

Sanctions as an EU foreign policy instrument

SUMMARY The EU's sanctions policy under the CFSP framework is guided by the EU's overarching foreign policy principle of effective multilateralism, with the United Nations (UN) at its core. Thus the EU implements mandatory sanctions adopted by the UN Security Council in order to maintain or restore international peace and security.

It can also impose autonomous sanctions, for which it may seek cooperation with states or regional organisations in order to enhance their effectiveness. Autonomous EU sanctions are always targeted and form part of a comprehensive approach, including political dialogue, incentives, conditionality and, as a last resort, coercive measures. CFSP sanctions are sometimes combined with trade or aid-related restrictive measures with a legal basis outside the CFSP framework, such as the suspension of the benefits resulting from bilateral or multilateral contractual relations with third countries or the withdrawal of unilateral trade concessions granted to third countries.

Academic research has shown that CFSP sanctions often fail to bring about the policy or behavioural change aimed for. Criticism has centred on the inconsistent selection of targets and insufficient monitoring of the implementation and evaluation of the impact of sanctions.

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Glossary

There is no universally agreed definition of **sanctions**. The [UN Charter's Article 41](#) provides for measures short of the use of armed force and a non-exhaustive list of types of sanctions. The EU uses the terms **sanctions** and **restrictive measures** interchangeably. Sanctions imposed in the CFSP realm aim at achieving *political* rather than *economic* goals. **Comprehensive** sanctions, such as trade embargoes are directed against entire states and tend to entail considerable human suffering for the population at large. In contrast, **targeted** or **"smart"** sanctions seek to minimise these unintended effects by maximising the impact on the leadership, the political elites and segments of society of the country concerned, which are deemed responsible for the objectionable behaviour identified.

Context

The EU has made use of sanctions as a foreign policy tool with [increasing frequency](#) since the establishment of the Common Foreign and Security Policy (CFSP) under the 1992 Treaty of Maastricht. It has both implemented mandatory UN Security Council decisions at EU level and has adopted autonomous restrictive measures under or outside the CFSP umbrella. [Academic research](#) into the effectiveness of CFSP sanctions has however revealed that they often fail to achieve their objectives.



Legal framework

The EU imposes [CFSP sanctions](#) against third countries, entities or individuals to bring about a change in policy or behaviour found to be inconsistent with the CFSP objectives, broadly set out in Article 21 TEU. The Council adopts CFSP decisions (pre-Lisbon, common positions) under Article 29 TEU. The measures included in Council decisions are implemented at either EU or national level, depending on the type of sanction. Arms embargoes or restrictions on admission are implemented directly by the Member States. Restrictive measures concerning the interruption or reduction of economic relations with a third country and the freezing of funds are implemented by means of a regulation, adopted by the Council, acting by qualified majority, on a joint proposal from the High Representative for Foreign Affairs and Security Policy and the Commission, under Article 215 TFEU. The EP does not have a formal role in the adoption of CFSP sanctions. It has merely the right to be informed.

Sanctions policy

The EU's sanctions policy is broadly outlined in the 2004 [Basic Principles](#) on the Use of Restrictive Measures (Sanctions), which set out the EU's commitment to the effective use of sanctions to maintain and restore international peace and security in accordance with the UN Charter and the CFSP.

In line with these principles the EU imposes autonomous EU sanctions to fight terrorism, the proliferation of weapons of mass destruction (WMD) and to uphold respect for human rights, democracy, the rule of law and good governance. The EU seeks to enlist the widest possible support of partners for autonomous sanctions to enhance their effectiveness. It uses restrictive measures as part of an integrated, comprehensive approach, including political dialogue, incentives, conditionality and, as a last resort, coercive measures.

Targeted sanctions must be imposed flexibly on a case-by-case basis in full respect of human rights and the rule of law.

The objectives of sanctions must be clearly defined and their necessity must be reviewed regularly.

