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Draft paper on

Sanctions imposed by the European Union: legal and institutional aspects

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1. General overview of EU practice in the field of sanctions (or "restrictive measures")

The European Union (EU) is making an **increasing use of the instrument of sanctions** or, as they are called in the EU jargon, of "restrictive measures", as a form of coercive diplomacy. In particular, recent practice shows a **growing inclination of the EU to impose autonomous sanctions**, going beyond UN measures, and also a certain readiness to impose "tough" measures, having serious economic impact[1]. This may not come as a surprise, if one considers the willingness of the EU to "assert its interest and values on the international scene"[2]. The EU cannot be regarded in itself a military power, generally lacking the capacity to project military force abroad. On the other hand, the EU certainly is an "economic superpower"[3]. As a consequence, the threat or the imposition of economic and financial sanctions can be a powerful tool in the hands of the EU in order to exert an influence on the conduct of other actors in the international arena. It is also important to stress that, from a political viewpoint, there exists a **general**

[1] Anthonius W. de Vries, Clara Portela and Borja Guijarro-Usobiaga, *Improving the Effectiveness of Sanctions: A Checklist for the EU,* CEPS Special Report No. 95 / November 2014, p. 1.
[2] Art. 32 TEU.
[3] Court E. Golumbic, Robert S. Ruff III, "Who Do I Call For An EU Sanctions Exemption?: Why The EU Economic Sanctions Regime Should Centralize Licensing", *Georgetown Journal of International Law*, vol. 44, 2013, p. 1007 ff., at p. 1052 (An EU sanctions regimes "can be fairly measured against that of the US in terms of its impact"); Christina Eckes," EU Restrictive Measures Against Natural and Legal Persons: From Counterterrorist to Third Country Sanctions", in *Common Market Law Review*, vol.51, 2014, p. 869 ff., at 872 ("The EU possesses unmatched economic power: it is the biggest economy and the greatest trading power in the world"); Leeander Leenders, *EU Sanctions: A Relevant Foreign Policy Tool?*, College of Europe, Bruges, EU Diplomacy Papers, 3/2014, p. 4.

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agreement among the member States as to the fact that the EU is much better placed than national governments to impose international sanctions[4].

This paper is devoted exclusively to EU restrictive measures adopted for political, non-commercial purposes, within the framework of the Common Foreign and Security Policy (CFSP). In effect, EU institutions generally keep a distinction between "restrictive measures" properly so called, adopted within the framework of the CFSP, and other types of actions designed for influencing the conduct of other actors. In particular, the restrictive measures discussed in this paper do not include the measures adopted in the context of commercial disputes nor the actions decided under a legal basis outside the CFSP, such as those consisting in the suspension or termination of bilateral agreements, of unilateral trade concessions or of cooperation with third countries[5].

In 2004, the EU Council outlined a general policy framework for the adoption of sanctions, by adopting the "**Basic Principles** on the Use of Restrictive Measures (Sanctions)", which had been elaborated by the Political and Security Committee[6]. That document expressed in the clearest terms the willingness of the EU to use sanctions as a key instrument of its foreign policy and, for the first time, designed a strategy for the use of sanctions[7].

Another important programmatic document is represented by the "**Guidelines** on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy", whose last version was adopted by

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[4] See in particular, the Report of the UK Government "Review of the Balance of Competences between the United Kingdom and the European Union. Foreign Policy" https://www.gov.uk/government/consultations/foreign-policy-report-review-of-the-balance-of-competences. As noted by Eckes, EU Restrictive, cit., p. 872, the report is "throughout very positive about the EU's role in the area of sanctions".

[5] Needless to say, these actions may, and often are, linked to, or combined with, the restrictive measures decided within the CFSP. See Iain Cameron, "Introduction", in ID., *EU Sanctions: Law and Policy Issues Concerning Restrictive Measures*, Cambridge –Antwerp – Portland, Intersentia, 2013, p. 39.

[6] Council document 10198/1/04. Cameron, Introduction, cit., p. 11 "The basic principles are meant as a simple guide to the reasons that the EU might have for resorting to sanctions".

[7] See Clara Portela, *European Union Sanctions and Foreign Policy: When and Why do they Work?*, London – New York, Routledge, 2010. P. 28; Golumbic, Ruff III, op. cit., p. 1024 ff. (the Basic Principles, though perhaps lacking in specificity, are nonetheless a definitive articulation of EU sanctions policy).

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the Council on 15 June 2012[8]. This more articulated document outlines a number of principles in order to guide the EU institutions and Member States in the formulation and implementation of sanctions and presents **standard wording and common definitions** that may be used in the legal instruments imposing or implementing restrictive measures. The Guidelines also suggested that a specific Council body be dedicated to the monitoring and follow up of the restrictive measures. As a consequence, on 26 February 2004 COREPER mandated the Foreign Relations Counsellors Working Party to carry out the monitoring and evaluation of EU restrictive measures, while meeting periodically in a specific Sanctions formation (**RELEX/Sanctions**), reinforced as necessary with experts from capitals.

The mandate for RELEX/Sanctions includes the exchange of information and experiences and the development of best practices among Member States in the implementation of restrictive measures. In accordance with that mandate, in November 2005 RELEX/Sanctions adopted a set of "EU **Best Practices** for the Effective Implementation of Restrictive Measures". The Best Practices are "non exhaustive recommendations of a general nature for effective implementation of restrictive measures", particularly directed at national authorities.

At the time of writing, there are **more than 30 regimes of EU sanctions in force**[9]. Many of them implement binding Resolutions adopted by the UN Security Council under Chapter VII of the Charter (ex. Al Qaeda). In effect, the Basic Principles stress the importance of the use of sanctions as an instrument "to maintain and restore international peace and security in accordance with the principles of the UN Charter" and the willingness of the EU Council to support the UN and fulfil the obligations

[8] Council document 11205/12. A first version of the Guidelines was adopted by the Council on 8 December 2003 (doc. 15579/03). Updated versions were agreed on 1 December 2005 (doc. 15114/05) and on 22 December 2009 (doc. 17464/09).

[9] European Commission, Restrictive Measures in force (art. 215 TFEU), updated 5.12.2014.

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stemming from the UN Charter[10]. It may also happen that the EU, in implementing UNSC sanctions, decides to add further restrictive measures (Iran)[11].

