

# MASTER THESIS | MASTER'S THESIS

Titel | Title

Legal Challenges in the Enforcement of European Union Sanctions

verfasst von | submitted by

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angestrebter akademischer Grad | in partial fulfilment of the requirements for the degree of  
Master of Laws (LL.M.)

Wien | Vienna, 2026

Studienkennzahl lt. Studienblatt |  
Degree programme code as it appears on the  
student record sheet:

UA 992 548

Universitätslehrgang lt. Studienblatt |  
Postgraduate programme as it appears on  
the student record sheet:

Europäisches und Internationales Wirtschaftsrecht  
(LL.M.)

Betreut von | Supervisor:

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## **Abstract-English**

In the context of increasing geopolitical instability, sanctions have become a key instrument of contemporary foreign policy. In recent years, the EU has significantly expanded its use of sanctions, which now occupy a central place in its external action.

Particular relevance attaches to the study of the EU's autonomous sanctions, adopted independently of United Nations Security Council regimes. The growing reliance on such measures reflects the EU's aspiration to strengthen its strategic autonomy and to act as an independent actor in international relations.

The topicality of this issue is further reinforced by the complexity of the procedure for the adoption of autonomous sanctions, which operate at the intersection of intergovernmental decision-making under the Common Foreign and Security Policy and supranational EU law, as well as by the specific legal nature of the decisions adopted within the framework of such a procedure. This gives rise to significant questions regarding the allocation of institutional competences, the effectiveness of enforcement mechanisms, the scope and limits of judicial review, and conformity with the fundamental principles of EU law.

The Master Thesis provides a concise overview of the evolution of the EU's external policy and its role within the EU legal order. It also outlines the general legal framework governing this area. This Master's Thesis analyses the present state of the EU legal framework governing the adoption and implementation of autonomous restrictive measures, including CFSP Council decisions adopted pursuant to Article 29 TEU and the application of economic and financial restrictive measures under Article 215 TFEU.

The Master Thesis continues by addressing the procedural aspects, highlighting their inherent complexity. The Study analyses the two-stage decision-making process (intergovernmental and supranational) underlying the adoption of restrictive measures and provides a systematic overview of the types of restrictive measures available to the EU, along with their possible classifications.

Furthermore, the Master Thesis elucidates the distinct—and in certain respects unique—roles of the various actors involved in the enforcement of restrictive measures. Special attention is devoted to the jurisdiction and competence of the Court of Justice of the European Union, which has shaped the scope of its jurisdiction through case law.

The Master Thesis also examines the principle of proportionality as one of the fundamental principles of EU law. Through an analysis of the case law concerning restrictive measures, the Study addresses the question of how all three steps of the principle of proportionality are applied by the Court in sanctions cases.

Finally, the Master's Thesis formulates conclusions concerning the system of restrictive measures within the framework of the CFSP, identifies prevailing trends and prospective developments in this system, and proposes recommendations aimed at enhancing its effectiveness.

## **Abstract – Deutsch**

Vor dem Hintergrund zunehmender geopolitischer Instabilität sind Sanktionen zu einem zentralen Instrument der zeitgenössischen Außenpolitik geworden. In den vergangenen Jahren hat die Europäische Union ihren Einsatz von Sanktionen erheblich ausgeweitet, sodass diese mittlerweile einen zentralen Bestandteil ihres außenpolitischen Handelns darstellen.

Besondere Bedeutung kommt der Untersuchung der autonomen Sanktionen der EU zu, die unabhängig von Sanktionsregimen des Sicherheitsrates der Vereinten Nationen erlassen werden. Die zunehmende Nutzung solcher Maßnahmen spiegelt das Bestreben der EU wider, ihre strategische Autonomie zu stärken und als eigenständiger Akteur in den internationalen Beziehungen aufzutreten.

Die Aktualität dieses Themas wird zudem durch die Komplexität des Verfahrens zur Verabschiedung autonomer Sanktionen verstärkt. Dieses bewegt sich an der Schnittstelle zwischen intergouvernementaler Entscheidungsfindung im Rahmen der Gemeinsamen Außen- und Sicherheitspolitik und dem supranationalen Unionsrecht sowie durch die besondere rechtliche Natur der im Rahmen dieses Verfahrens erlassenen Rechtsakte. Daraus ergeben sich erhebliche Fragestellungen hinsichtlich der Verteilung institutioneller Zuständigkeiten, der Wirksamkeit der Durchsetzungsmechanismen, des Umfangs und der Grenzen der gerichtlichen Kontrolle sowie der Vereinbarkeit mit den grundlegenden Prinzipien des EU-Rechts.

Die Masterarbeit bietet einen kompakten Überblick über die Entwicklung der Außenpolitik der EU und ihre Stellung innerhalb der Unionsrechtsordnung. Zudem werden die allgemeinen rechtlichen Rahmenbedingungen dieses Politikbereichs dargestellt. Die Arbeit analysiert den aktuellen Stand des EU-Rechtsrahmens für den Erlass und die Umsetzung autonomer restriktiver Maßnahmen, einschließlich der auf Artikel 29 EUV gestützten GASP-Beschlüsse des Rates sowie der Anwendung wirtschaftlicher und finanzieller restriktiver Maßnahmen nach Artikel 215 AEUV.

Anschließend widmet sich die Masterarbeit den verfahrensrechtlichen Aspekten und hebt deren inhärente Komplexität hervor. Die Studie analysiert den zweistufigen Entscheidungsprozess (intergouvernemental und supranational), der der Verabschiedung restriktiver Maßnahmen zugrunde liegt, und bietet einen systematischen Überblick über die der EU zur Verfügung stehenden Arten restriktiver Maßnahmen sowie deren mögliche Klassifizierungen.

Darüber hinaus erläutert die Masterarbeit die unterschiedlichen – und in gewisser Hinsicht einzigartigen – Rollen der verschiedenen Akteure, die an der Durchsetzung restriktiver Maßnahmen beteiligt sind. Besondere Aufmerksamkeit wird der Zuständigkeit und Kompetenz des Gerichtshofs der Europäischen Union gewidmet, der den Umfang seiner Zuständigkeit maßgeblich durch seine Rechtsprechung geprägt hat.

Ferner untersucht die Masterarbeit den Grundsatz der Verhältnismäßigkeit als eines der grundlegenden Prinzipien des EU-Rechts. Anhand einer Analyse der Rechtsprechung zu restriktiven Maßnahmen wird der Frage nachgegangen, wie alle drei Stufen des Verhältnismäßigkeitsgrundsatzes vom Gerichtshof in Sanktionsfällen angewandt werden.

Abschließend formuliert die Masterarbeit Schlussfolgerungen zum System restriktiver Maßnahmen im Rahmen der GASP, identifiziert vorherrschende Trends und mögliche zukünftige Entwicklungen dieses Systems und unterbreitet Empfehlungen zur Steigerung seiner Wirksamkeit.

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## Chapter 1: Introduction

### 1.1 Introduction and Topic

Following Russia's invasion of Ukraine, the European Union ("EU") adopted an unprecedented series of autonomous sanctions (also known as "restrictive measures")<sup>1</sup> from February 2022<sup>2</sup> and to today. The analysis applied over this period of sanctions indicates that the trend is only moving toward strengthening this instrument of EU Common Foreign and Security Policy ("CFSP")<sup>3</sup>.

The CFSP was established in response to the need to enhance the EU's capacity to address the numerous challenges it faces at the international level, by endowing it with new instruments for action in areas of external relations beyond the traditional Community competences, primarily trade policy and development cooperation<sup>4</sup>.

The CFSP occupies a distinctive and *sui generis* position within the legal order of the EU at the present stage of its development. It is characterised by specific decision-making procedures that combine intergovernmental decision-making with elements of the EU institutional framework, which significantly affects the legal nature of the decisions adopted in the course of these procedures, as well as legal accountability and the scope and limits of judicial review.

Within this framework, sanctions are applied as a fundamental instrument of the CFSP aimed at safeguarding the EU's values, fundamental interests and security; preserving peace and strengthening international security; and promoting democracy, the rule of law, human rights and the principles of international law at both regional and global levels<sup>5</sup>.

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<sup>1</sup> It should be noted here that, within the context of the EU's external actions, the term "sanctions" is generally not employed in EU primary legal acts. Instead, it is predominantly used in United Nations (UN) legal instruments, particularly in Security Council resolutions adopted under Chapter VII of the UN Charter, and appears in EU online resources and soft law instruments, such as the Guidelines on the Implementation and Evaluation of Restrictive Measures (Sanctions) within the Framework of the EU Common Foreign and Security Policy (the updated), EU Best Practices for the Effective Implementation of Restrictive Measures, and the Basic Principles on the Use of Restrictive Measures (Sanctions). The term is also commonly used in academic literature, which equally indicates that both terms "restrictive measures" and "sanctions" – refer to the same concept.

<sup>2</sup> Régis Bismuth, "The New Frontiers of European Sanctions and the Grey Areas of International Law", (June 2023) <<https://geopolitique.eu/en/articles/the-new-frontiers-of-european-sanctions-and-the-grey-areas-of-international-law/>> accessed 19 November 2025.

<sup>3</sup> See EU sanctions tracker <<https://data.europa.eu/apps/eusanctionstracker/>> accessed 19 November 2025.

<sup>4</sup> See Eur-Lex <<https://eur-lex.europa.eu/EN/legal-content/summary/common-foreign-and-security-policy.html>> accessed 19 November 2025.

<sup>5</sup> See European Parliamentary Research Service (EPRS) <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/751409/EPRS\\_BRI\(2023\)751409\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/751409/EPRS_BRI(2023)751409_EN.pdf)> accessed 19 November 2025.

The reforms of the Lisbon Treaty fundamentally changed the constitutional architecture of EU external action. Today, a set of general guiding principles and objectives overarches the EU's external constitution with a central role for the global protection and promotion of human rights (see Art. 21(1), (2)(b), Art. 3(5) Treaty on European Union ("TEU"))<sup>6</sup>.

Nevertheless, alongside the increasing intensity of restrictive measures, the difficulties associated with their law enforcement practice are also intensifying, particularly within the realm of judicial practice. An increasing number of cases are currently pending before the Court of Justice of the European Union ("CJEU")<sup>7</sup>.

Numerous judicial challenges have already been brought before the CJEU, and as a consequence, the sanction regime has been sharply criticised for its negative impact on human rights due to the following circumstances.<sup>8</sup>

First and foremost, the CJEU's jurisdiction with respect to CFSP matters remains ambiguous and insufficiently delineated, which could potentially compromise the existence of effective judicial review. The principle of effective judicial protection is contained in Article 47 of the Charter of Fundamental Rights of the European Union ("CFR"). As the CJEU pointed out in its judgment, "the very existence of effective judicial review designed to ensure compliance with provisions of EU law is of the essence of the rule of law"<sup>9</sup>.

Thus, the question of the Court's jurisdiction in the field of the CFSP has become more pertinent than ever. An analysis of the Court's case law makes it possible to determine the limits of its competence as delineated by the Court, as well as to identify emerging trends in its further development.

Secondly, proportionality is a core principle of EU law regarding the exercise of EU competences, which, in particular, provides that EU action must not exceed what is necessary to achieve the objectives of the Treaties (Article 5(3) Treaty on the Functioning of the European Union ("TFEU")).

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<sup>6</sup> Vivian Kube, "The European Union's external human rights commitment: what is the legal value of Article 21 TEU?" (October 2016) <<https://cadmus.eui.eu/entities/publication/09e36514-d955-559d-84b8-c9075c887e14>> accessed 20 November 2025.