A targeted carrot and stick policy

One of the main features of the EU's sanctions policy is its [double-track](#) approach combining pressure and engagement. The EU imposes targeted sanctions against the leadership of a country to induce a policy change. But at the same time, it continues to deliver humanitarian aid or other assistance to the population concerned, through civil society networks. In addition, when wielding sanctions the EU attaches particular importance to an incremental approach which aims at gradually adding more sanction elements if the target has not changed their behaviour. Conversely, the EU tends to be very responsive to positive developments on the ground with a view to lifting sanctions partly or completely. The resulting need for periodic reviews of targeted sanctions, and the evaluation of relevant intelligence, requires time and considerable human resources as well as regular Council decisions on listing or delisting of countries.

Policy mix on a case-by-case basis

The EU's integrated, comprehensive approach implies that, rather than applying CFSP sanctions, preference may be given to restrictive measures with a legal basis outside the CFSP framework. Such measures include the suspension of bilateral or multilateral contractual relations with third countries or the withdrawal of unilateral trade concessions granted to third countries, particularly developing countries. They may also be combined as a policy mix. Zimbabwe is one example. In 2002, the EU imposed [CFSP sanctions](#) against the country and [suspended](#) aid flows to it under the [Cotonou Agreement](#) between the EU and the 79 [African, Caribbean and Pacific countries \(ACP\)](#). Article 9 of the Agreement lists respect for human rights, democratic principles and the rule of law as "essential elements" (so called "human rights clause").

In case of their breach, a failed consultation procedure under Article 96 entitles the EU to adopt "appropriate measures". These might lead to suspension of the agreement resulting in development aid cut-offs for the targeted third country.

Another option for the EU to coerce a target is the withdrawal of unilateral trade concessions granted to third countries under the [General System of Preferences \(GSP\)](#). The GSP is consistent with WTO rules and conditional on compliance with [International Labour Organisation \(ILO\)](#) core conventions ("social clause"). So far, application of GSP has been withdrawn only for two countries: [Belarus](#) and [Burma/Myanmar](#). In March 2013, the EP's Committee on International Trade (INTA) [backed](#) the Commission's proposal to reinstate the application of GSP to Burma/Myanmar, given the country's reform efforts since 2011.

Categories of CFSP sanctions

CFSP sanctions may be divided into two main categories: EU sanctions implementing UN sanctions and autonomous EU sanctions, including informal sanctions.

EU sanctions implementing UN sanctions

The first category consists of EU sanctions implementing mandatory and legally binding UN sanctions adopted by the UN Security Council (UNSC) under Article 41 of the UN Charter, in response to an identified threat to international peace and security.

Furthermore, the EU has sometimes complemented UN sanctions with additional measures, as in the case of [Iran](#) where the EU – while implementing UN sanctions relating to

Iran's nuclear programme – has increased the list of targeted individuals, and has [separately](#) imposed sanctions against Iran for severe human rights violations.

Autonomous EU sanctions

The second category of autonomous sanctions may be imposed by the EU for a much broader array of reasons than UN sanctions. They may be wielded in the fight against terrorism and the proliferation of weapons of mass destruction (WMD), two of the key threats for the EU identified in the [European Security Strategy of 2003](#). In addition, the EU may levy sanctions against third countries as a response to violations of common EU norms and values, such as good governance, the rule of law, human rights and fundamental freedoms, or to gross violations of international human rights norms (*jus cogens*) such as torture or forced labour as in the case of Burma/Myanmar.

Informal sanctions

Furthermore, with no legal basis under the previous Treaties, a category of so called "informal sanctions" was created through the practice of the European Council and Council including sanctions against certain states in its conclusions without making them the subject of a formal decision.

A remnant of this practice is the [arms embargo](#) against China imposed by the European Council in the aftermath of the violent crackdown on student protests by Chinese security forces in Beijing's Tiananmen Square in 1989. In the past, informal sanctions had been imposed against Cuba, Guatemala, Pakistan, the Palestinian Authority, Peru, Russia, Serbia and Turkey.