At the same time, the EU (formerly the EC) has a long experience in adopting sanctions **on an autonomous basis, that is independently from a UN Security Council resolution**[12]. Currently, there are a number of important examples of these autonomous sanctions (Belarus; Moldova; Russian Federation; Syria). According to the 2004 Basic Principles, the Council will impose autonomous sanctions, if necessary, "in support of efforts to fight terrorism and the proliferation of weapons of mass destruction and as a restrictive measure to uphold respect for human rights, democracy, the rule of law and good governance"[13].

Needless to say, in the catalogue of EU sanctions one may find both traditional **"comprehensive" or "blunt" sanctions**, directed at States, and **"targeted" or "smart" sanctions**, aimed at single individuals or entities[14]. As to the targeted sanctions, that is measures directed at individuals who are named on *ad hoc* lists, a distinction has to be made between:

a) The situations in which the lists are established and maintained by the UNSC or a specialized sanctions committee (Resolution 1267, of 1997 concerning Al Qaeda). In this case the crucial decisions concerning listing and delisting are taken at UN level.

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[10] See also EU Sanctions Guidelines, para 3, "in the case of measures implementing UN SC Resolutions, the EU legal instruments will need to adhere to those Resolutions".

[11] Ibid., "it is understood that the EU may decide to apply measures that are more restrictive".

[12] That practice was inaugurated in the 1980s, with the adoption of sanctions against the Soviet Union following the invasion of Afghanistan (1980), against Poland for the imposition of martial law (1981) and vis-à-vis Argentina in the wake of the invasion of the Falkland Islands (1982). See Andrea de Guttry, "Le contromisure adottate nei confronti dell'Argentina da parte delle Comunità europee e dei terzi Stati ed il problema della loro liceità internazionale", in Natalino Ronzitti (ed.), *La questione delle Falkland/Malvinas nel diritto internazionale*, Milan, 1984, p. 343 ff.; LA Sicilianos, "Countermeasures in response to Grave Violations of Obligations Owed to the International Community" in J Crawford, A Pellet and S Olleson (eds), *The Law of International Responsibility*, Oxford, 2010, 1137-48, at 1141.

[13] Para. 3.

[14] On that distinction, see Marco Gestri "Legal Remedies against Security Council Targeted Sanctions," in Italian Yearbook of International Law: *De Lege Lata* and *De Lege Ferenda* Options for Enhancing the Protection of the Individual, in *Italian Yearbook of International Law*, 2008, pp. 25-53, at 25-26

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b) The situations in which the SC confines itself to deciding that sanctions are to be imposed upon certain subjects, leaving the concrete identification and listing of those subjects to the EU (Regime established under Resolution 1373 of 2001: in this case it is the EU that has to identify individuals and groups involved in terrorism).

Another distinction that has been made in the literature is between the sanctions that are geographically defined, targeting the political regimes of third States and their supporters, and the counterterrorist sanctions, which do not apply to a specific geographical region[15].

From a general point of view, the EU practice on sanctions may give rise to a number of problems. First of all, in the case of sanctions adopted *motu proprio* by the EU, that is in the absence of a UNSC resolution, a problem as to their **compatibility with international law** may arise. In this regard, the Basic Principles adopted in 2004 by the EU Council seem to move from the overarching principle of full respect for international law, providing that autonomous EU sanctions must be in "full conformity" with international law obligations (para. 3). In effect, under the TEU, "in its relations with the wider world, the Union…shall contribute to..the strict observance and the development of international law, including respect for the principles of the United Nations Charter" (art. 3 para. 5). In practice, from a legal point of view, EU sanctions may fall into different categories. Firstly, the EU may adopt measures that, even if designed to injure the target State or person, do not conflict with any international obligation. This is in particular the case when the EU decides to terminate or suspend benefits that had been unilaterally granted to third countries (development aid, technical assistance, cultural cooperation). These measures, qualified as "**retorsion**" under international law[16], do not raise any problem. Another example is offered by the

[15] Christine Eckes, "EU Restrictive Measures Against Natural and Legal Persons: From Counterterrorist to Third Country Sanctions", in *Common Market Law Review*, vol.51, 2014, pp. 869-906.

[16] According to the ILC, the notion of retorsion covers any ""unfriendly" conduct which is not inconsistent with any international obligation of the State engaging in it even though it may be a response to an internationally wrongful Act". Notably "acts of retorsion may include the prohibition of or limitations upon normal diplomatic relations or other contacts, embargoes of various kinds or withdrawal of voluntary aid programs. Whatever their motivation, so long as such acts are not incompatible with the international obligations of the States taking them towards the target State, they

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introduction of visa requirements for the entry into the EU of nationals of a given State or by the adoption of visa bans vis-à-vis certain individuals. In effect, each State is free to regulate the entry into its territory of foreign nationals, at least when there exists no international agreement regulating the movement of persons between the States involved.

A different situation arises when the sanctions adopted by the EU, if considered *per se*, do conflict with obligations deriving from customary or treaty law. In this case, the measure concretely adopted has to find a legal justification under the law of the international responsibility of States and international organizations (notably, pursuant to the rules on "**countermeasures**") or under the law of treaties (notably, according to the **principle *inadimplenti non est adimplendum***). Indeed, the practice of EU autonomous sanctions, that is of measures adopted without a UNSC authorization gives rise to a number of delicate legal questions, concerning *inter alia* their compatibility with art. 53 of the UN Charter as well as the right of the EU to take countermeasures in the presence of *erga omes* obligations[17].

When EU autonomous sanctions are adopted, EU institutions work in order "to enlist the support of the widest possible range of partners"[18], for, as stated in the EU Sanctions Guidelines, "the effectiveness of restrictive measures is directly related to the adoption of similar measures by third countries"[19]. In effect, the practice shows that the EU is often successful in **aligning the conduct of a significant number of third**

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do not involve countermeasures and they fall outside the scope of the present articles". Commentaries on the Draft Articles on responsibility of States for Internationally Wrongful Acts (2001) ILC Yearbook II (2) 128.

[17] One has to recall the thesis according to which, when the UN Security Council exerts its powers under art. 41 of the Charter and adopts sanctions against a certain State, individual States or international organization lose any right to adopt further sanctions in respect to the said State, even under the doctrine of collective countermeasures vis-à-vis violations of *erga omens* rules: see Sicilianos, op. cit., p. 1142; Ugo Villani, "The Security Council's Authorization of Enforcement Action by Regional Organizations", in *Max Planck Yearbook of United Nations Law*, vol. 6, 2002, p.p. 538-540; Pierre-Emmanuel Dupont, "Countermeasures and Collective Security: The Case of the EU Sanctions Against Iran", in *Journal of Conflict & Security Law*, vol. 17, 2012, pp. 301-336.