<sup>7</sup> Marie Terlinden "Sanctions Without Scrutiny? The Role of Proportionality in the Case Law of the European Union Courts", (Working Paper № 248), (May 2025), p. 5 <[https://ghum.kuleuven.be/ggs/publications/working\\_papers/wp-ggs-marie-terlinden-may-2025.pdf](https://ghum.kuleuven.be/ggs/publications/working_papers/wp-ggs-marie-terlinden-may-2025.pdf)> accessed 20 November 2025.

<sup>8</sup> Sarah Leonard, Christian Kaunert, "Between a rock and a hard place?: The European Union's financial sanctions against suspected terrorists, multilateralism and human rights", (December 2012), (Cooperation and Conflict, Vol. 47, № 47 Special Issue on European Security and Supranational Governance), p. 473 <<https://www.jstor.org/stable/45084703>> accessed 20 November 2025.

<sup>9</sup> See Judgement of the Grand Chamber of 28 March 2017 in case C-72/15 PJSC Rosneft Oil Company, ECLI:EU:C:2017:236, para 73.

In particular, judicial review of EU measures on the basis of proportionality is most commonly associated with discretionary policy decisions, in areas where the EU institutions are afforded a broad margin of discretion— a framework that is especially relevant to the adoption of CFSP Decisions<sup>10</sup>.

Many individuals and entities have contested restrictive measures on the proportionality grounds, claiming that such measure breach their fundamental rights<sup>11</sup>. In sanctions case law, however, the application of the three steps of the principle of proportionality is partial and inconsistent.

The CJEU has repeatedly referred to Article 52(1) of the CFR, stated, that “limitations on the exercise of the rights enshrined in the Charter, subject to the conditions that the limitation concerned respects the essence of the fundamental right in question and, subject to the principle of proportionality, that it is necessary and genuinely meets objectives of general interest recognised by the European Union”<sup>12</sup>.

Therefore, the topic of the application of the principle of proportionality by the CJEU in sanctions cases is becoming increasingly relevant. An analysis of the Court’s practice makes it possible to identify recurrent patterns in the CJEU’s approach to the application of this principle.

## **1.2 Purpose, Problem, and Research Question**

This study of this master thesis (“Master Thesis”) is tasked with examining the legal foundations for the adoption of EU sanctions, as well as the procedural framework governing their implementation. The adoption and implementation of restrictive measures involve a complex process, which shapes the nature of decisions taken within the CFSP framework. A thorough analysis of these issues will allow conclusions regarding the legal nature and distinctive features of decisions imposing restrictive measures in this context. The research will further explore the various types of sanctions and their potential classifications. Additionally, it will examine the actors involved in the adoption and broader enforcement of EU sanctions, with particular attention to their distinct roles.

Special emphasis will be placed on the role of the CJEU in sanction enforcement and on assessing the scope of its competence in the judicial review of restrictive measures,

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<sup>10</sup> Paul Craig, *EU Administrative Law* (Oxford University Press 2012), p. 600.

<sup>11</sup> Marie Terlinden “Sanctions Without Scrutiny? The Role of Proportionality in the Case Law of the European Union Courts”, (May 2025) (Working Paper № 248), p. 5 <[https://ghum.kuleuven.be/ggs/publications/working\\_papers/wp-ggs-marie-terlinden-may-2025.pdf](https://ghum.kuleuven.be/ggs/publications/working_papers/wp-ggs-marie-terlinden-may-2025.pdf)> accessed 20 November 2025.

<sup>12</sup> See Judgement of the Grand Chamber of 18 July 2013 in joined cases C-584/10 P, C-593/10 P and C-595/10 P Yassin Abdullah Kadi v European Commission (Kadi II), ECLI:EU:C:2013:518, para 101.



since the Court's approach to its competence is evolving dynamically and is not yet fully defined.

The objective of this research is to examine the application of the principle of proportionality in the CJEU's sanction cases. The Court's application of one of the EU's core principles remains unclear, imprecise, and inconsistent. The study will analyse selected case law concerning EU sanctions and clarify the Court's approach to assessing the compatibility of such measures with the principle of proportionality.

Accordingly, the central research questions of this study can be summarized as follows:

1. What is the legal nature of decisions adopting EU restrictive measures?
2. What is the scope of the CJEU's competence with regard to the CFSP, and what are the precise boundaries of that competence?
3. How does the CJEU apply the principle of proportionality in sanction cases?

### **1.3 Methodology**

In this Master's Thesis, doctrinal and comparative legal methods are employed to analyse, compare, and subsequently interpret and apply EU legal acts. The analytical method provides an in-depth examination and critical assessment of the judicial practice and interpretative techniques employed by the CJEU. The historical-legal method allows for the reconstruction of the evolution of the CFSP, facilitating a deeper understanding of its developmental stages as well as the characteristics of its contemporary institutional and normative framework.

The empirical method is applied in the collection and analysis of official data published on the online platforms of EU institutions, enabling the formulation of well-substantiated conclusions and the identification of key trends.

### **1.4 Sources of Law**

In answering the research question, various sources of law are used in the Master's Thesis.

First and foremost, sources of law on EU level include sources of primary law, i.e. the Treaty of the European Union (TEU), the Treaty on the functioning of the European Union (TFEU) and Charter of Fundamental Rights of the European Union (CFR).

Secondary sources of law include regulations, directives, decisions, recommendation and opinions.

In addition, sources of law also include general principles of EU law and case law from the Court of Justice of the European Union ("CJEU").

With regard to the principles of legal interpretation, this Master's Thesis draws, *inter alia*, on EU regulations and directives with direct effect, directives with indirect effect, and the principle of the supremacy of EU law over the law of Member States.

### **1.5 Demarcation**

This Master's Thesis is devoted exclusively to the EU's autonomous restrictive measures, that is, sanctions adopted independently by the EU within the framework of the CFSP.

In this context, autonomous sanctions are understood as restrictive measures imposed by the EU without a direct mandate from the United Nations Security Council ("UNSC"). They are adopted within the framework of the CFSP and as an expression of the Union's autonomous foreign and security policy objectives, pursuant to Articles 29 TEU and 215 TFEU.

Accordingly, this study does not address UN-mandated sanctions or their implementation within the EU, except where such measures are relevant for comparative purposes or for providing contextual background.

### **1.6 Structure of the Master Thesis**

The Master's Thesis is structured into four chapters.

Chapter 1 introduces the study and outlines its overall framework, setting out the research objectives, methodology, and scope of the analysis.

Chapter 2 constitutes the descriptive part of the Master Thesis. The Chapter provides an overview of the legal framework governing EU sanctions, examines the procedures for their adoption, identifies the actors involved in the enforcement of restrictive measures and their respective functions, analyses the main types of sanctions.

Chapter 3 forms the analytical part of the Master's thesis. The Chapter examines selected case law concerning the enforcement of EU sanctions, with particular emphasis on the application of the principle of proportionality by the CJEU.

Chapter 4 draws conclusions, first and foremost, regarding the historical evolution of the CFSP system and the fundamental principles on which it is currently based. The Chapter summarises the specific features of the procedure for the adoption of restrictive measures within the CFSP framework and highlights the particular characteristics of acts imposing such measures. Further conclusions are drawn concerning the roles of the various actors involved in the implementation and enforcement of restrictive measures. A separate assessment is devoted to delineating the scope of the jurisdiction of the CJEU in this field and to identifying the unresolved issues that persist in this regard. The Chapter also

summarizes the application of the principle of proportionality by the CJEU in cases related to restrictive measures. Finally, possible future trends are outlined, and proposals aimed at improving the system are put forward.

## **Chapter 2: EU Restrictive Measures: Legal Framework, Procedures, Typology and Enforcement**

### **2.1 The Legal Framework for Restrictive Measures**

#### **2.1.1 Historical evolution of the EU external action and its general legal framework**

The EU's external action has evolved through differentiated stages, progressing unevenly across different periods.

The 1957 Rome Treaty contained express external powers in two policy areas only: the Common Commercial Policy ("CCP") and the conclusion of Association Agreements. It was only in the beginning of the 1970s that European Community ("EC") Member States of the EU ("Member States") established the European Political Co-operation ("EPC"), which served as a loose framework for foreign policy coordination without, at the time, a legal basis in the Treaties.

For a very long time, foreign policy and law seemed to be very different within the EU, and legal questions on the EU's external relations only arose in relation to trade issues.

The 1993 Maastricht Treaty created the so-called «pillar structure» and thus clearly maintained a distinction between different areas of activities: the first encompassing the European Community ("EC"), the second the Common Foreign and Security Policy and the third Justice and Home Affairs ("JHA").

Despite the establishment of a common foreign and security policy in the 1990s, there was an increasing need in the new century to strengthen the EU's position in the world by reorganising and recalibrating the position of external actions in primary EU law and by closing the gaps between CFSP and non-CFSP areas<sup>13</sup>.

The Treaty of Lisbon abolished "the pillar structure", replacing it with a single legal framework for Union external action<sup>14</sup>, a change that logically reflected the EU's longstanding pursuit of greater coherence in its external policies.

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<sup>13</sup> Viktor Szép, Ramses A. Wessel, "The Current Legal Basis and Governance Structures of the EU's External Action", (January 2022), (Working Paper series, University of Groningen), p. 7 <[https://pure.rug.nl/ws/portalfiles/portal/200242816/ENGAGE\\_Working\\_Paper\\_6\\_The\\_Current\\_Legal\\_Basis\\_and\\_Governance\\_Structures\\_of\\_the\\_EU\\_s\\_External\\_Action.pdf](https://pure.rug.nl/ws/portalfiles/portal/200242816/ENGAGE_Working_Paper_6_The_Current_Legal_Basis_and_Governance_Structures_of_the_EU_s_External_Action.pdf)> accessed 22 November 2025.

<sup>14</sup> Allan Rosas et al, *EU Constitutional Law: An Introduction* (Bloomsbury Publishing 3rd edn 2018), p. 244-245.

Before the Treaty of Lisbon, there was no singular collective view of what EU external relations were and what they should look like. Under existing arrangements in place since the Treaty of Lisbon, the Union's external action has attempted to be more coherent in its practice, in addition to its legal wording and structure. This integrated construction, spanning a number of policy areas, has tried to ensure a more clear-cut method for how the Union is to operate externally<sup>15</sup>.

Nowadays, the legal framework of the EU external actions is laid down in the Title V "General provisions on the Union's external action and Specific provisions on the common foreign and security policy" (Chapter 1, Chapter 2) of the TEU.

In its relations with the wider world, the EU aims to uphold and promote its values and interests, while contributing to the protection of its citizens. Among other things, the EU's values include peace, security, and the protection of human rights, while ensuring compliance with and the development of international law (Article 3(5) TEU, (Title I «Common provisions»)).

Article 21(1), together with Article 21(3) (Title V, Chapter 1) TEU, establishes that the EU must uphold and adhere to fundamental principles—particularly democracy, the rule of law, and respect for international law—when developing and implementing the various areas of its external action under this Title and Part Five "The Union's external action" of the TFEU.

The formulation and implementation of common external policies and actions should be directed towards specific objectives, including safeguarding the EU's values, fundamental interests, security, independence, and integrity; consolidating and supporting democracy, the rule of law, human rights, and the principles of international law; and preserving peace, preventing conflicts, and strengthening international security, in accordance with the core purposes and principles of international law and European security. (Article 21(2) TEU).

Under Article 23 of the TEU all EU external actions on CFSP shall be guided by the principles and pursue the objectives above. (Article 23 of the TEU)<sup>16</sup>

The evolution of the EU's external relations—from limited treaty powers and «the pillar structure» to the integrated legal framework established by the Treaty of Lisbon—

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<sup>15</sup> Graham Butler, *Constitutional Law of the EU's Common Foreign and Security Policy: Competence and Institutions in External Relations* (Hart Publishing/Bloomsbury 2019), p. 25.