Types of sanctions (restrictive measures)

- diplomatic sanctions (expulsion of diplomats, severing diplomatic ties, suspension of official visits)
- suspension of cooperation
- trade sanctions (general or specific trade sanctions, arms embargoes)
- financial sanctions (freezing of funds or economic resources, prohibition of financial transactions, restrictions on export credits or investment)
- flight bans
- boycotts of sport or cultural events
- restrictions on admission

Source: [EEAS](#)

Sanctions practice

Two key Council documents address major issues of the EU's sanctions practice: the 2005 [Guidelines](#) on Implementation and Evaluation of Restrictive Measures provide technical guidance for designing, implementing and monitoring of sanctions, as well as standard wording for CFSP legal instruments. The 2008 [Best Practices](#) for the Effective Implementation of Restrictive Measures specify the listing process and application of financial sanctions, including the procedure on how to grant exceptions (uses not prohibited by EU regulations) and exemptions (uses prohibited unless authorised by a competent authority).

Cooperation with the UN and key actors

EU sanctions implementing UN sanctions by far outnumber restrictive measures unilaterally imposed by the EU (see annex). This is consistent with the EU's strong commitment to [effective multilateralism](#), with the UN at its core. Hence, if the UN as the preferred option cannot impose sanctions because the UNSC is blocked, the EU may actively seek [cooperation](#) with key global or regional actors such as the US, the African Union (AU), the Association of Southeast Asian Nations (ASEAN) or the League of Arab States (LAS). In forging broad coalitions, the EU aims to minimise substitution effects and enhance the sanctions' effectiveness. The most recent expression of this policy is the sanctions regime against [Syria](#) complementing restrictive measures of other [key actors](#).

Geographical focus

The EU's ambition to act as a distinctive normative and transformative power is clearly focused on its eastern and southern neighbourhood, including the candidate countries covered by its enlargement policy. In its eastern neighbourhood, the EU has upheld long-standing sanctions against the [Belarusian](#) leadership and, while not having made use of CFSP sanctions proper, the EU has reacted to the deterioration of

democracy and the rule of law in Ukraine by delaying the [signature](#) of the EU-Ukraine [Deep and Comprehensive Free Trade Agreement \(DCFTA\)](#).

Autonomous EU sanctions by country and type, as of April 2013

	Arms embargo	Freezing of funds	Commodity/ services boycott	Travel ban
Belarus		x		x
Bosnia and Herzegovina		x		x
China	x			
Egypt		x		
Republic of Guinea (Conakry)	x	x	x	x
Iran		x		
Moldova/Transnistria				x
Myanmar/Burma	x		partly lifted	
Serbia/Montenegro*		x		x
Syria	x	x	partly eased	x
Tunisia		x		
United States of America			x	
Zimbabwe	x	x	x	x

*imposed before Montenegro's independence; still formally in force

Source: Based on the [EEAS list of CFSP sanctions in force](#)

In its southern neighbourhood the EU seeks to support the democratic transition in [Egypt](#) and [Tunisia](#) in the wake of the Arab Spring by freezing assets from the previous authoritarian regimes. And it aims to bring about regime change in [Syria](#) by employing the whole arsenal of its sanctions toolkit. The EU has also adopted targeted restrictive measures against individuals in EU candidate countries [Serbia and Montenegro](#) and the potential candidate country [Bosnia and Herzegovina](#).

Particular emphasis has been placed on the African continent where the EU has made frequent use of the well-institutionalised consultations of the Cotonou Agreement to exert influence on the policy of ACP countries rather than to wield CFSP sanctions as in the cases of [Guinea \(Conakry\)](#)

and Zimbabwe. Recently, the EU [eased](#) sanctions imposed on Zimbabwe in view of the outcome of the Zimbabwean constitutional referendum of 16 March 2013.

Legal issues linked to blacklisting

In the framework of the global fight against terrorism, individuals, entities or bodies suspected of having taken part in terror acts or of facilitating the financing of terrorist organisations were blacklisted by UNSC resolution [S/RES/1390\(2002\)](#). To give effect to it, the Council adopted [Regulation \(EC\) No 881/2002](#) based on Articles 60, 301 and 308 of the old EC Treaty.