[18] EU Basic Principles, para 4.

[19] EU Sanctions Guidelines, Annex 1, para 21: "in principle, therefore it is preferable for sanctions to be adopted in the framework of the UN. Where this is not possible, the aim should be to bring as much as possible of the international community to exert pressure on the targeted country".

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States with that of the EU. More particularly, the States belonging to the following categories generally tend to align with EU measures: candidate countries, potential candidates, members of the European Economic Area (EEA). Also some of the partners of the European Neighborhood Policy have shown an important tendency to conform to EU sanctions, notably Moldova, Georgia and Armenia. In this connection, one may refer to the restrictive measures adopted against Syria on 15 October 2012. According to a Declaration issued by the High Representative of the Union for Foreign Affairs and Security Policy, the following third countries had expressly committed themselves to conform to the EU acts imposing the sanctions: Croatia (Acceding Country); the former Yugoslav Republic of Macedonia, Montenegro, Iceland and Serbia (Candidate Countries); Albania (Potential Candidate); Liechtenstein and Norway (members of the EEA); Moldova and Georgia. In light of the above, one can say that the EU sanctions policy exerts, from a factual point of view, a relevant force of attraction in respect of third States.

From the legal point of view, the case of **candidate countries** deserves a particular attention. They are generally expected to conform to sanctions adopted by the EU[20]. Yet it is questionable that candidate countries are under a legal obligation to do so. The problem has arisen in respect of the unwillingness of Serbia to align with the EU sanctions against Russia. The EU Commissioner for Neighborhood Policy and Enlargement Negotiations, Johannes Hahn, has recently issued contradictory declarations on the issue, stating, on the one side, that Serbia is under a legal commitment to gradually align its foreign policy to that of the EU, in particular in respect of difficult issues such as sanctions on Russia; yet, on the other side, declaring that the EU is not asking Serbia to impose sanctions against Russia[21].

[20] See EU Guidelines, Annex I, para 22, "candidate countries should be systematically invited to align themselves with the measures imposed by the EU" See also European Parliament recommendation to the Council of 2 February 2012 on a consistent policy towards regimes against which the EU applies restrictive measures, when their leaders exercise their personal and commercial interests within EU borders (2011/2187(INI)): (i) "to ensure that countries belonging to the European Economic Area and applicant countries for accession to the European Union also apply the restrictive measures and exchange relevant information with the Union"

[21] http://www.b92.net/eng/news/politics.php?yyyy=2014&mm=11&dd=19&nav_id=92288

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Another issue of general interest emerging from the EU practice is that concerning the **jurisdictional scope of application of sanctions**. The EU Sanction Guidelines expressly condemn the extra-territorial application of national legislations imposing sanctions, notably in respect of natural and legal persons under the jurisdiction of EU Member States, and declare that the EU "will refrain from adopting legislative instruments having extra-territorial application in breach of international law"[22]. In any case, the jurisdictional scope of EU sanctions is generally quite broad. According to the standard clause on jurisdiction envisaged by the EU Sanctions Guidelines, restrictive measures apply (a) within the territory of the EU, including its airspace; (b) on board any aircraft and or any vessel under the jurisdiction of a Member State, (c) to nationals of any Member State (wherever located), (d) to any legal person, entity or body incorporated or constituted under the law of a Member State (wherever located) (e) to any legal person, entity or body with respect to business done in whole or in part within the EU[23]. On the other hand, EU sanctions, differently from some US measures, do not envisage more aggressive forms of extra-territorial application, such as provisions covering the conduct of **foreign subsidiaries of EU legal persons** or clauses controlling the **re-export from third countries of EU-origin goods**[24].

2. The EU decision-making process for the imposition of sanctions

The adoption of "restrictive measures" in the EU legal order is governed by a **complex procedure**, which often straddles the TEU and the Treaty on the Functioning of the European Union (TFEU). The legal picture is complicated by the fact that any measure adopted by the EU must under EU law have an appropriate legal basis, in

[22] Para. 52.
[23] Para. 88.
[24] It has to be added that EU sanctions lists tend in any case to influence the conduct of leading non-EU companies based in third States: in the financial sector, for instance, a survey carried out in 2009 showed that 36% of non-EU companies use the EU list explicitly and a further 31% employ some form of aggregate, including EU designations: Deloitte Fin. Advisory Servs. Llp, *Facing The Sanctions Challenge In Financial Services: A Global Sanctions Compliance Study*, 2009, p. 18.

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accordance with the principle of attribution of powers, and considering the variety of possible different legal bases that may come into consideration in a given case.

The imposition of restrictive measures for political purposes in principle **falls under the EU Common Foreign and Security Policy (CFSP)**, and requires a **Decision of the Council,** adopted under article 29 TEU and in accordance with the procedure envisaged by artt. 30 and 31 TEU[25]. The measures must be consistent with the objectives of the CFSP, which are outlined in art. 21 TEU.

The **sanction proposal** may come **from any MS or from the HR**, who can act with the support of the EU Commission (in this case, the HR and the Commission will introduce a joint proposal). When the EU implements sanctions decided by the UNSC, it is crucial for the EU to adopt the necessary legal instruments with minimum time delay. In this connection, EU members of the SC may play a central role, notably in ensuring immediate information concerning the discussion and prospective adoption of new UN sanctions (the Guidelines stress the importance of "prompt exchange of information regarding draft Security Council Resolutions).

With respect to EU autonomous sanctions, the Guidelines articulate in a very detailed manner the different phases of the decision making process leading to the introduction of a sanctions proposal before the Council[26]. An important role in the

[25] Obviously, the basic political decisions as to the adoption of restrictive measures are often taken by the European Council. In this respect, the EU General Court (GC) has recalled that "the CFSP decisions adopted by the Council have to comply with the first subparagraph of Article 26(2) TEU, according to which the Council is deemed to act 'on the basis of the general guidelines and strategic lines defined by the European Council'": 25 April 2012, case T-509/10, Manufacturing Support & Procurement Kala Naft v Council, para 38. Before the entry into force of the Maastricht Treaty, a practice developed as to the adoption of "informal sanctions" against certain States or entities (Cuba, Guatemala, Pakistan, the Palestinian Authority, Peru, Russia, Serbia and Turkey). They were simply envisaged by the "conclusions" of the European Council or the Council, without being formalized in any further decision. A remnant of this practice is the embargo on arms against China, imposed by the Declaration of the Madrid European Council of 27 June 1989. See Gisela Grieger, "Sanctions as an EU foreign policy instrument", Library Briefing, Library of the European Parliament, 22.5.2013, p. 3.

