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## **Policy memo**

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### **Aims and strands of EU sanctions**

Sanctions are one of the instruments in the European Union's toolkit to promote the objectives of its external action: peace, democracy and the respect for the rule of law, human rights and international law (Art. 21 TEU). The EU argues that its 'sanctions are not punitive, but designed to bring about a change in policy or activity by the target country, entities or individuals'<sup>1</sup>. The EU tries to minimise their adverse consequences for the civilian population or for legitimate activities.

The EU traditionally refers to sanctions as 'restrictive measures'. It only uses the term 'sanctions' in relation to the measures agreed to in the framework of the Common Foreign and Security Policy (CFSP). Negative conditionality measures are not referred to as 'sanctions': e.g., reductions of aid adopted under article 96 of the Cotonou Agreement with African, Caribbean and Pacific countries are referred to as 'appropriate measures'; in the context of the European Neighbourhood Policy, the phrase 'less for less' is preferred.

EU sanctions practice features two distinct strands of restrictive measures. Firstly, the EU implements sanctions regimes decided upon by the UN Security Council (UNSC). The competence of the EU to implement UNSC sanctions is derivative of the duty which rests upon EU member states qua members of the UN. The 'uploading' of this

duty to the EU serves to prevent distortions in the European single market and to enhance the efficacy of implementation. The EU often reinforces UN sanctions by applying stricter and additional measures ('gold-plating'). A second strand of EU sanctions concerns those instances where the Council deems it necessary to adopt restrictive measures autonomously, i.e. in the absence of a UNSC resolution (e.g. Myanmar, Zimbabwe).

In the case of Iran, UN sanctions resolutions provided a basis for more extensive unilateral sanctions (see below).

### **Adoption and entry into force**

According to Articles 24(1) and 28-31 of the Treaty on European Union (TEU), the Council of Ministers imposes EU restrictive measures through a CFSP Council 'Decision' ('Common Position' before the entry into force of the Lisbon Treaty on 1 December 2009) adopted by unanimity.

Certain sanctions, such as arms embargoes and travel bans, are implemented directly by the EU member states on the basis of the binding Council decision.

Measures which provide for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries, or which have been adopted against natural or legal persons and groups or non-state entities (e.g. asset freezes and travel bans) fall under the competence of the Union and therefore require separate implementing legislation in the form of a Council regulation, which is directly binding on natural and legal persons active in the EU. The legal basis for this implementing regulation is Article 215 of the Treaty on the Functioning of the EU (TFEU), which prescribes that the Council (i) acts by a qualified majority on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission, and (ii) informs the European Parliament thereof. The

regulation contains the details on the precise scope of the measures decided upon by the Council and their implementation. It usually enters into force on the day following its publication in the Official Journal of the EU (OJEU)<sup>2</sup>.

## **Frequent measures**

### **- Arms embargo**

An arms embargo normally covers the sale, supply and transport of the goods included in the EU common military list<sup>3</sup>. Related technical and financial assistance is normally also included in the ban. In addition, the export of equipment used for internal repression may be prohibited, i.e. police equipment not covered by the EU common military list (e.g. vehicles equipped with water cannons, barbed wire and anti-riot helmets and shields). The Council might also ban the export of dual use goods to targeted countries, i.e. those that can be used for both civil and military purposes<sup>4</sup>.

### **- Asset freeze**

An asset freeze concerns funds (e.g. cash, cheques, bank deposits, stocks, shares) and economic resources owned or controlled by targeted individuals or entities. Funds may not be accessed, moved or sold. All other tangible or intangible assets, including real estate, cannot be sold or rented. An asset freeze also includes a ban on providing resources to the targeted entities and persons. EU citizens and companies must not make payments or supply goods and other assets to them. Business transactions with designated companies and persons cannot legally be carried out. National competent authorities can permit derogations from the asset freeze under specific exemptions, for instance to cover basic needs (such as foodstuffs, rent, medicines or taxes) or reasonable legal fees.

## - Visa or travel ban

Persons targeted by a travel ban will be denied entry to the EU at the external borders. If visas are required for entering the EU, they will not be granted to persons subject to such restrictions on admissions. EU sanctions never oblige a member state to refuse entry to its own nationals. If an EU citizen is subject to a travel ban, his home country must, subject to national legal provisions, admit that person. In addition, member states may grant exemptions to travel bans when they host an international intergovernmental organisation, a UN conference or the OSCE.

## Where do EU sanctions apply?

By their very nature, sanctions are designed to have political effects in third countries. Nevertheless, EU restrictive measures only apply within the jurisdiction of the EU, that is:

- within EU territory, including its airspace;
- to EU nationals, whether or not they are in the EU;
- to companies and organisations incorporated under the law of a member state, whether or not they are in the EU. This also includes branches of EU companies in third countries;
- to any business done in whole or in part within the European Union;
- on board of aircrafts or vessels under the jurisdiction of a member state.
- Candidates for EU membership (Turkey, Serbia, Montenegro, (FYRo)Macedonia, Kosovo, Iceland, Bosnia-Herzegovina, Albania) systematically align themselves with EU restrictive measures.

## Legal remedies

The Council notifies persons and entities targeted by an asset freeze or travel ban of the measures taken against them. At the same time, it brings the available legal

remedies to their attention: they can ask the Council to reconsider its decision, by providing observations on the listing. They can also challenge the measures before the General Court of the EU<sup>5</sup>.