<sup>16</sup> Andrii Mikheiev, "EU Sanctions: Legal nature and discretion over their duration and renewal", (June 2025) < <https://drive.google.com/file/d/1XgeHypTBb8FVJJpoSql-pooiSCgXPuhy/view> > accessed 21 November 2025.

reflects a continuous effort to enhance coherence, uphold the Union's values and fundamental principles, and provide a clear legal and institutional basis for the further development and coordination of its common foreign and security policy.

### **2.1.2 CFSP Decision, based on Article 29 TEU, imposing restrictive measures**

Article 26(2) TEU entails a general competence for the Council to “frame the common foreign and security policy and take the decisions necessary for defining and implementing it on the basis of the general guidelines and strategic lines defined by the European Council”.

A combination of the abovementioned provisions and the more specific key legal base, particularly in Articles 25 and 29 TEU, allows the Council to adopt such CFSP instrument, as Common position<sup>17</sup>, which shall define the approach of the EU to a particular matter of a geographical or thematic nature. In addressing a specific issue, whether of a geographical or thematic character, the EU may, in particular, adopt autonomous restrictive measures, in exercise of its competences within the framework of the CFSP.

Within the CFSP framework, the Council may adopt autonomous restrictive measures against third countries, specific regions, governments, as well as designated entities or individuals. In general, such measures are employed by the EU as instruments to induce a change in policy or conduct, encouraging the targeted state, its governmental authorities, or particular actors to modify their behaviour or strategic choices.

The objective of each restrictive measure must be clearly stated and consistent with the Union's overall strategy in the relevant area. Restrictive measures are not economically motivated and may not be justified by economic considerations; economic rationale is incompatible with their purpose and guiding principles<sup>18</sup>.

Positions that the EU is to adopt on the international stage in areas falling within the scope of the CFSP, including restrictive measures, shall be established by the CFSP Council Decision based on Article 29 TEU. (Articles 25 and 29 TEU).

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<sup>17</sup> Ramses A. Wessel, “Legal acts in EU Common Foreign and Security Policy: combining legal bases and questions of legality”, (February 2019), (First draft – presented at the workshop Contemporary Challenges to EU Legality, European University Institute, Florence, 5 February 2019), p. 4 <<https://research.utwente.nl/en/publications/legal-acts-in-eu-common-foreign-and-security-policy-combining-leg/>> accessed 23 November 2025.

<sup>18</sup> See Guidelines on the implementation and evaluation of restrictive measures (sanctions) in the framework of the Common Foreign and Security Policy (2018), updated, paras 2, 4, 5.

The CFSP Council Decisions, adopted on the basis of Article 29 TEU, are intergovernmental in nature, follow the specific CFSP procedure<sup>19</sup> and require unanimity among the Member States. (Article 31 TEU)

This implies that the power to decide whether a sanction is necessary and to choose the appropriate measures is retained by the Member States. In the absence of an agreement necessary for a CFSP Decision, Member States may take unilateral measures, though always respecting EU law.

At the same time, it remains noteworthy that the TEU is quite clear about the binding nature of CFSP acts. Member States shall ensure that their national policies conform to the Union positions (Article 29 TEU). The mandatory force of CFSP Decisions can also clearly be derived from Article 28(2) TEU. Member states are not allowed to adopt positions or otherwise to act contrary to the CFSP Decisions. They have committed themselves to adapting their national policies to the agreed Decisions.

Overall, the system is based on a duty of good faith, which is clearly laid down in Article 24(3) TEU. The nature of CFSP acts as concrete norms of conduct demanding a certain unconditional behaviour from the Member States, is underlined by the strict ways in which exceptions are allowed<sup>20</sup>.

With regard to the nature of CFSP Decisions under Article 29 TEU, it is important to highlight that, in Case C-72/15, *PJSC Rosneft Oil Company* (Judgment of the Grand Chamber of 28 March 2017), the Court concluded that a CFSP Council Decision adopted under Article 29 TEU cannot be regarded as a legislative act, since «the adoption of legislative acts within the meaning of Article 289(3) TFEU explicitly excluded». In support of this conclusion, the Court referred to the provisions on the CFSP contained in Title V, Chapter 2 of the EU Treaty, which establish a distinct allocation of responsibilities among the Union's institutions in this area and are subject to specific rules and procedures, as reflected in Article 24 TEU<sup>21</sup>.

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<sup>19</sup> Gudrun Monika Zagel, "Article 215 TFEU on Restrictive Measures" (October 2015), (Smit/Herzog/Campbell/Zagel (eds.), Smit & Herzog on the Law of the European Union, 4 Volumes), (looseleaf), (Lexis Nexis (2015)), p. 22 < [https://papers.com/sol3/papers.cfm?abstract\\_id=2683547](https://papers.com/sol3/papers.cfm?abstract_id=2683547) > accessed 25 November 2025.

<sup>20</sup> Ramses A. Wessel, "Legal acts in EU Common Foreign and Security Policy: combining legal bases and questions of legality", (February 2019) (First draft – presented at the workshop Contemporary Challenges to EU Legality, European University Institute, Florence, 5 February 2019), p. 5 <<https://research.utwente.nl/en/publications/legal-acts-in-eu-common-foreign-and-security-policy-combining-leg/>> accessed 26 November 2025.

<sup>21</sup> See Judgement of the Grand Chamber of 28 March 2017 in case C-72/15 *PJSC Rosneft Oil Company*, ECLI:EU:C:2017:236, paras 91-92.

The fact that no “legislative acts” can be concluded is mainly intended to exclude the use of the “legislative procedure”. Accordingly, the exclusion of the legislative procedure (as the regular decision-making procedure for other EU policies), the requirement of unanimity rather than qualified majority voting as the default voting rule, the “specific role of the European Parliament and of the Commission” and the fact that “the CJEU shall not have jurisdiction” with respect to a number of specific CFSP provisions, seem to have had an impact on how we have perceived the “legality” of CFSP acts.

At the same time, CFSP decisions are to be found under “legal acts” in the EurLex databases and are published in the L-series of the Official Journal. It is therefore self-evident that both the procedural norms enshrined in the Treaties and the decisions adopted within the framework of the CFSP constitute “legal” acts in the sense that they form an integral part of the Union’s legal order. The legal nature of CFSP acts and the fact that they form part of the Union’s legal order just like other EU instruments suggests that they should be assessed and interpreted in the context of the overall EU legal order<sup>22</sup>.

An example of a Council Decision adopted under Article 29 TEU within the CFSP framework is Council Decision 2014/512/CFSP of 31 July 2014, which provides for restrictive measures in response to Russia’s actions destabilising the situation in Ukraine. The Decision has been amended repeatedly, most recently by Council Decision (CFSP) 2025/2032 of 23 October 2025.

Recital 1 of Council Decision 2014/512/CFSP of 31 July 2014 recalls, that on 6 March 2014, the Heads of State or Government of the EU strongly condemned the unprovoked violation of Ukraine’s sovereignty and territorial integrity by the Russian Federation and called on it to immediately withdraw its armed forces to their permanent bases in accordance with the relevant agreements.

Initially, the Recital sets out rationale and objectives underpinning the adopting of the restrictive measures. Subsequently, the Recital further emphasises that any further destabilising actions by the Russian Federation would entail additional and far-reaching consequences for economic relations between the EU and its Member States, on the one hand, and the Russian Federation, on the other. Further, the Recital states that, in view of

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<sup>22</sup> Ramses A. Wessel, “Legal acts in EU Common Foreign and Security Policy: combining legal bases and questions of legality”, (February 2019) (First draft – presented at the workshop Contemporary Challenges to EU Legality, European University Institute, Florence, 5 February 2019), p. 4 <<https://research.utwente.nl/en/publications/legal-acts-in-eu-common-foreign-and-security-policy-combining-leg/>> accessed 03 December 2025.

the gravity of the situation, the Council deemed it appropriate to adopt restrictive measures in response to Russia's actions destabilising the situation in Ukraine.

Recitals 9–12 of the Council Decision 2014/512/CFSP of 31 July 2014 delineate the restrictive measures deemed appropriate for implementation, including financial sanctions directed at state-owned Russian financial institutions, prohibitions on the sale, supply, transfer, or export of arms and related materiel, restrictions on the provision of dual-use items for military purposes, and limitations on the transfer of certain sensitive technologies intended for specific energy projects.

The measures are codified within the Council Decision and are organised into distinct articles according to their respective categories. The Annex specifies the entities to which each particular article applies, thereby ensuring precision and legal certainty in the application of the sanction's regime.

The Decision sets a clear timeframe and includes measures to ensure it is applied effectively. It provides for continuous monitoring, allowing the Council to modify or extend the measures if their goals are not achieved. The restrictive measures are also formally reviewed on a set date, taking into account their impact and the actions of third States. The Decision comes into force the day after its publication in the *Official Journal*<sup>23</sup>.

Thus, CFSP Council Decisions adopted pursuant to Article 29 TEU retain an intergovernmental character and are binding on both the Union's institutions (Articles 24–25 TEU) and the Member States (Article 288(4) TFEU). They do not qualify as legislative acts under Article 289(3) TFEU and continue to possess a predominantly external policy character within the EU's framework of external action, even while acquiring formal legal status within the Union's legal order.

The measures envisaged in CFSP Council Decisions adopted pursuant to Article 29 TEU are implemented either at the EU level or by the Member States at the national level, in accordance with the relevant guidelines.

Where CFSP Council Decisions adopted under Article 29 TEU impose arms embargoes or restrictions on entry (such as travel bans), the adoption of national legislation is required, as these matters fall within the scope of national competences. Travel bans restrict access to the territories of the Member States and, consequently, to the EU. Arms embargoes prohibit the sale, supply, or transfer of weapons, related technologies, or associated services to individuals, non-state entities, and state entities. Although the

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<sup>23</sup> Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (2014) OJ L 229, as amended.



prohibition initially applied exclusively to military goods, it became apparent that certain items and technologies produced for civilian purposes could also be diverted for military use<sup>24</sup>.

The EU recognized this problem by delegating the final decision to Member States, but a list of dual-use goods was adopted in 2009 to harmonize the activities of the national authorities of EU Member States<sup>25</sup>.

Council Decision 2014/512/CFSP of 31 July 2014, which establishes restrictive measures in response to Russia's actions destabilising the situation in Ukraine, inter alia imposes an arms embargo pursuant to Article 2<sup>26</sup>. A travel ban is provided by Council Decision (CFSP) 2025/2032 of 23 October 2025, which amending Decision 2014/512/CFSP in view of the ongoing destabilisation of Ukraine by Russia.<sup>27</sup>

In conclusion, CFSP Council Decisions adopted under Article 29 TEU, imposing arms embargoes and travel bans, require implementation through national legislation, as these measures engage competences retained by the Member States, and do not require recourse to the subsequent application of Article 215 TFEU.

### **2.1.3 The imposing and implementation of EU economic and financial restrictive measures pursuant to Article 215 TFEU**

In the context of economic and financial restrictive measures, an intergovernmental CFSP Council Decision adopted pursuant to Article 29 TEU constitutes merely a prerequisite for a subsequent supranational legal act adopted under Article 215 TFEU<sup>28</sup>.

The economic restrictive measures (economic boycotts) entail the prohibition to sell specific products or services to a targeted country, region, company, and/or individual<sup>29</sup>. The financial restrictive measures include the freezing of assets (Article 2 of Council Regulation (EU) № 269/2014 of 17 March 2014 concerning restrictive measures in respect

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<sup>24</sup> Asada Masahiko, *Economic Sanctions in International Law and Practice*, (First published 2020 by Routledge 2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN and by Routledge 52 Vanderbilt Avenue, New York, NY 10017), p. 66-67.