Yassin Abdullah Kadi, a blacklisted Saudi national, whose assets had been frozen, [challenged](#) this Regulation before the General Court and subsequently appealed to the Court of Justice of the European Union (CJEU). In its landmark [Kadi ruling](#) the CJEU found that the Council Regulation violated Kadi's fundamental rights, having deprived him of his right to be heard, to an effective remedy and to property. As a result of the Kadi case, CFSP sanctions under Article 215 TFEU have become subject to judicial review by the General Court and the CJEU. This is an exception to Article 275 TFEU under which the Courts generally lack jurisdiction on CFSP matters.

According to a recent [legal study](#), the grounds underlying the different categories of sanctions differ in respect of their justification under international law, and thus in the potential legal cost they might entail for the EU when targeted individuals, entities or bodies challenge the EU's decision to have blacklisted them.

EP position

Notwithstanding the absence of a formal role in the adoption of EU sanctions, the EP regularly voices its position on the EU's sanctions policy. In a January 2013 resolution [on the human rights situation in Bahrain](#) the EP firmly condemned the lack of an EU response to the ongoing human

rights violations in Bahrain and called for targeted EU sanctions against those responsible for grave violations of the human rights of peaceful protesters.

In its resolution [on a consistent policy towards regimes against which the EU applies restrictive measures](#) of February 2012 the EP strongly criticised the application of double standards in EU sanctions policy, as evidenced by the different treatment of third countries with similar human rights and democratic records. It therefore suggested establishing clear criteria which would enhance the consistency and credibility of EU sanctions, and accompanying their application with precise and achievable benchmarks for the lifting of sanctions. In addition, it called for the scope of EU sanctions to be extended to include cases of violation of fundamental freedoms, especially of religious freedom and freedom of expression. It also strongly advocated that decisions on restrictive measures be implemented regardless of political, economic and security interests.

In its resolution [on the evaluation of EU sanctions as part of the EU's actions and policies in the area of human rights](#) of September 2008, the EP regretted that intra-EU disagreements and the reluctance of Member States to antagonise major partners such as Russia have led the EU to adopt only "informal sanctions", as this practice reflects an unbalanced or inconsistent application of EU sanctions. It furthermore deplored that no evaluation or impact assessment had been carried out in respect of the EU's sanctions policy, and that as a consequence it is very difficult to gauge the sanctions policy's impact and effectiveness on the ground. It therefore proposed to set up a network of independent experts to remedy these shortcomings and suggested enhancing the legitimacy of the EU's sanctions policy by involving Parliament at all stages of the procedure.

Academic views

Effectiveness

[Academic research](#) conducted by Clara Portela, of Singapore Management University, into the effectiveness of EU restrictive measures shows that CFSP sanctions feature a high failure rate. To a great extent, that may be due to the support of neighbouring powers acting as protectors, which undermines the impact of international pressure. This has been the case regarding Myanmar/Burma, Zimbabwe, Belarus and Transnistria which have been shielded by China/Thailand, South Africa and Russia respectively. Portela has found that CFSP sanctions tend to be most effective when used against countries strategically exposed, or unprotected by an influential power, and interested in capitalising on the economic benefits of cooperation with the EU and enhancing their international prestige.

Research carried out by Francesco Giumelli (Metropolitan University Prague) demonstrates that the effectiveness of sanctions must be measured against three different purposes which they may pursue, ranging from coercing or constraining the target to merely signalling strong disapproval with its policy or course of action. Sanctions' effectiveness depends *inter alia* on the direct material impact and on whether it is feasible for the target to comply with the sender's demands. A major cause for low effectiveness of sanctions may be that the expectations of the sender have been insufficiently clear to the target, or impossible to realise without risking their political survival.

Mikael Eriksson, of the Swedish Defence Research Agency, found evidence for his hypothesis that the greater the proximity between the sender country and the targeted entities, the more effective the EU's targeted sanctions policy is likely to be. The closer the target is, the more vulnerable it is to the sender's monitoring and screening.

[Stefan Lehne](#), with Carnegie Europe, claims that the effectiveness of EU sanctions can only be assessed in concrete terms on a case-by-case basis. He suggests that gauging the contribution of sanctions to achieving a specific outcome is inherently problematic since the influence of other factors is difficult to control.