[26] Proposals for restrictive measures are submitted by the Member States or the European External Action Service (EEAS). The political aspects and broader parameters of the proposals are first discussed in the relevant **regional working party** of the Council, which is chaired by the EEAS and assisted by EEAS country desk officers and sanctions officers and experts from the Commission and the Council Legal Service. The EEAS Heads of Missions in the countries concerned are generally invited to provide their advice on the proposals. Where appropriate, the Political and Security

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preparation and review of autonomous sanctions regime is played by the **European External Action Service (EEAS)**[27].

As an instrument of the CFSP, the adoption of a Decision on sanctions as a general rule requires **unanimity** from EU Member States in the Council. Some derogations to this rule are envisaged by art. 31, para 2, TEU. In particular, the Council may decide by qualified majority with respect to situations in which the ministers act on the basis of a previous decision of the European Council or upon a proposal presented by the HR at the specific request of the European Council (in both cases one may speak of a sort of prior authorization to qualified majority voting by the European Council). One has also to take into account the rules on abstention, and notably the mechanism known as "**constructive abstention**" (art. 31, para. 1 TEU). In particular, if a MS abstains that will not prevent the adoption of the decision (unless one-third of the members representing one-third of the population abstain and qualify their abstention). A member state may also qualify its abstention by making a formal declaration: in that case it "shall not be obliged to apply the decision, but shall accept that the decision commits the Union". Besides, in "a spirit of mutual solidarity, the Member State shall refrain from any action likely to conflict with or impede Union action based on that decision, and the other Member States shall respect its position". This instrument for flexibility allows a member State to opt out of a certain decision without blocking its adoption. In the doctrine, the utilization of such a mechanism has recently been invoked in order to allow the Council to adopt more effective sanctions against the Russian Federation in the wake of the Ukrainian crisis[28]. From a different viewpoint, one could consider that mechanism also in order to solve possible problems deriving from the

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Committee will also discuss the proposal and provide political orientations. When an agreement has been reached in the regional working party on the political aspects of the proposal, a **technical working group** (the Council's Foreign Relations Counsellors working group, **RELEX**) will discuss all the legal, technical and horizontal aspects of the proposed measures. **In this working group both the EEAS and the Commission are represented to provide advice on horizontal and technical aspects of the measures under consideration.** After having been cleared by the regional working party and RELEX, the proposal will be submitted to COREPER and to the Council.

[27] See also Eckes, EU restrictive, cit., p. 884.

[28] Steven Blockmans, "Ukraine, Russia and the need for more flexibility in EU foreign policy-making", CEPS Policy Brief, No. 320, 25 July 2014.

more prudent attitude of the new Greek Government in respect of the imposition of sanctions against Russia.

However, on the one hand, the constructive abstention mechanism has not been very successful in the CFSP practice; on the other hand, its application in the field of sanctions appears as particularly problematic.

Considering that in the field of the CFSP the adoption of legislative acts is excluded (art. 31, para. 1 TEU), the Decision on sanctions, in order to be applicable vis-à-vis natural and legal persons, has to be implemented by further acts. In particular, the measures foreseen in the CFSP Decision of the Council may be implemented along **two different tracks**, depending on the type of sanctions envisaged and on the attribution of competences between the EU and member States.

First, some measures are **implemented directly by the Member States**. This is in particular the case when the EU has no competence to adopt the operative measures envisaged by the CFSP Decision. In any case, since CFSP Decisions are legally binding, Member States are under a legal obligation to act in conformity with the act. Typically, **arms embargoes** and **travel bans**, established by a CFSP Decision, are directly implemented by the member States. For arms embargoes this is a consequence of art. 346 of the TFEU[29]. The embargo is therefore implemented by the national laws or regulations of each member State[30]. Needless to say, uniformity is required as to the application of the arms embargo by the Member States. As rule, that is unless otherwise specified, arms embargoes will cover all goods and technology included in the Common Military List of the Union[31]. One of the favorite EU restrictive measures is the restriction on the admission to its territory of specifically listed third country nationals. The travel ban may imply the denial of a visa, if the State of nationality is included

[29] On the other hand, very often the embargo also covers dual-use items and the provision of services related to military technology. These aspects have to be covered by a EU Regulation.
[30] Cameron, Introduction, cit., p. 9.
[31] Common Military List of the European Union (adopted by the Council on 17 March 2014) (equipment covered by Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment)(updating and replacing the Common Military List of the European Union adopted by the Council on 11 March 2013 (1))(CFSP) (2014/C 107/01)

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among those for which EU regulation No. 539/2001 requires a visa, or the non-admission of the person in question at a point of entry into EU territory. Both measures will be implemented by national authorities, for the responsibility of issuing visas and of exerting border control is still in the hands of national Governments[32]. As a recent example of a travel ban, one may refer to the Decision 2010/573/CFSP concerning restrictive measures against the leadership of the Transnistrian region of the Republic of Moldova, which has imposed a travel ban on a list of people "responsible for the campaign of intimidation and closure against Latin-script Moldovan schools in the Transnistrian region of the Republic of Moldova".

In a second range of hypotheses, the imposition of the sanctions foreseen in the CFSP decision requires **further EU legislation under the TFEU**. This is the case of measures restricting trade or financial relations with a State, which generally fall under the EU Commercial policy[33] or affect the movement of capital and the functioning of the internal market. In practice, the Council generally indicates in the CFSP instrument that "Further action by the Union is needed in order to implement certain measures"[34]. This enables the HR and the Commission to propose a Regulation implementing the measures falling within the remit of the Union.

After the Lisbon Treaty, the legal basis for such a legislation is offered by **art. 215 TFEU**[35]. The first paragraph deals with **sanctions directed at States** while the second

[32] In some cases, there is no need for any additional normative measure, and the travel restriction is implemented simply by denying access to the concerned individual.

[33] Court of Justice (ECJ), 14 January 1997, Centro-Com, Case 124/95 [1997] ECR I-80.

[34] See EU Sanctions Guidelines, para 49. "Where precision is needed to ensure that all measures are implemented in time, the CFSP instrument should indicate expressly how each measure or part of measure will be implemented" (ibid.). See Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine, para. 13.