<sup>25</sup> Council Regulation (EC) № 428/2009 of May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (Recast) (2009) OJ L 134, as amended.

<sup>26</sup> Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (2014) OJ L 229, as amended.

<sup>27</sup> Council Decision 2025/2032/CFSP of 23 October 2025 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (2025) OJ L.

<sup>28</sup> Gudrun Monika Zagel, "Article 215 TFEU on Restrictive Measures" (October 2015), (Smit/Herzog/Campbell/Zagel (eds.), (Smit & Herzog on the Law of the European Union, 4 Volumes), (looseleaf), (Lexis Nexis (2015)), p. 23 < [https://papers.com/sol3/papers.cfm?abstract\\_id=2683547](https://papers.com/sol3/papers.cfm?abstract_id=2683547) > accessed 03 December 2025.

<sup>29</sup> Asada Masahiko, *Economic Sanctions in International Law and Practice*, (First published 2020 by Routledge 2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN and by Routledge 52 Vanderbilt Avenue, New York, NY 10017), p. 66-67.

of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (consolidated text))<sup>30</sup> and the prohibition of providing loans and making payments to certain persons and entities (Article 5, 5a Council Regulation (EU) № 833 № 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (consolidated text))<sup>31</sup>.

Pursuant to Article 215(1) TFEU, the EU may implement restrictive measures targeting one or more third countries. This was the original practice of the EU<sup>32</sup>. Following the wording of Article 215 (1) TFEU, restrictive measures cannot be imposed on EU Member States; where action against a Member State is required, the provisions of Article 7 TEU or the judicial remedies set out in Articles 258 and 259 TFEU are applicable<sup>33</sup>.

With respect to the scope of limitation, Article 215 (1) TFEU provides for the “interruption or reduction” of economic and financial relations, which gives a large amount of discretion to the Council, in other words, the restrictive measures may reach from a complete ban to only selected limitations. In practice, Council Decisions usually provide for specific measures with a view to make them as effective as possible<sup>34</sup>. For instance, restrictions on trade frequently cover specific goods (for example, ban to import, purchase or transfer iron and steel products from Belarus, as listed in Annex XII of Council Regulation (EC) 765/2006 of 18 May 2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against (consolidated text)<sup>35</sup>).

The current practice of implementing smart or targeted sanctions is grounded in Article 215(2) TFEU. Targeted sanctions are directed against specific persons and entities responsible for an objectionable situation or behaviour. They are considered to be more

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<sup>30</sup> Council Regulation (EU) № 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (consolidated text) (2014) OJ L 78.

<sup>31</sup> Council Regulation (EU) № 833 № 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (consolidated text) (2014) OJ L 229.

<sup>32</sup> Council Regulation (EC) № 765/2006 of 18 May 2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine (consolidated version) (2016) OJ L 134, OJ L 352M.

<sup>33</sup> Gudrun Monika Zagel, “Article 215 TFEU on Restrictive Measures” (October 2015), (Smit/Herzog/Campbell/Zagel (eds.), (Smit & Herzog on the Law of the European Union, 4 Volumes), (looseleaf), (Lexis Nexis (2015)), p. 15 < [https://papers.com/sol3/papers.cfm?abstract\\_id=2683547](https://papers.com/sol3/papers.cfm?abstract_id=2683547) > accessed 05 December 2025.

<sup>34</sup> Ibid p. 12

<sup>35</sup> Council Regulation № 765/2006 of 18 May 2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against (consolidated text).

effective to achieve the intended foreign policy goal and moreover prevent unintended economic and social effects on the population of the state where the targeted person acts.

In practice, Council Regulations do not always distinguish between Paragraphs 1 and 2, but simply refer to Article 215 TFEU as the legal basis for the adoption of restrictive measures.

Measures restricting economic or financial activity, adopted pursuant to Article 215 TFEU, are generally enacted through Regulations, which are regarded as the most appropriate legal instrument for several reasons.

Firstly, Regulations are directly applicable from the date of their adoption and publication in the *Official Journal* and do not require transposition into national law by the Member States. This immediacy is essential to ensure the effectiveness of the measures, as it prevents potential circumvention, particularly in relation to asset freezes. Secondly, the direct applicability of Regulations guarantees the uniform enforcement of restrictive measures across the EU, thereby enhancing their overall efficacy. Thirdly, inconsistent implementation or non-implementation by one or more Member States could create competitive distortions within the internal market<sup>36</sup>.

It should also be emphasised that Regulations adopted under Article 215 TFEU, following the non-legislative procedure set out in that provision, do not qualify as legislative acts. Instead, they are considered “regulatory acts” for the purposes of the third subparagraph of the fourth paragraph of Article 263 TFEU, as the Grand Chamber concluded in its Judgement of 22 June 2021 in case C-872/19P Bolivarian Republic of Venezuela v Council of the EU<sup>37</sup>.

Consequently, economic and financial restrictive measures are adopted in the form of Regulations which are binding in their entirety and directly applicable in all Member States. Primarily, a CFSP Decision adopted on the basis of Article 29 TEU must set out the objectives of the economic and financial restrictive measures under the CFSP, after which a Regulation determines the details of the aforementioned restrictive measures pursuant to

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<sup>36</sup>Gudrun Monika Zagel, “Article 215 TFEU on Restrictive Measures” (October 2015), Smit/Herzog/Campbell/Zagel (eds.), (Smit & Herzog on the Law of the European Union, 4 Volumes), (looseleaf), (Lexis Nexis (2015)), p. 23 < [https://papers.com/sol3/papers.cfm?abstract\\_id=2683547](https://papers.com/sol3/papers.cfm?abstract_id=2683547) > accessed 05 December 2025.

<sup>37</sup>See Judgement of the Grand Chamber of 22 June 2021 in case C-872/19 P Bolivarian Republic of Venezuela v Council of the EU, ECLI:EU:C:2021:507, paras 92.

Article 215 TFEU<sup>38</sup>. The Council is not authorised to introduce any new restrictive measures or to alter the scope of those established in the CFSP Decision<sup>39</sup>.

In case C-72/15 PJSC Rosneft Oil Company the Court defined Article 215 TFEU as a “bridge between the objectives of the EU Treaty in matters of the CFSP and the actions of the Union involving economic measures falling within the scope of the TEU Treaty”. (para 89) From the Court’s perspective, two distinct types of acts—CFSP Council Decisions adopted under Article 29 TEU and Regulations adopted pursuant to Article 215 TFEU—perform complementary functions: the former defines the Union’s position regarding the restrictive measures to be adopted, whereas the latter serves as the legal instrument through which those measures are implemented at the Union level. (para 90)<sup>40</sup>

It must be noted that, according to settled case-law, the Council enjoys a broad discretion in its assessment of the matters to be taken into consideration for the purpose of adopting economic and financial sanctions on the basis of Article 29 TEU and Article 215 TFEU.

The General Court in its recent Judgement of 23 July 2025 in case T-1095/23 OT v Council of the EU stated, that “the Council has a degree of discretion to determine, on a case-by-case basis whether the legal criteria on which the restrictive measures are based are met”. (para 82)<sup>41</sup>

Although the EU institutions enjoy a considerable degree of discretion in adopting CFSP restrictive measures, this discretion does not exempt them from the obligation to clearly state both the legal basis and the reasons underpinning their acts.

In general, restrictive measures must respect human rights and fundamental freedoms, in particular due process and the right to an effective remedy in full conformity with the jurisprudence of the EU Courts. (ANNEX 1 to Guidelines on the implementation and evaluation of restrictive measures (sanctions) in the framework of the Common Foreign and Security Policy)<sup>42</sup>.

The legal context of the measures should be set out. In addition to relevant provisions of the TEU and the TFEU, this may include references to any relevant provisions of

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<sup>38</sup> Tamás Szabados, *Economic Sanctions in EU Private International Law* (Bloomsbury Academic, 2019), p. 21.

<sup>39</sup> See Judgement of the Court (Third Chamber) of 16 October 2025 in case C-805/24 Timchenko, para 51.

<sup>40</sup> See Judgement of the Grand Chamber of 28 March 2017 in case C-72/15 PJSC Rosneft Oil Company, ECLI:EU:C:2017:236.

<sup>41</sup> See Judgement of the General Court para 82 in case T-1095/23 OT v Council of the EU, ECLI:EU:T:2025:744.

<sup>42</sup> See Guidelines on the implementation and evaluation of restrictive measures (sanctions) in the framework of the Common Foreign and Security Policy (2018), updated.

international law. For reasons of clarity and transparency, efforts should be made to present these references as fully as possible<sup>43</sup>.

In turn, the Regulations based on Article 215 TFEU must meet the legality requirements for legal acts adopted by the Union, as provided for in Article 296 TFEU. Accordingly, Regulation must mention the relevant provisions of the TFEU, on which they are based, as well as the underlying Council decision and any relevant documents. Both the intergovernmental CFSP Council decision and the joint proposal of the High Representative and the Commission are expressly mandated by Article 215 TFEU. (see Recital of the Council Regulation (EU) № 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, which makes reference to Article 215 TFEU, CFSP Council Decision 2014/145/CFSP of 17 March 2014 and the joint proposal of the High Representative of the Union for Foreign Affairs and Security Policy and of the European Commission<sup>44</sup>).

With respect to the choice of the legal basis as well as the necessity to adopt the measures, the Regulations must provide reasons. In case of restrictive measures against specific persons, the obligation to state reasons is of special importance as it facilitates the review of the restrictive measure.

In contrast to supranational legal acts, intergovernmental Council Decisions based on Article 29 TEU formally do not have to meet the extensive requirements contained in Article 296 TFEU. Nevertheless, the Council Decisions, adopted on the basis of the relevant legal provision, constitute legal instruments and are required to set out the foreign policy rationale underlying the adoption of restrictive measures. To the extent Council Decisions impose restrictive measures against individuals, they must state the reasons for listing the persons concerned, and provide for legal remedies that ensure the rights of defence as well as the principles of effective judicial protection<sup>45</sup>.

Regarding the duration of restrictive measures, the Council enjoys considerable flexibility. Decisions may be adopted for a fixed period or without a specified time limit.

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<sup>43</sup> See Guidelines on the implementation and evaluation of restrictive measures (sanctions) in the framework of the Common Foreign and Security Policy (2018), updated.

<sup>44</sup> Council Regulation (EU) № 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (2014) OJ L 78.

<sup>45</sup> Gudrun Monika Zagel, "Article 215 TFEU on Restrictive Measures" (October 2015), Smit/Herzog/Campbell/Zagel (eds.), (Smit & Herzog on the Law of the European Union, 4 Volumes), (looseleaf), (Lexis Nexis (2015)), p. 22-23 < [https://papers.com/sol3/papers.cfm?abstract\\_id=2683547](https://papers.com/sol3/papers.cfm?abstract_id=2683547) > accessed 06 December 2025.

The Council has full discretion<sup>46</sup>. As a general rule, restrictive measures are adopted for a limited duration and commonly include a sunset clause, under which they cease to apply automatically after a predetermined period—typically twelve months, though this may vary—unless the Council expressly decides to extend their application<sup>47</sup>.

The Council reviews all restrictive measures on a regular basis with a view to examine the developments with regard to the stated objectives and their effectiveness in this respect<sup>48</sup>.

Given that the EU has condemned the extraterritorial application of third countries' legislation imposing restrictive measures that purport to regulate the activities of natural and legal persons under the jurisdiction of EU Member States, it is unsurprising that the EU Sanctions Guidelines emphasise that the Union will refrain from adopting legislative instruments with extraterritorial effect in violation of international law<sup>49</sup>.

