

Постановка проблеми. На сучасному глобальному рівні, імплементація санкційних регламентів Європейського Союзу (ЄС) стала важливою темою. Еволюція цих регламентів від початкової концепції до сучасного виконання представляє складну проблему. Незважаючи на наявність міцної правової бази та зусиль різних учасників, ефективна реалізація та виконання санкцій стикається з викликами. Ці виклики мають не лише правовий та політичний, але й економічний та соціальний характер, ускладнений різними інтересами держав-членів ЄС, кожна з яких має свій унікальний геополітичний контекст та пріоритети.

Аналіз останніх досліджень та публікацій. Серед важливих досліджень – роботи таких авторів, як Бірстекер (2013), Рассел (2018), Бендік, Аландер, Бохтлер (2020), Портела (2022, 2023), Лонардо (2023), Імменкамп (2024).

Мета цієї статті полягає в огляді проблемних питань, критичному аналізі найновіших досліджень та публікацій, а також у визначенні цілей дослідження. Ці цілі включають аналіз процесу введення санкцій, розуміння ролі держав-членів та Європейської комісії у виконанні санкцій. Автор статті прагне зробити свій внесок у поточний дискурс щодо санкцій ЄС та надати цінні висновки, які можуть вплинути на формування політики та подальші дослідження.

Виклад основного матеріалу. До 1980-х рр. Європейська спільнота не запроваджувала власних санкцій, а держави-члени виконували санкції ООН. Після закінчення холодної війни санкції стали частиною Спільної зовнішньої та безпекової політики (СЗБП) ЄС. З 2004 р. Європейська рада прийняла Основні принципи використання обмежувальних заходів (санкцій), спрямованих на захист прав людини, демократії, верховенства права та боротьбу з загрозами, такими як зброя масового знищення та тероризм.

Існують три основних типи санкцій ЄС: 1) виконавчі санкції ООН, які ЄС зобов'язаний реалізувати; 2) автономні санкції, що доповнюють санкції ООН; 3) автономні санкції без наявності санкцій ООН. Санкції поділяються на загальні заходи, що впливають на сектори економіки, та заходи проти конкретних осіб і організацій. Санкції ЄС, як частина СЗБП, поділяються на такі основні категорії: 1) загальні заходи, що впливають на конкретні сектори і можуть мати широкий вплив на економіку; 2) заходи, застосовані проти визначених осіб та організацій, зазначених у додатку до законодавства. Інша класифікація, стосується організаційної структури режиму санкцій, які можуть бути географічними або тематичними.

Розроблення санкційних режимів включає різні органи ЄС. Високий представник ЄС із питань закордонних справ і політики безпеки відіграє ключову роль у підготовці санкцій. Європейська служба зовнішніх справ (EEAS) підтримує Високого представника у виконанні мандату. Рада ЄС приймає рішення щодо санкцій, а Європейська комісія відповідає за їх моніторинг та забезпечення виконання. У розробленні та виконанні санкцій беруть участь численні органи ЄС, включаючи Раду ЄС, Високого представника ЄС із питань закордонних справ і політики безпеки, Європейську службу зовнішніх справ, Європейську комісію та навіть Європейський парламент. Рада ЄС приймає рішення щодо санкцій, а Європейська комісія забезпечує їх моніторинг та виконання. Держави – члени ЄС відіграють ключову роль у реалізації та виконанні санкцій, тоді як Європейська комісія відповідає за забезпечення дотримання цих регламентів.

Висновки дослідження. Дослідження підтверджує гіпотезу про те, що санкції ЄС стали важливим інструментом підтримки міжнародного миру та безпеки. Вони слугують інструментом захисту прав людини, демократії, верховенства права та протидії загрозам, таким як зброя масового знищення та тероризм. Це відповідає принципам Статуту ООН та Договору про Європейський Союз (TEU), демонструючи відданість ЄС міжнародному праву. З плином часу прослідковується перехід до більш цільового

підходу до санкцій, спрямованого на тих, хто несе відповідальність за політику або дії, що викликали рішення ЄС про введення санкцій. Цей перехід зумовлений гуманітарними міркуваннями, такими як негативний вплив широких санкцій на цивільне населення.

Дослідження також підкреслює складність розроблення санкційних режимів, залучення різних органів ЄС та центральну роль держав-членів у реалізації санкцій. Це відображає унікальну інституційну структуру ЄС, де прийняття рішень централізоване, але реалізація значною мірою залишається в компетенції держав-членів. Практичні висновки можуть вплинути на формування політики та юридичну практику, надаючи цінні інсайти для практиків, включаючи політиків, юристів та тих, хто займається реалізацією санкцій. Майбутні дослідження можуть глибше дослідити ефективність цільового підходу до санкцій та вивчити потенційні впливи санкцій ЄС на міжнародні торговельні регулювання та основних прав та свобод людини, а також можуть сприяти поточним дебатам про баланс між необхідністю ефективних санкцій та мінімізацією їхнього впливу на торгівлю та гуманітарні умови, збагачуючи академічний дискурс та політичну практику.

Коротка анотація

Анотація. У статті розглядається питання еволюції регулювання санкцій Європейського Союзу (ЄС) та механізмів введення їх у дію, зосереджуючись на їх зростаючій інтеграції у Спільну зовнішню та безпекову політику (СЗБП) ЄС з початку 1990-х рр. Зазначається про перехід від широких санкцій до більш цільових заходів проти осіб і організацій, пов'язаних із політиками або діями, що викликають запровадження обмежувальних заходів. Для написання статті автор проаналізував типи санкцій ЄС, їхнє правове підґрунтя та взаємодію з міжнародними торговельними регулюваннями. Методологія включає детальний розгляд документів ЄС, керівних принципів та положень договорів, а також аналіз релевантних публікацій та досліджень.

Ключові слова: право ЄС, цільовий підхід, автономні санкції, Спільна зовнішня та безпекова політика, Національний компетентний орган, Європейська комісія.

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