[35] A second legal basis for the imposition of sanctions aiming at preventing and combating terrorism and related activities is provided by art. 75 TFEU. Under this provision: "Where necessary to achieve the objectives set out in art. 67, as regards preventing and combating terrorism and related activities, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall define a framework for administrative measures with regard to capital movements and payments, such as the freezing of funds, financial assets or economic gains belonging to, or owned or held by, natural or legal persons, groups or non-State entities". However, this provision is interpreted as referring exclusively to measures adopted in order to combat "internal"

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has introduced a new legal basis in respect of **restrictive measures against natural or legal persons and groups or non-States entities**. Before Lisbon, the imposition of targeted sanctions relied on a more precarious legal basis, deriving from the joint application of *ex* Articles 301, 60 and the flexibility clause (Article 308 TEC).

According to the first paragraph of art. 215, where a CFSP decision provides for the "interruption or reduction….of economic and financial relations" with one or more countries, the Council shall adopt the "necessary measures", acting by a qualified majority on a joint proposal from the HR and the Commission[36]. The same procedure is envisaged by the second paragraph for the adoption of targeted sanctions.

It is to be noted that under art. 215 TFEU the **European Parliament** has a very marginal role in respect of the adoption of sanctions. Formally, the Parliament does not take any active part in the procedure for the adoption of the sanctions and has only to be informed once the measures have been adopted. In effect, the Parliament has requested on many occasions to be associated in all the stages of the sanctions process, and in particular in the decision-making process leading to sanctions, in the selection of the sanctions most appropriate to the situation, and also in the definition of benchmarks and the evaluation of their implementation within the framework of the review mechanism and the lifting of the sanction[37]. In a number of cases, the Parliament has also expressed its political views on the merits of the EU sanctions policy, inviting the Council to

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terrorism, that is against terrorist or terrorist groups posing a threat to public security in the Member States (or within the EU). On the other hand, when the threat relates primarily to one or more third States or to the international community in general, the appropriate legal basis would be represented by art. 215 TFEU. On the relationship between art. 75 and art. 215 TFEU, see ECJ, 19 July 2012, European Parliament v. Council, Case C-130/10,. In the doctrine, Cameron, Introduction, cit., p.35 ff.; Eckes, EU Restrictive Measures, cit.

[36] Legally, the Regulation is based upon the CFSP Decision, and should be adopted after it. In practice, the proposals for the CFSP Decision and the Regulation tend to be drafted and discussed together, in order to allow the Council to adopt them simultaneously. See Golumbic, Ruff III, op. cit., p. 1040.

[37] European Parliament resolution of 4 September 2008 on the evaluation of EU sanctions as part of the EU's actions and policies in the area of human rights (2008/2031(INI)

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adopt sanctions vis-à-vis certain States[38] or accusing the EU of "double-standards" in the imposition of sanctions[39].

Art. 215 TFEU provides for the adoption of "**the necessary measures**". When that formula is used in the Treaty, the institutions may have recourse to all the types of legal acts envisaged by art. 288 TFEU (regulations, directives, decisions, recommendations and opinions).

By any means, the instrument of EU legislation generally used in this field is the "**regulation**". Only regulations may in effect guarantee the necessary uniformity in the application of the restrictive measures, in view of the fact that they **have general application**, are **binding in their entirety** and are **directly applicable** in all member States (art. 288 TFEU).

As we have seen, it is the Council that has to adopt the basic regulation on the restrictive measures. With respect to autonomous sanctions, the Council generally also exerts the competence to adopt the **acts implementing the basic regulation**, notably when it is necessary to establish at the EU level "uniform conditions" for implementing the measures[40]. As to restrictive measures implementing UNSC resolutions, it is the Commission which is generally entrusted to amend the regulation, or its annexes, in order to give effect to decisions of the UNSC or its Committees on listing or delisting[41].

3. The implementation of EU sanctions: the role of the Member States

[38] European Parliament Resolution of 17 January 2013 on the human rights situation in Bahrain (2013/2513(RSP)

[39]European Parliament, Recommendation to the Council of 2 February 2012 on a consistent policy towards regimes against which the EU applies restrictive measures, when their leaders exercise their personal and commercial interests within EU borders (2011/2187(INI)) http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2012-0018

[40] Under art. 291 TFEU, where uniform conditions for implementing EU acts are needed, in principle the competence to adopt the implementing acts pertains to the Commission. The Council may be granted such a competence "in duly justified specific cases".

[41] Cameron, Introduction, cit., p. 39.

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The actual implementation of the restrictive measures imposed at EU level often requires further action on the part of the Member States. In this respect, one may distinguish between possible **legislative action** and **administrative action** by Member States.

Council Regulations imposing sanctions are directly applicable in the Member States and, being part of EU law, take precedence over conflicting domestic legislation. As a consequence, as a rule and in the abstract, they should not require further legislation on the part of Member States. However, the Regulation may in practice require the adoption of additional legislation or regulations by Member States.

Typically, this happens in respect of the **determination of penalties for violations of the restrictive measures** (so called "**secondary sanctions**")[42]. In this respect, the regulations imposing restrictive measures normally include a standard clause, which is also set out in the Sanctions Guideline[43]. For instance, Regulation 267/2012, the basic act concerning sanction on Iran, provides in its art. 46 that:

> Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

By virtue of such a provision, Members States are under an articulate set of positive obligations: the duty **to adopt internal measures** imposing penalties for the violation of the restrictive measures; a duty **to concretely take all necessary measures to enforce** those measures; an obligation **to ensure that the penalties are effective, proportionate and dissuasive**. As a consequence, even if the choice of the penalties remains within the discretion of each member State, such a discretion is limited by the requirements concerning effectiveness, proportionality and dissuasion. The notion of "effective, proportionate and dissuasive penalties" has been elaborated by the European

[42] C. Eckes, *EU Counter-Terrorist Policies and Fundamental Rights: The Case of Individual Sanctions*, Oxford, OUP, 2009, pp. 55-56.
[43] Guidelines, cit., pp. 41-42, para. 89-90.

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Court of Justice in its case law[44] and it is now regularly used in EU legislation. In any case, the interpretation of these requirements is not an easy task and has to be made in accordance with the EU case law[45]. The penalties envisaged by the Member States range from measures of an administrative or civil nature to criminal law penalties. As to the criminal penalties, they may be provided for in legislative measures adopted *ad hoc*, with specific regard to a single sanctions regime; in many States the penalties can be imposed directly by the Government, via secondary legislation, pursuant to an authorization provided in a general statute[46]. In some legal orders, the penalties derive from general provisions of criminal law concerning breaches of EU regulations[47].

Under the relevant EU legislation, the member States are under a duty to notify the Commission of the rules adopted for imposing sanctions "without delay".