The same document clarifies that the application of EU restrictive measures is confined to situations involving a connection with the EU. The standard clause specifying the scope of an EU regulation on restrictive measures covers: the territory of the EU, including its airspace; aircraft or vessels registered in Member States; nationals of Member States, whether inside or outside the EU; companies and other entities incorporated or established under the law of a Member State; and any economic activity carried out wholly or partly within the EU.

Thus, autonomous EU sanctions, in accordance with the norms of international law, do not have extraterritorial effect and apply solely within the jurisdiction of the EU<sup>50</sup>.

It follows that, as a general rule, non-EU subsidiaries of an EU parent company are not directly subject to EU restrictive measures if they are incorporated outside the EU and do not conduct business within the Union. However, EU Guidelines cautions entities incorporated in a Member State against using a controlled company as a means to

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<sup>46</sup>Gudrun Monika Zagel, "Article 215 TFEU on Restrictive Measures" (October 2015), Smit/Herzog/Campbell/Zagel (eds.), (Smit & Herzog on the Law of the European Union, 4 Volumes), (looseleaf), (Lexis Nexis (2015)), p. 14 < [https://papers.com/sol3/papers.cfm?abstract\\_id=2683547](https://papers.com/sol3/papers.cfm?abstract_id=2683547) > accessed 06 December 2025.

<sup>47</sup> Franceso Giumelli, Fabian Hoffmann, Anna Ksiazczakova, "The when, what, where and why of European Union sanctions", (2021), (European Security 30:1, 1-23, DOI: 10.1080/09662839.2020.1797685), p. 6 < <https://www.tandfonline.com/doi/full/10.1080/09662839.2020.1797685>> accessed 06 December 2025.

<sup>48</sup>Gudrun Monika Zagel, "Article 215 TFEU on Restrictive Measures" (October 2015), (Smit/Herzog/Campbell/Zagel (eds.), Smit & Herzog on the Law of the European Union, 4 Volumes), (looseleaf), (Lexis Nexis (2015)), p. 14 < [https://papers.com/sol3/papers.cfm?abstract\\_id=2683547](https://papers.com/sol3/papers.cfm?abstract_id=2683547) > accessed 06 December 2025.

<sup>49</sup> See Guidelines on the implementation and evaluation of restrictive measures (sanctions) in the framework of the Common Foreign and Security Policy (2018), updated, para 52.

<sup>50</sup> See Guidelines on the implementation and evaluation of restrictive measures (sanctions) in the framework of the Common Foreign and Security Policy (2018), updated, paras 51, 88.

circumvent prohibitions, including cases where the subsidiary is established outside the EU, or providing instructions with the same effect<sup>51</sup>.

In conclusion, CFSP Council Decisions under Article 29 TEU set the political and foreign policy goals of restrictive measures, while Regulations under Article 215 TFEU implement economic and financial restrictive measures uniformly and directly across all Member States. This two-step framework ensures compliance with EU legal standards, including legality and effective judicial protection, while preventing from expanding or changing the measures. It provides the EU with a clear, efficient, and legally sound mechanism for imposing autonomous sanctions.

## **2.2 The Procedure for the Adoption of Restrictive Measures**

### **2.2.1 Intergovernmental procedure**

Restrictive measures are usually adopted in order to pursue foreign policy objectives; however, the instruments used to implement them largely fall within the EU's exclusive competence in the area of external trade. This close link between foreign policy and external economic relations makes the legal framework for the adoption of economic sanctions within the EU particularly complex, due to the division of competences between the Union and its Member States. While foreign policy matters, even after the entry into force of the Treaty of Lisbon, remain primarily within the competence of the Member States and are coordinated under the intergovernmental framework of the CFSP, measures aimed at reducing or suspending economic and financial relations form part of the Union's external trade policy, which largely falls within the EU's exclusive competence.

This complexity is addressed through a specific two-stage procedure set out in Articles 29 TEU and 215 TFEU. This procedure first involves the unanimous adoption of a CFSP Decision defining the foreign policy objectives of the restrictive measures, followed by the adoption of an implementing measure regulating their technical and operational aspects, which is adopted by qualified majority voting<sup>52</sup>. The right to initiative for a CFSP Council Decision lies with any Member State or the High Representative of the Union for Foreign Affairs and Security Policy. (Article 30 TEU) In practice, the proposal of new restrictive measures comes from the High Representative of the Union for Foreign Affairs

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<sup>51</sup>Asada Masahiko, *Economic Sanctions in International Law and Practice*, (First published 2020 by Routledge 2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN and by Routledge 52 Vanderbilt Avenue, New York, NY 10017), p. 66-67.

<sup>52</sup>Gudrun Monika Zagel, "Article 215 TFEU on Restrictive Measures" (October 2015), (Smit/Herzog/Campbell/Zagel (eds.), Smit & Herzog on the Law of the European Union, 4 Volumes), (looseleaf),( Lexis Nexis (2015)), p. 29 < [https://papers.com/sol3/papers.cfm?abstract\\_id=2683547](https://papers.com/sol3/papers.cfm?abstract_id=2683547) > accessed 07 December 2025.

and Security Policy (HR), but such measures can be considered and discussed from the European Council down to several working groups thereof – such as Coreper II (The Permanent Representatives Committee), the Political and Security Committee (“PSC”), the regional subgroups and, especially, the Working Party of Foreign Relations Counsellors (“RELEX”)<sup>53</sup> and the Council working party responsible for the geographical region to which the targeted country belongs (for example, the Eastern Europe and Central Asia Working Party for Ukraine or Belarus and the Mashreq/Maghreb Working Party for Syria (“RELEX”)<sup>54</sup>. The European External Action Service (“EEAS”) and the Commission assist the Council in the preparation of the legal texts<sup>55</sup>.

The adoption of sanctions within the framework of the CFSP is subject to the requirement of unanimity in the Council of Ministers pursuant to Article 31 TEU<sup>56</sup>.

At this stage, the European Parliament does not participate, which reflects its limited role in matters relating to the CFSP; moreover, the adoption of legislative acts is expressly excluded within the CFSP framework pursuant to Article 23 TEU.

Since CFSP Council decisions are legally binding on the Member States, they do not have direct effect and therefore require implementation through EU measures adopted pursuant to Article 215 TFEU.

Although CFSP Council Decisions are legally binding on the Member States, they do not produce direct effect and must therefore be implemented either through EU measures adopted pursuant to Article 215 TFEU (concerning economic and financial restrictive measures) or through national implementing measures. Council decisions consistently specify whether their implementation necessitates further action at the EU level or by the Member States.

Any amendment to, or termination (*actus contrarius*) of, restrictive measures require the adoption of a Council Decision following the same procedure, including the requirement of unanimity<sup>57</sup>. For example, Council Decision (CFSP) 2025/931 of 20 May 2025 amending Decision 2014/512/CFSP concerning restrictive measures in view of

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<sup>53</sup> Mikael Eriksson, *Understanding UN and EU Targeted Sanctions* (Routledge 1<sup>st</sup> Edition 2011), p. 177.

<sup>54</sup> See Explainers of the Council of EU < <https://www.consilium.europa.eu/en/policies/sanctions-adoption-review-procedure/> > accessed 07 December 2025.

<sup>55</sup> Francesco Giumelli, Fabian Hoffmann, Anna Ksiazczakova, “The when, what, where and why of European Union sanctions”, (2021), (European Security 30:1, 1-23, DOI: 10.1080/09662839.2020.1797685), p. 6 < <https://www.tandfonline.com/doi/full/10.1080/09662839.2020.1797685> > accessed 06 December 2025.

<sup>56</sup> Mikael Eriksson, *Understanding UN and EU Targeted Sanctions* (Routledge 1<sup>st</sup> Edition 2011 ), p. 177.

<sup>57</sup> Gudrun Monika Zagel, “Article 215 TFEU on Restrictive Measures” (October 2015), (Smit/Herzog/Campbell/Zagel (eds.), (Smit & Herzog on the Law of the European Union, 4 Volumes), (looseleaf), (Lexis Nexis (2015)), p. 31 < [https://papers.com/sol3/papers.cfm?abstract\\_id=2683547](https://papers.com/sol3/papers.cfm?abstract_id=2683547) > accessed 07 December 2025.



Russia's actions destabilising the situation in Ukraine<sup>58</sup>. By contrast, amendments to the Annexes of Council Decisions identifying the persons subject to travel bans or financial restrictions may be adopted by the Council through implementing Decisions, which are subject to qualified majority voting<sup>59</sup>. For example, Council Implementing Decision (CFSP) 2025/774 of April 2025 implementing Decision 2011/235/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Iran<sup>60</sup>.

If a Council Decision provides for an asset freeze and/or other forms of economic or financial sanctions, the implementation of such measures must take the form of a Council Regulation adopted pursuant to Article 215 TFEU.

### **2.2.2 Supranational procedure**

On the basis of the CFSP Council Decision, the High Representative of the Union for Foreign Affairs and Security Policy, together with the European Commission, submits a joint proposal for the corresponding Council Regulation. This proposal is first examined by the Working Party of Foreign Relations Counsellors ("RELEX") and subsequently forwarded to Coreper II and the Council for formal adoption. Following adoption, the Council notifies the European Parliament.

The Regulation specifies the exact scope of the restrictive measures and the modalities for their implementation. As a legal act of general application (regulatory act), it is binding on all natural and legal persons, as well as economic operators and public authorities, within the EU<sup>61</sup>.

In practice, intergovernmental and supranational steps are simultaneous, with the Council adopting both the CFSP Decision and Regulation at the same time. The Council Decision and the Council Regulation entering into force on the same day upon publication

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<sup>58</sup>Council Decision (CFSP) 2025/931 of 20 May 2025 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (2025) OJ L.

<sup>59</sup>Gudrun Monika Zagel, "Article 215 TFEU on Restrictive Measures" (October 2015), Smit/Herzog/Campbell/Zagel (eds.), (Smit & Herzog on the Law of the European Union, 4 Volumes), (looseleaf), (Lexis Nexis (2015)), p. 29 < [https://papers.com/sol3/papers.cfm?abstract\\_id=2683547](https://papers.com/sol3/papers.cfm?abstract_id=2683547) > accessed 07 December 2025.

<sup>60</sup> Council Implementing Decision (CFSP) 2025/774 of April 2025 implementing Decision 2011/235/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Iran (2025) OJ L.

<sup>61</sup> See Explainers of the Council of EU < <https://www.consilium.europa.eu/en/policies/sanctions-adoption-review-procedure/> > accessed 07 December 2025.

in the *Official Journal* of the EU, thereby ensuring that both legal instruments produce their effects concurrently<sup>62</sup>.

Amendments to existing Regulations and termination (*actus contrarius*) of the restrictive measures in Regulation require a preceding CFSP Decisions and the supranational procedure as the adoption of Regulations<sup>63</sup>. For example, Council Regulation (EU) 2025/2037 of 23 October 2025 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine<sup>64</sup>.

Like the CFSP Council Decision, also Council Regulations provide for implementing powers to amend the Annexes containing persons and entities<sup>65</sup>. For example, Council Implementing Regulation (EU) 2025/1894 of 12 September 2025 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine<sup>66</sup>.

Natural or legal persons subject to asset-freezing measures or travel restrictions are duly informed of the restrictive measures adopted against them, either by means of individual notification by letter where their address is available, or through the publication of a notice by the Council in the “C” series of the *Official Journal* of the European Union.

All restrictive measures currently in force are subject to continuous review to ensure their ongoing relevance and effectiveness in achieving their stated objectives.