### **Sanctions adopted against Iran**

The basic sanctions package against Iran is laid down in UNSC Resolutions 1737 (2006), 1747 (2007), 1803 (2008) and 1929 (2010). They entail following measures:

- embargo on all items which could contribute to Iran's enrichment-related, reprocessing or heavy water-related activities, or to the development of nuclear weapon delivery systems, and ban on related technical or financial assistance;
- visa ban and assets freeze on persons and entities directly associated with Iran's proliferation sensitive nuclear activities or the development of nuclear weapon delivery systems;
- prohibition to supply arms to Iran;
- ban on new grants, assistance or loans to Iran except for humanitarian and developmental purposes;
- ban on commercial activity involving uranium mining, production or use of nuclear materials and technology by Iran overseas;
- authorisation to states to intercept, seize and dispose of Iranian cargo covered under the embargo;
- prohibition on bunkering services to vessels owned or contracted by Iran;
- ban on new branches, subsidiaries of Iranian banks abroad and ban on new joint ventures with Iranian banks.

Continued US pressure for the internationalisation of the Iranian nuclear dossier and the extraterritorial application of its sanctions led the EU in January 2013 to adopt US-inspired measures additional to those imposed by the UNSC:

- a ban on export and import of arms;
- ban on export on materials relevant to industries controlled by the Iranian Revolutionary Guard Corps;
- ban on investment by Iranian nationals and entities in uranium mining and production of nuclear material and technology within the EU;
- ban on imports of crude oil, petroleum and petrochemical products and natural gas from Iran;
- ban on the supply of vessels designed for the transport or storage of oil and petrochemical products
- export and import ban on dual-use goods and technology, including telecommunication systems and equipment
- ban on the export of key equipment used for exploration and production of oil and natural gas, refining and liquefaction of natural gas, and for the petrochemical industry in Iran;
- investment ban on the Iranian oil and gas industries;
- ban on new grants, concessional loans to the Iranian government;
- ban on new commitments for financial support for trade with Iran;
- prohibition to provide insurance and re-insurance to the Iranian government and Iranian entities (except health and travel insurance);
- ban on trade in gold, precious metals and diamonds with Iranian public bodies and the central bank, and on delivery of Iranian denominated banknotes and coinage to the Iranian central bank;
- prohibition on financial transfers with Iranian banks unless authorised if related to food supplies, health, humanitarian purposes or personal remittances, among others;
- prohibition for Iranian banks to open branches and create joint ventures in the EU;
- ban on the issuance of and trade in Iranian government or public bonds with the Iranian government, central bank and Iranian banks;

- ban on cargo flights operated by Iranian carriers or originating in Iran (except for mixed passenger and cargo flights) and ban;
- ban on flagging to Iranian oil tankers or cargo vessels;
- prohibition to construct new oil tankers for Iran or to participate in their construction;
- ban on supplying key naval equipment for shipbuilding and maintenance to Iran.

EU supplementary sanctions included additional entries in the blacklists to which a visa ban and assets freeze was applied. Only 78 out of 482 listed entities were already designated by the UN.

### **Temporary EU sanctions relief following the adoption of the Joint Plan of Action**

The temporary and partial suspension of sanctions in the framework of the November 24, 2013 agreement on a Joint Plan of Action (JPA) illustrates the flexibility offered by the combination of UN and non-UN sanctions: despite the fact that Tehran's six negotiating partners include the P-5, the deal reached did not affect any UN-mandated measures. Specifically, the P5+1 agreed to halt efforts to reduce Iranian oil sales, "enabling Iran's current customers to purchase their current average amounts of crude", suspended sanctions on insurance for transport of such oil and allowed the repatriation of \$4.2 billion in revenue from oil sales currently held abroad. The EU and US have also suspended the prohibition on the import, purchase or transport of Iranian petrochemical products and on the provision of related services; as well as the prohibition on trade in gold and precious metals<sup>6</sup>.

### **Suspension and termination of EU sanctions**

The EU suspends and terminates its sanctions by way of the same procedure applied to the adoption of sanctions: i.e. a Council decision adopted unanimously by the

member states and, for issues falling within the competence of the EU (e.g. economic embargoes and asset freezes), an additional Council regulation adopted by a qualified majority on a joint proposal from the High Representative and the Commission. Such decisions usually enter into force on the day following their publication.

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<sup>1</sup> Factsheet: EU Restrictive measures, Brussels, 5 April 2013.



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<sup>2</sup> See the Commission's list of restrictive measures (sanctions) in force (Article 215 TFEU), 29 January 2014

<sup>3</sup> See Common Military List of the European Union, 11 March 2013.

<sup>4</sup> See Annex I of Council Regulation (EC) No 428/2009.

<sup>5</sup> See Blockmans, 'Curbing the Circumvention of Sanctions against Iran over its Nuclear Programme', 50 Common Market Law Review (2013), 623-639.

<sup>6</sup> For the suspension of EU sanctions see Council Decision 2014/21/CFSP of 20 January 2014 amending Council Decision 2010/413/CFSP concerning restrictive measures against Iran, OJEU 2014 L 15/22, available at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2014:015:0022:0023:EN:PDF>>; and Council Regulation No. 2014/42/EU of 20 January 2014 amending Regulation (EU) No. 267/2012 concerning restrictive measures against Iran, OJEU 2014 L 15/18, available at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2014:015:0018:0021:EN:PDF>>.