The delegation to each member State of the competence to lay down the rules on penalties applicable to infringements of EU restrictive measures could determine inconsistencies in the repression of violations. In this respect, as observed by Eckes, "it cannot be ruled out that the Community [now the EU] adopts criminal sanctions for the violation of European sanctions regimes at some point in the future"[48].

Apart from the situations in which the Member States have to adopt legislative measures, they also have the responsibility to carry out a number of important tasks in order to ensure that sanctions regimes are complied with. Given that the EU is not a federal State, and does not possess enforcement agencies having general competence,

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[44] ECJ, 21 September 1989, Case 68/88, Commission v Greece, [1989] ECR2965.

[45] See AG Kokott, Joined cases C-387/02; C-391/02 and C-403/02, Berlusconi and Others [2005]ECR I-3565.

[46] This is the case in the Netherlands. Suus Hopman, Michel Uiterwaal, "The Implementation of EU Terrorism Blacklisting Sanctions in the Dutch National Legal System", in Cameron, EU Sanctions, cit., p. 223 ff.

[47] See, for instance, the case of Finland. A general provision of the Finnish Penal Code punishes the violation of any regulatory provision in a "Regulation, adopted on the basis of Article 60, 301 or 308 of the Treaty establishing the European Community, on the interruption or limitation of capital transfers, payments or other economic relations as regards the Common Foreign and Security Policy of the European Union, (365/2002)" or the violation of "a regulatory order issued on the basis of one of the above". See Kimmo Nuotio, "How, if at all, do anti-terrorist blacklisting sanctions fit into (EU) Criminal Law?", in Cameron, EU Sanctions, cit., p. 126.

[48] EU Counter-Terrorist Policies, cit.., pp. 55-56.

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the function of **monitoring** the application of the restrictive measures by natural and legal persons and that of ensuring the **effective enforcement** of the sanctions by the same subjects is still in the hands of MS. National authorities are in particular tasked to cooperate with the relevant economic operators (including financial and credit institutions) in the application of sanctions.

In other words, as observed in the legal literature, "while EU legislation sets EU sanctions policy, adopts sanctions programs, and designates targets, **the day-to-day operation of the EU sanctions regime falls to the Member States**"[49].

National authorities also have to report to the Commission on their monitoring and enforcement activities.

Another aspect of the implementation of the EU sanctions which is entrusted to MS is the **granting of exemptions.** In effect, as is typically the case with sanctions programs, the EU instruments on financial restrictions, restrictions on admission and other restrictive measures generally make provision for appropriate exemptions to take account of, in particular, "**basic needs of targeted persons, legal fees, extraordinary expenses** or, where applicable, **humanitarian needs** or **international obligations**"[50]. Another situation in which exemptions may be granted is in order to enable a targeted persons **to fulfil an obligation arising from a prior contract**[51].

The granting of these exemptions has generally to be based on a **case-by-case assessment**[52] of the particular situation of the person involved and is attributed to the national authorities. The latter may also have the competence to impose conditions as to the exemptions granted, in order to ensure that they do not frustrate or circumvent the objectives of the sanctions regime[53]. It is to be noted that the EU acts imposing sanctions **do not provide detailed criteria** as to the granting of exemptions. Some guidance for the consideration of exemptions requests by the competent authorities of the member States is provided by the Sanctions Guidelines, as previously seen, and, in

[49] Golumbic,, Ruff III, op. cit., p. 1042.
[50] EU Sanctions Guidelines, p. 12, para. 25.
[51] EU Sanctions Guidelines, p. 13, para 28, and p. 37, para 86.
[52] GC, 6 September 2013, case T-434/11, Europäisch-Iranische Handelsbank AG v Council.
[53] EU Sanctions Guidelines, p. 12, para 26.

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more articulated terms, by the Best Practices. However, as observed, "this guidance lacks specificity...and leaves a vast amount of discretion to member state competent authorities"[54].

In fact, concerns have been expressed in the legal literature as to **possible inconsistencies in the concrete implementation of EU sanctions** deriving from the reliance upon the authorities of 28 separate Member States for the management of exemptions and, more in general, for the day-to-day enforcement of sanctions. Divergences in the actual implementation of EU sanctions programs among the Member States could in effect derive from the unequal availability of financial resources in the various states[55], from different levels of efficiency and professionalism of the authorities involved in the administration of sanctions but also from diverging political attitudes in respect of the targeted entities[56] or from a tendency to favor the economic interests of domestic operators. In light of that, some commentators have in particular advocated **the establishment by the EU of a centralized licensing agency** "responsible for reviewing and issuing decisions on applications for exemptions from sanctions"[57].

While waiting for such possible innovation, under existing EU law the full and consistent implementation by Member States of the EU legislation on restrictive measures should be ensured by the EU Commission (the watch-dog for EU law) and EU Courts. More particularly, if a Member State fails to adopt the necessary implementing rules *in subiecta materia*, an **infringement procedure** can be started by the Commission against that Member State, in accordance with Articles 258 (or by another Member State, under art. 259 TFEU)[58].

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[54] Golumbic,, Ruff III, op. cit., p.1044.

[55] It is to be noted that "the EU currently does not provide financial assistance for sanctions implementation": Golumbic, Ruff III, op. cit, p. 1045.

[56] Ibid., p. 1046: "domestic political agendas can..lead to disparities in sanctions implementation and enforcement.

[57] Golumbic,, Ruff III, op. cit., p. 1042.

[58] The Commission or the other Member States may bring the case to the Court of Justice, whose judgment is binding (art. 260 TFEU). In case of non-compliance with the Court's judgment, the Court may impose a lump sum or penalty payment on the concerned Member State (ibid.).

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In the actual practice, a number of problems also derive from the **number of national authorities** generally involved in the application, monitoring and enforcement of sanctions. In Italy, the application of sanctions involve a myriad of institutions: Ministry of Economic Affairs; Ministry of Foreign Affairs; Ministry of the Interior; Ministry of Justice; the Bank of Italy; the National Commission for Business and Stock Exchange (CONSOB); ISVAP; Italian police corps and agencies involved in the fight against crime (Polizia di Stato; Carabinieri; Guardia di Finanza; DIA). In order to ensure better coordination among those entities, a special Committee, Comitato di Sicurezza Finanziaria (Committee for financial security) has been established (Legge 14 dicembre 2001, n. 431; Legisaltive Decree 22 June 2007). The CSF, set up within the Ministry of Economic Affairs and chaired by the Director General of the Treasury, consists of the representatives of the various institutions involved.