Listed persons and entities may submit a request to the Council, together with supporting documentation, requesting that the decision to list them be reconsidered<sup>67</sup>.

Thus, EU restrictive measures combine intergovernmental CFSP decision-making on political objectives with supranational implementation of economic and financial

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<sup>62</sup>See Explainers of the Council of EU < <https://www.consilium.europa.eu/en/policies/sanctions-adoption-review-procedure/> > accessed 07 December 2025.

<sup>63</sup>Gudrun Monika Zagel, “Article 215 TFEU on Restrictive Measures” (October 2015), (Smit/Herzog/Campbell/Zagel (eds.), Smit & Herzog on the Law of the European Union, 4 Volumes), (looseleaf), (Lexis Nexis (2015)), p. 31 < [https://papers.com/sol3/papers.cfm?abstract\\_id=2683547](https://papers.com/sol3/papers.cfm?abstract_id=2683547) > accessed 07 December 2025.

<sup>64</sup>Council Regulation (EU) 2025/2037 of 23 October 2025 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (2025) OJ L.

<sup>65</sup>Gudrun Monika Zagel, “Article 215 TFEU on Restrictive Measures” (October 2015), (Smit/Herzog/Campbell/Zagel (eds.), Smit & Herzog on the Law of the European Union, 4 Volumes), (looseleaf), Lexis Nexis (2015)), p. 31 < [https://papers.com/sol3/papers.cfm?abstract\\_id=2683547](https://papers.com/sol3/papers.cfm?abstract_id=2683547) > accessed 07 December 2025.

<sup>66</sup>Council Implementing Regulation (EU) 2025/1894 of 12 September 2025 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (2025) OJ L.

<sup>67</sup>See Explainers of the Council of EU < <https://www.consilium.europa.eu/en/policies/sanctions-adoption-review-procedure/> > accessed 07 December 2025.

measures, ensuring effectiveness, coherence, and regular review while providing procedural safeguards for affected persons.

### 2.3 The Typology of EU Restrictive Measures

The EU's practice concerning restrictive measures encompasses three distinct dimensions. The first pertains to the implementation of collective economic sanctions, namely those authorized by the United Nations Security Council ("UNSC") and therefore binding on all EU Member States in their capacity as members of the United Nations ("UN").

The second category consists of measures that go beyond the scope of UNSC-mandated sanctions. These supplementary or "UNSC-plus" measures may take various forms, such as the imposition of broader sectoral restrictions or the designation of individuals and entities not included on UNSC sanction lists.

The third category comprises fully autonomous or unilateral restrictive measures adopted by the EU without prior authorization from the UNSC. Such measures are variously referred to as autonomous sanctions, unilateral sanctions, non-UN sanctions, or unilateral coercive measures. As of today, this terminological conundrum has not been resolved either in state practice or in the scholarly debates<sup>68</sup>.

While the first EU sanctions were only adopted to comply with the Member States' obligation to implement sanctions adopted through UNSC resolutions, most of today's EU sanctions regime are not, or only partially, UN based, the majority of contemporary EU sanctions regimes are either entirely autonomous or only partially derived from UN mandates<sup>69</sup>.

Among the 55 EU sanctions regimes currently in force, 8 are entirely UN based, 11 are partly autonomous and 36 are entirely autonomous<sup>70</sup>. The fact that a large majority of EU sanctions regimes either go beyond UN sanctions or are adopted outside any UN framework is a sharp indicator of the emergence of restrictive measures as an independent EU foreign policy tool.

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<sup>68</sup>Matthew Happold, Iryna Bogdanova, "Report on the limitations of the current EU restrictive measures (sanctions) regimes", (June 2024), (University of Luxembourg), p. 5 < <https://www.uni.lu/wp-content/uploads/sites/3/2024/11/Report-on-Limitations-of-EU-Restrictive-Measures-Final.pdf> > accessed 08 December 2025.

<sup>69</sup>Yuliya Miadzvetskaya, Celia Challet, "Are EU restrictive measures really targeted, temporary and preventive? The case of Belarus", (2022), (Europe and the World: A law review) < <https://journals.uclpress.co.uk/ewlr/article/pubid/EWLR-6-3/> > accessed 08 December 2025.

<sup>70</sup>See EU Sanctions Map, < <https://sanctionsmap.eu/#/main?checked=&search=%7B%22value%22:%22%22,%22searchType%22:%7B%7D%7D> > accessed 08 December 2025.

The EU possesses a wide-ranging arsenal of tools in the form of sanctions within the CFSP framework, enabling it to shape the conduct of states, entities, and individuals in accordance with its foreign policy and security objectives. EU sanctions can target: governments of non-EU countries because of their policies; entities (companies) providing the means to conduct the targeted policies; groups or organisations such as terrorist groups; individuals, such as terrorists or people responsible for human rights violations<sup>71</sup>.

Within the framework of the CFSP, a streamlined classificatory model can be adopted, distinguishing five primary categories of restrictive measures: arms embargoes, travel restrictions, asset freezes, financial restrictions, and trade limitations. Each category may encompass one or more specific measures. This taxonomy is largely derived from EU terminology and is grounded in Council decisions, which typically allocate a distinct article to each type of measure.

Arms embargoes refer to prohibitions on the sale, supply, transfer, or export of arms and related materials of all kinds, and also encompass restrictions on dual-use goods. Travel restrictions are measures that prevent designated individuals from entering or transiting through the territories of the Member States and are generally regarded as synonymous with visa bans. Asset freezes cover all funds and economic resources that belong to, are owned by, held by, or under the control of the sanctioned individuals or entities. Financial restrictions target interactions with the financial sector of the targeted country, such as prohibitions on payments. Trade restrictions constitute a broad category encompassing measures affecting import or export activities imposed on the target country, or parts thereof, and also include flight bans, which may be considered restrictions on trade in services<sup>72</sup>.

Abovementioned restrictive measure can be categorized based on various criteria: degree of targeting (e.g., comprehensive sanctions, sectoral sanctions, targeted sanctions against named legal entities and individuals); economic (financial restrictions) vs noneconomic restrictions (travel bans); country-specific vs horizontal regimes; based on the reasons for their imposition (democracy promotion, conflict management, post-conflict stabilisation, non-proliferation, terrorism, promotion of EU's interests, as well as promotion of international norms); based on the objectives they aim to achieve (change of

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<sup>71</sup> See Explainers of the Council of EU < <https://www.consilium.europa.eu/en/policies/sanctions-different-types/#regimes> > accessed 08 December 2025.

<sup>72</sup> Franceso Giumelli, Fabian Hoffmann, Anna Ksiazczakova, "The when, what, where and why of European Union sanctions", (2021), (European Security 30:1, 1-23, DOI: 10.1080/09662839.2020.1797685), p. 8 < <https://www.tandfonline.com/doi/full/10.1080/09662839.2020.1797685> > accessed 08 December 2025.

behaviour, deterrence of the objectionable actions)<sup>73</sup>; geographical scope (namely Europe, Asia, Africa, and the Americas), (“the EU vicinity” countries (countries sharing a direct border with the EU), “the outer circle” countries (bordering these neighbouring states) and “the rest of the world” countries (all remaining countries)<sup>74</sup>.

The majority of EU sanctions regimes are adopted in view of a specific situation in a given country, which means they are country-specific<sup>75</sup>. Country-specific regimes encompass a broader range of measures than thematic (horizontal) regimes, for example, restrictive measures targeting certain sectors of the country's economy or prohibitions on new investments into a particular country or a sector of that country's economy<sup>76</sup>.

While most EU sanctions remain connected to the situation in a specific third country, the EU increasingly adopts thematic, horizontal sanctions regimes<sup>77</sup>.

Horizontal (thematic) sanctions regimes are structured around thematic objectives rather than being confined to specific states. They facilitate the identification and listing of individuals and entities accountable for actions that contravene a particular norm, irrespective of their territorial location<sup>78</sup>. Four thematic/horizontal sanctions regimes are targeting terrorist groups, proliferation and chemical weapons use, cyberattacks and human rights abuses. Unlike the Magnitsky-style sanctions implemented by other countries, the current the EU Global Human Rights Sanctions Regime does not extend to acts of significant corruption<sup>79</sup>. At the time of writing, the establishment of a sanctions regime

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<sup>73</sup>Matthew Happold, Iryna Bogdanova, “Report on the limitations of the current EU restrictive measures (sanctions) regimes”, (June 2024), (University of Luxembourg), p. 10-11 < <https://www.uni.lu/wp-content/uploads/sites/3/2024/11/Report-on-Limitations-of-EU-Restrictive-Measures-Final.pdf> > accessed 08 December 2025.

<sup>74</sup> Franceso Giumelli, Fabian Hoffmann, Anna Ksiazczakova, “The when, what, where and why of European Union sanctions”, (2021), (European Security 30:1, 1-23, DOI: 10.1080/09662839.2020.1797685), p. 8 < <https://www.tandfonline.com/doi/full/10.1080/09662839.2020.1797685>> accessed 08 December 2025.

<sup>75</sup> See Explaners of the Council of EU < <https://www.consilium.europa.eu/en/policies/sanctions-different-types/#regimes>> accessed 08 December 2025.

<sup>76</sup> Matthew Happold, Iryna Bogdanova, Report on the limitations of the current EU restrictive measures (sanctions) regimes, (June 2024), University of Luxembourg p. 11 < <https://www.uni.lu/wp-content/uploads/sites/3/2024/11/Report-on-Limitations-of-EU-Restrictive-Measures-Final.pdf> > accessed 08 December 2025.

<sup>77</sup>Yuliya Miadzvetskaya, Celia Challet, “Are EU restrictive measures really targeted, temporary and preventive? The case of Belarus”, (2022), (Europe and the World: A law review) < <https://journals.uclpress.co.uk/ewlr/article/pubid/EWLR-6-3/> > accessed 08 December 2025.

<sup>78</sup> Clara Portela, “The Spread of Horizontal Sanctions”, (March 2019). <[https://www.researchgate.net/publication/331653752\\_The\\_Spread\\_of\\_Horizontal\\_Sanctions](https://www.researchgate.net/publication/331653752_The_Spread_of_Horizontal_Sanctions) > accessed 08 December 2025.

<sup>79</sup> See Council Decision (CFSP) 2020/1999 of 07 December 2020 concerning restrictive measures against human rights violations and abuses (2020) OJ L 410I.

specifically addressing serious corruption is under consideration, with the European Parliament strongly advocating for its adoption<sup>80</sup>.

A new thematic regime targeting disinformation was introduced by Council Decision 2024/2643/CFSP of 8 October 2024 concerning restrictive measures in view of Russia's destabilising activities. This regime enables the imposition of asset freezes and travel bans on individuals and entities responsible for Russia's destabilising conduct, including hybrid threats, disinformation, and interference within the EU and in partner countries<sup>81</sup>.

As is well established, that in response to the events in Tunisia and Egypt known as the Arab Spring and the Ukrainian Revolution of Dignity (Maidan Revolution), the EU put in place a special EU sanctions regime – EU misappropriation sanctions. As events unfolded, deeply corrupt regimes were compelled to relinquish power. To prevent the dissipation of misappropriated public assets and to stabilize conditions in the affected states, the EU adopted misappropriation sanctions targeting regime leaders and their associates. Strictly speaking, these EU misappropriation sanctions were established as three distinct, country-specific regimes<sup>82</sup>.

A classification of sanctions may also be proposed according to the specific crisis that prompted their adoption. Seven categories are identified herein: democracy promotion, crisis management, post-crisis management, non-proliferation, terrorism, EU interests and international norms. The triggering cause is coded by looking at the preamble of the Council decision that established the sanctions regime or the decision/implementing decision that determined the commencement of the episode. As indicated in the Codebook, there are specific sentences that have been “assigned” to each of the following categories.