Consistency

[Klaus Brummer](#) (University of Erlangen-Nuremberg) strongly criticises the EU's inconsistencies in the selection of targets, in the application of the grounds triggering the imposition of sanctions and in the use of exemptions, resulting in a gap between the EU's normative aspiration and reality. The EU reacted timidly to the violent response of the Chinese security forces to demonstrations in Tibet in March 2008 and to Russia's military action against Georgia in August 2008. This, he argues shows that the EU's sanctions policy tends to target only weak or isolated states with limited or no capacity to retaliate like Zimbabwe or Belarus. China or Russia, which are capable of reciprocating, are spared in order not to compromise Member States' security and economic interests.

Monitoring

[Konstanty Gebert](#), of the European Council on Foreign Relations' Warsaw office, stresses the need for better monitoring of the implementation and impact of sanctions, as loopholes in the sanctions regimes against Belarus (exemptions from the visa ban), Burma/Myanmar (the EU investment ban did not cover the oil sector, allowing EU companies to continue to strike profitable deals) and Libya (exemption of the oil industry) have seriously undermined the effectiveness of the sanctions imposed. He deplores that the EU is currently not capable of effectively assessing the implications of its sanctions, and concludes that this not only impairs their effectiveness but also the credibility of EU policy.

Main references

Coercing, constraining and signalling. Explaining UN and EU sanctions after the Cold War / F. Giumelli, Colchester 2011.

[Comment choisir ses mesures restrictives? Guide pratique des sanctions de l'UE](#) / C. Beaucillon, Institute for Security Studies, Occasional Paper no 100, December 2012.

[European Union sanctions and foreign policy. When and why do they work?](#) / C. Portela, 2010.

[Restrictive measures adopted by the EU from the standpoint of international and EU law](#) / T. Gazzini, European Law Review 2011, 36(6), 798-817.

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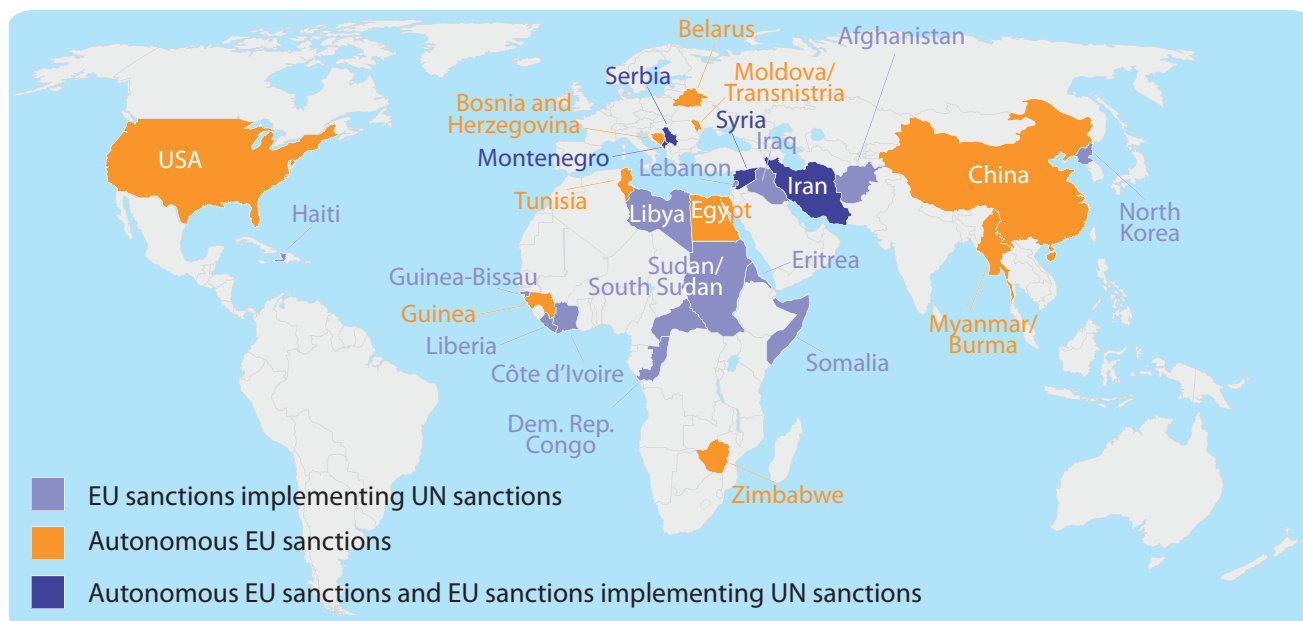