In any case, it has to be added that when the Regulations implementing restrictive measures entrust specific tasks to the competent authorities of Member States, these authorities are "either listed in an Annex to the Regulation, or indicated in an indirect way by listing in an Annex to the Regulation the web-pages of each Member State where information about its relevant competent authorities can be found"[59].

[59] EU Sanctions Guidelines, p. 13, para 30.

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4. Judicial remedies against EU imposed sanctions

Under general EU law, the EU regulations adopted under art. 215 TFEU are subject to judicial review by the Court of Justice and the General Court of the EU. In particular, EU acts may be challenged in accordance with the **action for annulment** envisaged by art. 263 TFEU. As to the CFSP decisions constituting the basis for the imposition of sanctions, they are also subject to judicial review when they envisage sanctions targeted against natural or legal persons. In effect, art. 275 (2) TFEU introduces a derogation to the general rule, according to which the Court of Justice has no jurisdiction in the field of the CFSP, providing that the Court shall have jurisdiction "to rule on proceedings, brought in accordance with the conditions laid down in the fourth paragraph of article 263 of the Treaty, reviewing the legality of decisions providing for restrictive measures against natural and legal persons adopted by the Council on the basis of Chapter 2 of Title V of the TE"[60].

As is known, the numerous actions brought to the Court by listed individuals and legal persons, challenging the EU measures for alleged incompatibility with fundamental human rights, have given rise to an important and somewhat "revolutionary" case law of the EU Courts[61]. That case law has put the entire EU sanctions system under

[60] On the scope of that exception, see GC, 25 April 2012, case T-509/10, Manufacturing Support & Procurement Kala Naft v Council, para 34-38, nyr.

[61] Natural or legal persons, being unprivileged applicants, may bring an action against acts addressed to them and against acts which are of direct and individual concerns to them. After the entry into force of the Lisbon Treaty, private parties may also challenge a "regulatory act" (that is a non-legislative act) if the act is of direct concern to the applicant. As regards targeted sanctions, even under this restrictive test there is no question that the persons which are targeted by the act adopting the sanctions may challenge it, even if the act is adopted in the form of a Regulation. As a matter of fact, the case law of the EU Courts has consistently admitted the application by natural or legal persons included in the lists. A different legal discourse applies in respect of the Regulations adopting sanctions against States. It has to be observed that in this case undertakings suffering economic losses from the sanctions do have limited standing to challenge the EU measure according to the *Plaumann* formula. They need to prove that the act in question affects them "by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of these factors distinguishes them individually as in the case of the person addressed".

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considerable pressure[62]. This is not the place for re-discussing this jurisprudence, which has been extensively analyzed in the legal literature. It is however important to stress that that case-law is breaking new ground as to the judicial review of sanctions.

The first judgments that focused on the general, formal deficiencies in the listing and delisting procedures, amounting to a violation of the human rights of listed individuals (KADI I)[63], have open the way to the more recent wave of decisions (KADI II; Iranian cases) in which **full judicial scrutiny** of both the lawfulness and of the merits of each measure is carried out[64]. EU courts now routinely exert substantive judicial review of the merits of each measure, even if implementing a UNSC decision, and they annul sanctions not supported by adequate evidence.

More particularly, in the first place the EU courts analyze, from the viewpoint of art. 296 TFEU, the **reasons given by the Council** for listing the interested person. These reasons must comply with the listing requirements envisaged in the relevant acts and must be clear and specific, in order to allow the person to defend its rights and to challenge the measure before a court[65]. If the reasons are too vague, the listing is annulled[66]. In the second place, EU courts evaluate the **information or evidence presented by the Council in order to support the alleged reasons**: if the information

[62] See Eckes, EU Restrictive, cit., p. 891 ("more than a hundred cases have been brought to the EU courts challenging different types of targeted sanctions").

[63] ECJ, 3 September 2008, Joined cases C-402, C-415/05 P, Kadi and Al Barakaat International Foundation v Council and Commission [2008] ECR I-6351 (Kadi I Appeal).

[64] ECJ, 18 July 2013, Joined Cases C‑584/10 P, C‑593/10 P and C‑595/10 P Commission and Others v Kadi, nyr ('Kadi II' Appeal); GC, 21 March 2012, Joined Cases T-439/10 and T-440/10 Fulmen and Mahmoudian v Council; ECJ, case C-280/12 P, Council v Fulmen and Mahmoudian.

[65] See, for instance, ECJ, Fulmen, cit., para 61: "the person concerned must be able to ascertain the reasons upon which the decision taken in relation to him is based, either by reading the decision itself or by requesting and obtaining disclosure of those reasons, without prejudice to the power of the court having jurisdiction to require the authority concerned to disclose that information, so as to make it possible for him to defend his rights in the best possible conditions and to decide, with full knowledge of the relevant facts, whether there is any point in his applying to the court having jurisdiction, and in order to put the latter fully in a position to review the lawfulness of the decision in question". See also ECJ, Kadi II, cit., para. 100.

[66] See, for instance, GC, 6 September 2013, Case T-24/11, Bank Refah Kargaran v Council, nyr.

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or evidence is insufficient or inadequate the listing is also annulled[67]. As stated by the Court of Justice,

> the judicial review of the lawfulness of a measure whereby restrictive measures are imposed on an entity extends to the assessment of the facts and circumstances relied on as justifying it, and to the evidence and information on which that assessment is based. In the event of challenge, it is for the Council to present that evidence for review by courts of the European Union[68].

This case-law impinges upon delicate issues, such as judicial review of political decisions or of classified evidence[69]. In this respect, EU Courts have clarified that the institutions must submit to the court the evidence necessary to substantiate the alleged reasons "without it being possible to raise objections that the evidence and information used by the Council is secret or confidential"[70]. That even if the Court of Justice has acknowledged that overriding considerations pertaining to the security of the EU or of Member States or to the conduct of international relations may justify derogations from the adversarial principle, under which all information and material must be fully communicated between the parties, and preclude the disclosure of some information to

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[67] CJ, Fulmen, para. 64: "The effectiveness of the judicial review guaranteed by Article 47 of the Charter also requires that the Courts of the European Union are to ensure that the decision, which affects the person or entity concerned individually, is taken on a sufficiently solid factual basis. That entails a verification of the allegations factored in the summary of reasons underpinning that decision, with the consequence that judicial review cannot be restricted to an assessment of the cogency in the abstract of the reasons relied on, but must concern whether those reasons, or, at the very least, one of those reasons, deemed sufficient in itself to support that decision, is substantiated (see Kadi II, paragraph 119)". See also M. Lester, "Recent European Court Judgments On Iranian Sanctions", in *European Sanctions*, http://europeansanctions.com/2013/09/19/recent-european-court-judgments-on-iranian-sanctions/

[68] Ibid. See also GC, Case T‑390/08, Bank Melli Iran v Council, paragraphs 37 and 107.