Democracy promotion involves instances where the EU has adopted restrictive measures in response to human right violations in a given country.

Crisis management refers to a situation of crisis or conflict in which the EU either intervenes to mitigate the negative consequences hereof or relies on sanctions to solve an international disagreement.

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<sup>80</sup> See Think Tank. European Parliament. Briefing of 09.02.2023. Towards an EU global sanctions regime for corruption. < [https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_BRI\(2023\)739340](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2023)739340) < accessed 07 December 2025.

<sup>81</sup> See Council Decision (CFSP) 2024/2643 of 08 October 2024 concerning restrictive measures in view of Russia's destabilising activities (2024) OJ L (consolidated version) and Council Regulation (EU) 2024/2642 of 08 October 2024 concerning restrictive measures in view of Russia's destabilising activities (2024) OJ L (consolidated version).

<sup>82</sup> Matthew Happold, Iryna Bogdanova, “Report on the limitations of the current EU restrictive measures (sanctions) regimes”, (June 2024), (University of Luxembourg), p. 12 < <https://www.uni.lu/wp-content/uploads/sites/3/2024/11/Report-on-Limitations-of-EU-Restrictive-Measures-Final.pdf> > accessed 08 December 2025.

Post-crisis management marks cases where a crisis has ended and the EU acts to support either the implementation of the agreement or to sustain the consolidation of the new government (be it one elected or that has been recognised by the EU as legitimate) by targeting potential spoilers of the conflict settlement – such as rebels and former government officials.

Terrorism cases, meanwhile, reveal clear elements of the EU's intent to inhibit such activity.

Non-proliferation concerns the EU's intention to contribute to international regimes that help counter the proliferation of weapons of mass destruction (WMDs).

EU Interests indicates the intention of the supranational body to adopt sanctions to address a direct challenge to its own interests.

Finally, international norms refer to upholding those that have not already been mentioned above (i.e. terrorism and non-proliferation), such as “territorial integrity” and “international humanitarian law”.

Naturally, each episode could fall under multiple categories. For instance, the preamble of a Council decision may mention several triggering causes, while multiple sanctions can be imposed at the same time<sup>83</sup>.

The analysis of sanctions and the increasing number of grounds for their adoption demonstrate the EU's intention to adapt its restrictive measures to the changing nature of contemporary threats, ranging from traditional breaches of international law to hybrid, corruption-related, and transnational risks.

## **2.4 Actors Involved in the Process of Sanction Enforcement and the Specific Roles Assigned to Them**

### **The role of the Council of EU**

The Council of the EU adopts restrictive measures and designs the enforcement framework.

Within the Council of the EU, the Working Party of Foreign Relations Counsellors (“RELEX”) deals with legal, financial and institutional issues of the CFSP. Restrictive measures are among the Working Party's priorities. The main task of the RELEX “Sanctions formation” is to share best practices and to revise and implement common guidelines to ensure effective and uniform implementation of EU sanctions regimes. In

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<sup>83</sup> Francesco Giumelli, Fabian Hoffmann, Anna Ksiazczakova, “The when, what, where and why of European Union sanctions”, (2021), (European Security 30:1, 1-23, DOI: 10.1080/09662839.2020.1797685), p. 9 < <https://www.tandfonline.com/doi/full/10.1080/09662839.2020.1797685>> accessed 08 December 2025.

July 2024, the Council updated the EU Best Practices for the effective implementation of restrictive measures.

Furthermore, in an unprecedented move, on 6 October 2022, in the context of the sanction's regime against Russia, the Council adopted a new designation criterion targeting "natural or legal persons, entities or bodies facilitating infringements of the prohibition against circumvention of the provisions of (regulations and decisions related to restrictive measures against Russia)". This means that, on the basis of information provided by Member States, the Council is now able to adopt restrictive measures against persons and entities that facilitated the circumvention of the restrictive measures provided for within the sanction's regime. (Article 3(1)(h) of the Council Regulation (EU) № 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (consolidated version)<sup>84</sup>.

Finally, as a co-legislator, the Council, together with the European Parliament, can adopt legislative acts that can impact the enforcement framework.

For instance, the two institutions adopted Directive (EU) 2024/1226 on the definition of criminal offences and penalties for the violation of Union restrictive measures on 24 April 2024<sup>85</sup>.

Fundamentally, Directive (EU) 2024/1226 lays down uniform minimum standards across the European Union concerning the definition and criminalisation of offences related to the breach or circumvention of Union restrictive measures.

A further legislative act in this context is Directive (EU) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation, strengthens the enforcement of EU restrictive measures by establishing a harmonised framework for tracing, freezing, and confiscating assets linked to sanctions violations, while also covering criminal proceeds more broadly<sup>86</sup>.

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<sup>84</sup>Council Regulation (EU) № 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (consolidated version) (2014) OJ L 78.

<sup>85</sup>See Directive (EU) 2024/1226 of the European Parliament and of the Council of 24 April 2024 on the definition of criminal offences and penalties for the violation of Union restrictive measures and amending Directive (EU) 2018/1673 (2024) OJ L.

<sup>86</sup> See Directive (EU) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation) (2024) OJ L.



Moreover, the Authority for Anti-Money Laundering and Countering the Financing of Terrorism (AMLA) should also have powers to monitor the enforcement of restrictive measures<sup>87</sup>.

In conclusion, the Council of the EU plays a key role in enforcing EU restrictive measures by adopting restrictive measures, coordinating their implementation, and ensuring their uniform application across Member States. Furthermore, as co-legislator with the European Parliament, the Council strengthens enforcement by adopting legislative acts that facilitate the effective implementation of restrictive measures.

### **The role of Member States**

Implementation and enforcement of EU restrictive measures are primarily the responsibility of Member States<sup>88</sup>.

Resorting to sanctions is decided by EU Member States in the European Council and, in particular, in the Council of Ministers, where the adoption of Council decisions and regulations establishing sanctions regimes requires unanimous approval. Member States are also those that gather evidence to support listing requests for individuals and entities. The Member States' role is also crucial in other following ways.

The enforcement of travel bans and arms embargoes predominantly falls within the competence of Member States, reflecting their retained sovereignty over border control and the regulation of arms trade, whereas the EU Council establishes the restrictive measures and the Commission provides harmonised guidance—such as military lists and dual-use technology regulations—while the practical implementation remains the responsibility of national authorities<sup>89</sup>.

Member States apply restrictive measures and grant derogations to the freezing of assets, trade-related prohibitions or other restrictive measures, within the framework designed by the Council, through their national competent authorities, as listed in the Annex to the relevant Council Regulation<sup>90</sup>. It is the responsibility of Member States to

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<sup>87</sup> Stéphane Bonifassi, Elena Fedorova, Julie Bastien, “A closer look at EU sanctions enforcement” (September 2024), (Global Investigations Review) < <https://globalinvestigationsreview.com/guide/the-guide-sanctions-archived/fifth-edition/article/closer-look-eu-sanctions-enforcement> > accessed 09 December 2025.

<sup>88</sup> Stéphane Bonifassi, Elena Fedorova, Julie Bastien, “A closer look at EU sanctions enforcement” (September 2024), (Global Investigations Review) < <https://globalinvestigationsreview.com/guide/the-guide-sanctions-archived/fifth-edition/article/closer-look-eu-sanctions-enforcement> > accessed 09 December 2025.

<sup>89</sup> Asada Masahiko, *Economic Sanctions in International Law and Practice*, (First published 2020 by Routledge 2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN and by Routledge 52 Vanderbilt Avenue, New York, NY 10017), p. 124-125.

<sup>90</sup> Stéphane Bonifassi, Elena Fedorova, Julie Bastien, “A closer look at EU sanctions enforcement” (September 2024), Global Investigations Review < <https://globalinvestigationsreview.com/guide/the-guide-sanctions-archived/fifth-edition/article/closer-look-eu-sanctions-enforcement> > accessed 09 December 2025.

monitor the conduct of entities within their jurisdictions, to conduct investigations, and to determine the appropriate penalties for violations of EU sanctions<sup>91</sup>.

They also have an obligation to inform each other and the European Commission of any authorisation or derogation granted, and generally to share with each other any information relevant to the enforcement of restrictive measures, including relevant information received by Member States from any person or entity under their jurisdiction.

Member States are also responsible for the investigating and penalising of breaches of EU restrictive measures within their jurisdiction. For this purpose, Member States may need to adopt legislation at the national level. Council regulations providing for restrictive measures systematically include an obligation for Member States to “lay down the rules on sanctions applicable to the infringements of the provisions of the (Regulation) and shall take all measures necessary to ensure that they are implemented”. Sanctions laid down by Member States must be “effective, proportionate and dissuasive”.

Member States retained discretion in determining the nature of penalties applicable to breaches of EU restrictive measures, which has resulted in considerable divergence across Member States with regard to both the form and substance of the sanctions imposed. In order to address this disparity, the Council adopted Council Decision (EU) 2022/2332 of 28 November 2022 on identifying the violation of Union restrictive measures as an area of crime that meets the criteria in Article 83(1) of the Treaty on the Functioning of the European Union<sup>92</sup>, which added the violation of EU restrictive measures to the areas of crimes laid down in Article 83(1) of the TFEU.

Following the adoption of this decision, the European Parliament and the Council adopted Directive (EU) 2024/1226 on the definition of criminal offences and penalties for the violation of EU restrictive measures.

The Directive provides an obligation for Member States to criminalise the conduct identified by the Directive under their national law. The types of conduct include violations of restrictive measures (Article 3) and inciting, aiding and abetting, and attempting to breach restrictive measures (Article 4). The Directive sets forth common penalties (minimum penalties for natural persons (Article 5), liability and penalties for legal persons

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<sup>91</sup>Asada Masahiko, *Economic Sanctions in International Law and Practice*, (First published 2020 by Routledge 2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN and by Routledge 52 Vanderbilt Avenue, New York, NY 10017), p. 124-125.

<sup>92</sup> See Council Decision (EU) 2022/2332 of 28 November 2022 on identifying the violation of Union restrictive measures as an area of crime that meets the criteria in Article 83(1) of the Treaty on the Functioning of the European Union) (2022) OJ L.

(Articles 6 and 7) and aggravating and mitigating circumstances (Articles 8 and 9)), as opposed to the current framework of individually fixed penalties<sup>93</sup>.

Member States must adapt their national laws to comply with the Directive by 20 May 2025<sup>94</sup>. However, the results of the implementation of Directive (EU) 2024/1226 show significant differences among Member States. Some EU Member States have fulfilled their obligations. At the same time, a significant number of EU Member States have not yet completed the implementation process. As a result, on 24 July 2025, the European Commission announced that it was initiating proceedings against 18 EU Member States that had not notified measures to fully implement Directive (EU) 2024/1226 into national law<sup>95</sup>.

In conclusion, despite the central role of Member States in the implementation and enforcement of EU restrictive measures, persistent divergences in national legal frameworks and delays in transposing EU-wide norms, including Directive (EU) 2024/1226, continue to undermine the uniformity and effectiveness of the Union's sanctions regime.

### **The role of the EEAS**

The European External Action Service ("EEAS") was created to facilitate the coordination of the foreign policy of the Member States. Indeed, it is the High Representative of the Union for Foreign Affairs and Security Policy, as head of the EEAS, who makes proposals for the adoption of sanctions. The EEAS drafts Council decisions that are sent to Working Party of Foreign Relations Counsellors ("RELEX") for discussion.