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Annex

Countries targeted by EU sanctions



Source: Based on the [FEAS list of CFSP sanctions in force](#) and the legal study [Comment choisir ses mesures restrictives? Guide pratique des sanctions de l'UE](#) by Charlotte Beaucillon.

EU sanctions in force as of April 2013, based on the classification by Charlotte Beaucillon

	EU sanctions implementing UN sanctions	EU sanctions imposed for violations of norms and values agreed with third countries <i>in italics</i> , EU sanctions imposed for violations of universally recognised norms
Afghanistan	Council Decision 2011/486/CFSP (Taliban) amended by Council Implementing Decision 2013/73/CFSP	
Belarus		Council Decision 2012/642/CFSP (violation of civil and political rights)
Bosnia and Herzegovina		Common Position 1997/642/CFSP (acts of violence in Mostar) Council Decision 2011/173/CFSP (support of the Dayton Agreement for peace)
China		European Council Declaration of 27 June 1989 (repression of the Tienanmen protests of June 1989)
Côte d'Ivoire	Council Decision 2010/656/CFSP (maintenance of peace)	
Democratic Republic of Congo	Council Decision 2010/788/CFSP (maintenance of peace) amended by Council Implementing Decision 2013/46/CFSP	
Egypt		Council Decision 2011/272/CFSP (support to democratic transition)
Eritrea	Council Decision 2010/127/CFSP (border conflict)	
Guinea Bissau	Council Decision 2012/285/CFSP (maintenance of peace)	
Republic of Guinea (Conakry)		Council Decision 2010/2638/CFSP (violent repression and violations of human rights)
Haiti	Common Position 94/315/CFSP (maintenance of peace)	
Iran	Council Decision 2010/495/CFSP (nuclear programme)	Council Decision 2011/235/CFSP (<i>serious human rights violations</i>)
Iraq	Common Position 2003/495/CFSP (maintenance of peace)	
Lebanon	Common Position 2005/888/CFSP (assassination of Rafiq Hariri) Common Position 2006/625/CFSP (maintenance of peace)	
Liberia	Common Position 2004/487/CFSP (measures against Charles Taylor) Common Position 2008/109/CFSP (maintenance of peace)	
Libya	Common Position 2004/698/CFSP (protection of economic operations) Council Decision 2011/137/CFSP (maintenance of peace - support to democratic transition)	
Moldova/Transnistria		Council Decision 2010/513/CFSP (conflict in Transnistria)
Myanmar/Burma		Council Decision 2013/184/CFSP (<i>serious violations of fundamental rights</i>)
North Korea (DPRK)	Council Decision 2013/88/CFSP (nuclear-related, ballistic missile-related and other WMD-related programmes)	
Serbia and Montenegro	Common Position 94/366/CFSP (prohibition to satisfy certain claims)	Common Position 2000/696/CFSP (measures against Slobodan Milosevic)
Somalia	Council Decision 2010/231/CFSP (maintenance of peace)	
Sudan and South Sudan	Council Decision 2011/423/CFSP (maintenance of peace)	
Syria	Common Position 2005/888/CFSP (assassination of Rafiq Hariri)	Council Decision 2013/186/CFSP (<i>serious human rights violations</i>)
terrorism	Common Position 2001/931/CFSP (international fight against terrorism) Common Position 2002/402/CFSP (Al-Qaida)	
Tunisia		Council Decision 2011/72/CFSP (support to democratic transition)
USA		Joint Action 1996/668/CFSP (protection against the effects of the extra-territorial application of US legislation such as the Helms-Burton Act of 1996 and the Iran and Libya Sanctions Act of 1996)
Zimbabwe		Council Decision 2013/160/CFSP (human rights violations)