[69] CJ, Fulmen, cit., para 70: "In such circumstances, it is none the less the task of the Courts of the European Union, before whom the secrecy or confidentiality of that information or evidence is no valid objection, to apply, in the course of the judicial review to be carried out, techniques which accommodate, on the one hand, legitimate security considerations about the nature and sources of information taken into account in the adoption of the act concerned and, on the other, the need sufficiently to guarantee to an individual respect for his procedural rights, such as the right to be heard and the requirement for an adversarial process (see Kadi II, paragraph 125, and, by analogy, ZZ, paragraphs 54, 57 and 59)".

[70] See, GC, Fulmen, cit. para. 100.

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the person concerned[71]. The draft new rules of procedure of the General Court submitted to the Council by the General Court, in agreement with the Court of Justice, do in effect envisage an *ad hoc* procedure allowing a party to submit that the communication of certain evidence would "harm the security of the EU or its Member States or the conduct of their international relations" and the Court to take the material into account without it being disclosed to the other party[72].

Another issue deserving investigation is to what extent domestic courts are allowed to review national measures adopted to implement EU measures, notably when member States exert a certain measure of discretion (e.g., the granting of exceptions).

5. Conclusions

From the foregoing analysis, a number of provisional conclusions can be drawn:

- The EU is making an increasing use of economic sanctions and has become one of the most important actors in that field. Particularly, in recent times the EU has shown a new inclination to adopt autonomous sanctions, enacted without any UN basis or going beyond relevant resolutions of the UN Security Council.

- Even if EU institutions have declared that autonomous sanctions must always be "in full conformity with international law", the actual lawfulness of each measure has to be carefully evaluated, notably under the law of the treaties (*inadimplenti non est adimplendum*) or under the rules on the international responsibility of States and international organizations (countermeasures).

- As regards autonomous sanctions, the EU is often successful in aligning the conduct of a significant number of third States (candidate countries; potential

[71] See ECJ, Fulne, cit., para. 70

[72] Council of the EU, Draft Rules of Procedure of the GC of the European Union - consolidated version, doc. 16724/14, 9 December 2014, art. 14. See M. Lester, "Draft European Court Rules Propose Secret Hearings, & April 2014", *European Sanctions*, http://europeansanctions.com/2014/04/06/draft-european-court-rules-for-secret-hearings/; Id, "EU To Approve New Court Rules To Permit Secret Hearings", 22 January 2015, *European Sanctions*, ; ID, "New EU Court Rules To Be Adopted Without UK Approval", 23 January 2015, in *European Sanctions*, http://europeansanctions.com/category/court-procedure/

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candidates; members of the EEA; partners of the European Neighborhood Policy) with EU decisions. From a legal point of view, the position of EU candidate States, vis-à-vis EU decisions imposing sanctions, deserves particular consideration.

- Under EU law, the imposition of sanctions is governed by a complex procedure. Some legal and institutional aspects of that regime are still in need of clarification, also considering the innovations introduced by the Lisbon Treaty. Generally, the imposition of sanctions requires a CFSP Decision of the Council, adopted under article 29 TEU. The latter is directly implemented by Member States when the EU has no competence to adopt the operative measures (arms embargoes; travel bans). In all the other cases, further EU legislation is necessary under art. 215 TFEU. Such a two-step procedure may be time-consuming and lead to delayed and ineffective implementation of the sanctions[73]. Besides, the adoption of the basic CFSP Decision requires unanimity among Member States, which can determine a paralysis in EU action or the adoption of watered-down measures. In this respect, the possible application of the rules of the TEU on "constructive abstention" has to be explored.

- The concrete implementation of EU sanctions is largely dependent upon the conduct of the Member States. First, they generally have to lay down the rules on the penalties for violations of the restrictive measures . More particularly, the choice of the penalties remains within the discretion of each Member State; on the other hand, that discretion is limited by the obligation to ensure that the penalties are effective, proportionate and dissuasive. In practice, the interpretation of the latter obligation may be problematic. Second, the function of monitoring the application of EU sanctions and that of ensuring the effective enforcement of the sanctions are still in the hands of the Member States. Third, under the current EU system, also the competence to grant exemptions is delegated to the national authorities of Member States. EU legislative or programmatic acts do not provide in that respect detailed criteria but only very general guidelines.

[73] See Leenders, op. cit., p. 7.

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- The delegation to the national authorities of 28 Member States of crucial functions concerning the implementation of EU sanctions (penalty determination; enforcement; granting of exemptions) has given rise to concerns about possible inconsistencies in the application of the measures, both among economic and financial operators and in the legal literature. Proposals have been put forward in order to overcome the present legal framework. On the one hand, one could envisage the adoption by EU institutions of common rules on penalties for violations of the restrictive measures (under the new competences introduced by the Lisbon Treaty). On the other hand, the establishment of a EU centralized agency, responsible for issuing decisions on exemptions from sanctions, has been advocated. These proposals deserve further investigation, from a legal but also from a political viewpoint.

- Under EU law, acts adopting sanctions may be challenged before the Court of Justice of the EU (art. 263 TFEU) and an extensive litigation has been triggered by targeted individuals and entities. As a consequence, the EU (and, indirectly, the UN) sanctions system have been subject to considerable pressure. In particular, EU courts now exert substantive judicial review of the merits of each restrictive measure, even if implementing a UNSC decision, annulling sanctions not supported by adequate evidence. This case-law raises thorny issues, such as the limits of the judicial review of political decisions or the possibility for a court of law to use classified evidence. At the time of writing this paper, EU institutions are considering important reforms in the procedure of the General Court addressing these problems. The recent EU case-law on sanctions has also been criticized by US officials, for risking to undermine the effectiveness of international sanctions (with particular respect to Iranian sanctions)[74]. On the other hand, the EU case-law has had a crucial role in favoring important reforms at the UN level as concerns the listing and delisting procedures.

[74] James Kanter, "Iran Ruling In Europe Draws Anger From U.S", *The New York Times*, September 6, 2013, http://www.nytimes.com/2013/09/07/world/europe/european-union-wrongly-imposed-sanctions-on-iranian-companies-court-rules.html?_r=0.

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