The EEAS has a sanctions policy division that falls directly under the Secretary-General. The sanctions policy division is responsible for the overall coordination of EU sanctions policy and CFSP sanctions regimes and ensures that the legal texts are coherent and consistent across the EU. The unit plays a central role in all phases of sanctions, from their design to their application.

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<sup>93</sup>Directive (EU) 2024/1226 of the European Parliament and of the Council of 24 April 2024 on the definition of criminal offences and penalties for the violation of Union restrictive measures and amending Directive (EU) 2018/1673 (2024) OJ L.

<sup>94</sup>Stéphane Bonifassi, Elena Fedorova, Julie Bastien, "A closer look at EU sanctions enforcement" (September 2024), (Global Investigations Review) < <https://globalinvestigationsreview.com/guide/the-guide-sanctions-archived/fifth-edition/article/closer-look-eu-sanctions-enforcement> > accessed 09 December 2025.

<sup>95</sup> See Press Release of the European Commission "Commission takes action to ensure complete and timely transposition of EU directives" < [https://ec.europa.eu/commission/presscorner/detail/en/inf\\_25\\_1842](https://ec.europa.eu/commission/presscorner/detail/en/inf_25_1842) > accessed 09 December 2025.

The EEAS also provides the Council with regional expertise that is necessary to design restrictive measures. This role is relevant to reassert the principle according to which decisions would be made in the interest of the EU. For instance, if sanctions are to be imposed on a third party upon the request of one or more Member States via the HR, the geographical desk(s) under the five regional divisions would be involved to provide comments and/or opinions on, for instance, the effectiveness and utility of sanctions in the specific context at hand. Especially, restrictive measures can have multiple and diverse effects in the local dynamic where targets are located, therefore EU delegations, geographical desks, and the Commission (see the following) can remark on whether sanctions have, among other things, unintended and/or unwanted consequences as well<sup>96</sup>.

Thus, the EEAS coordinates and advises on the design and implementation of EU restrictive measures, ensuring legal coherence, providing regional expertise, and supporting Member States in the uniform enforcement of sanctions.

### **The Role of the EU Commission**

Given that restrictive measures are alteration of the functioning of the internal market, the Commission is included in the formal and informal discussions about sanctions.

For instance, the Commission drafts Council regulations that are sent to RELEX for discussion together with Council decisions drafted by the EEAS. The Commission participates also in the process with the Service for Foreign Policy instruments (FPI). FPI represents the Commission in sanctions related discussions in RELEX and prepare proposals for regulation of the Council.

Currently, the Commission can also play an essential role in providing expertise that neither the Council nor the EEAS have on the effects that sanctions have both on the targeted economy and on the EU. For instance, it was for the Commission to draft a three-tier sanctions policy toward Russia. In this situation, the Commission prepared a document estimating the impact on both the EU and Russia of three different sets of sanctions. The Commission provides the competence about the internal market and the economic implications deriving from the imposition of sanctions<sup>97</sup>.

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<sup>96</sup>Asada Masahiko, *Economic Sanctions in International Law and Practice*, (First published 2020 by Routledge 2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN and by Routledge 52 Vanderbilt Avenue, New York, NY 10017), p. 123.

<sup>97</sup>Asada Masahiko, *Economic Sanctions in International Law and Practice*, (First published 2020 by Routledge 2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN and by Routledge 52 Vanderbilt Avenue, New York, NY 10017), p. 123-124.

Pursuant to Article 17 of the TEU, the European Commission ensures the application of treaties and measures adopted by certain institutions and oversees the application of EU law. Within this framework, the Commission oversees the uniform application of restrictive measures by Member States. If a Member State does not enforce EU restrictive measures, the European Commission could launch an infringement procedure under Article 258 of the TFEU (this has not occurred to date).

The Commission monitors the enforcement of restrictive measures by Member States through information that national competent authorities and economic operators provide pursuant to various information obligations under Council Regulations. In particular, this information may concern frozen funds and economic resources, enforcement difficulties experienced by national competent authorities or derogations granted. The Commission can also request additional information. Information provided to or received by the Commission in this context shall only be used for the purposes for which it was provided or received.<sup>98</sup>

On 4 March 2022, the European Commission introduced the EU Sanctions Whistle-blower Tool, allowing individuals to anonymously report suspected breaches of EU restrictive measures. The tool facilitates the submission of information on past, ongoing, or planned violations, which may involve persons, companies, or third countries. The Commission assesses the credibility of the reports and, if deemed reliable, shares anonymised information with the relevant national authorities, supporting investigations and enhancing the effectiveness of the EU sanctions regime<sup>99</sup>.

Furthermore, the Commission may provide guidance to Member States on the implementation of restrictive measures, which can take the form of FAQs (Frequently Asked Questions)<sup>100</sup>, Guidance or opinions.

In March 2022, to ensure coordination in the implementation of individual sanctions under the sanction's regime against Russia, the Commission also set up a Freeze and Seize Task Force composed of the Commission, national contact points from each Member State,

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<sup>98</sup>Stéphane Bonifassi, Elena Fedorova, Julie Bastien, "A closer look at EU sanctions enforcement" (September 2024), (Global Investigations Review) < <https://globalinvestigationsreview.com/guide/the-guide-sanctions-archived/fifth-edition/article/closer-look-eu-sanctions-enforcement> > accessed 09 December 2025.

<sup>99</sup>See EU sanctions whistle-blower tool < [https://finance.ec.europa.eu/eu-and-world/sanctions-restrictive-measures/overview-sanctions-and-related-resources/eu-sanctions-whistleblower-tool\\_en](https://finance.ec.europa.eu/eu-and-world/sanctions-restrictive-measures/overview-sanctions-and-related-resources/eu-sanctions-whistleblower-tool_en) > accessed 09 December 2025.

<sup>100</sup>See Commission Consolidated FAQs on the implementation of Council Regulation No 833/2014, Council Regulation No 269/2014, Council Regulation (EU) No 692/2014 and Council Regulation (EU) 2022/263) < [https://finance.ec.europa.eu/system/files/2024-01/faqs-sanctions-russia-consolidated\\_en.pdf](https://finance.ec.europa.eu/system/files/2024-01/faqs-sanctions-russia-consolidated_en.pdf)> accessed 09 December 2025.

the European Union Agency for Criminal Justice Cooperation (Eurojust), European Union Agency for Law Enforcement Cooperation (Europol) and other EU agencies and bodies. The Task Force's objective is to explore the interplay between restrictive measures and criminal law measures and to provide a platform where Member States can explore whether any listed individuals or companies have been involved in criminal proceedings. The Task Force coordinates actions by Member States to freeze and, where necessary, confiscate assets of listed persons and entities<sup>101</sup>.

The Commission also created the new position of EU Sanctions Envoy<sup>102</sup>, whose role is to ensure continuous, high-level discussions with third countries to avoid the evasion or circumvention of sanctions.

Thus, the European Commission plays an important and multifaceted role in the EU sanctions regime, ensuring the drafting, coordination, enforcement, monitoring, and guidance of restrictive measures while providing expertise, facilitating information sharing, and engaging with third countries to maintain the effectiveness and coherence of EU sanctions.

### **The Role of the CJEU in shaping the scope of CFSP jurisdiction**

The CJEU holds a limited jurisdiction in matters of the CFSP, reflecting the distinct nature of the CFSP as a component of the EU's external action, which is governed by specific rules and procedures that differentiate it from other areas of Union law.

Evidently, CJEU has shaped the scope of its CFSP jurisdiction through case law. However, the precise boundaries of the Court's jurisdiction remain undelineated – in *Opinion 2/13*<sup>103</sup>, the Court revealed that “the Court has not yet had the opportunity to define the extent to which its jurisdiction is limited in CFSP matters”.

Under Article 24(1) TEU and Article 275 TFEU the Court's jurisdiction is excluded in the CFSP matters. There are two exceptions to this jurisdictional carve-out, acting as clawbacks. First, the CJEU ensures reciprocal non-encroachment between the CFSP and other EU policies pursuant to Article 40 TEU. Moreover, the Court reviews the legality of certain decisions, namely restrictive measures (sanctions) against natural or legal person, adopted by the Council on the basis of Chapter 2 of Title V of the TEU.

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<sup>101</sup> See Press Release of the European Commission “Enforcing sanctions against listed Russian and Belarussian oligarchs: Commission's “Freeze and Seize” Task Force steps up work with international partners” < [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_1828](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1828) > accessed 09 December 2025.

<sup>102</sup> See EU Sanctions Envoy < [https://commission.europa.eu/persons/david-osullivan\\_en](https://commission.europa.eu/persons/david-osullivan_en) > accessed 09 December 2025.

<sup>103</sup> See *Opinion 2/13* of the Court (Full Court) of 18 December 2014, ECLI:EU:C:2014:2454, para. 251.

Prima facie, the Court's jurisdiction is limited in the CFSP matters. In its judgement of 24 June 2014 in case C-658/11 *Mauritius*<sup>104</sup>, the Court concluded, "that it is apparent from the final sentence of the second subparagraph of Article 24(1) TEU and the first paragraph of Article 275 TFEU that the Court does not, in principle, have jurisdiction with respect to the provisions relating to the CFSP or with respect to acts adopted on the basis of those provisions". (para 69)

However, the Court interprets the CFSP carve-out provisions, Article 24(1) TEU and Article 275 TFEU, as a derogation from the rule of the general jurisdiction under Article 19 TEU, which confers on the Court to ensure that in the interpretation and application of the Treaties the law is observed, and which must be interpreted narrowly (para 70). Consequently, the Court interprets the CFSP carve-out in a narrow manner.

In case C-72/15 *Rosneft*<sup>105</sup> the Court stated that, a prerequisite for the validity of a Regulation adopted on the basis of Article 215 TFEU is the prior adoption of a valid decision in accordance with the provisions relating to the CFSP, consequently, the question of the validity of contested CFSP Decision, which was based on Article 29 TEU to adopt restrictive measures, is clearly relevant in the context of this case. (paras 11-16, para 55)

Furthermore, the Court recalled, that the Member States must, "pursuant to Article 29 TEU, ensure that their national policies conform to the Union position adopted under the CFSP". (para 56) The Court noted that, in the event that contested Regulation based on Article 215 TEU, "which gives effect to the positions adopted by the Union in the context of the CFSP" (para 106), were to be declared invalid, this would, in principle, have no impact on the obligation of the Member States to ensure that their national policies comply with the restrictive measures established under contested CFSP Decision. (para 56)

Accordingly, the Court affirmed its jurisdiction to examine the validity of contested CFSP Decision, "such an examination is required in order to determine the scope of the obligations resulting from that decision", irrespective of whether Regulation based on that Decision is valid. (para 56)

In case *Rosneft*, the Court also departed from the strict interpretation of Articles 24(1) TEU and 275 TFEU by allowing preliminary reference procedures to review the legality of restrictive measures. (para 75)

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<sup>104</sup>See Judgement of the Court (Grand Chamber) 24 June 2014 in case C-658/11 *Mauritius*, ECLI: ECLI:EU:C:2014:2025.

<sup>105</sup> See Judgement of the Grand Chamber of 28 March 2017 in case C-72/15 *PJSC Rosneft Oil Company*, ECLI:EU:C:2017:236.

In its judgement, the Court concluded, “that Articles 19, 24 and 40 TEU, Article 275 TFEU, and Article 47 of the CFR must be interpreted as meaning that the Court has jurisdiction to give preliminary rulings, under Article 267 TFEU, on the validity of an act adopted on the basis of provisions relating to the CFSP”, such as CFSP Decision, which was based on Article 29 TEU to adopt restrictive measures, “provided that the request for a preliminary ruling relates either to the monitoring of that decision’s compliance with Article 40 TEU, or to reviewing the legality of restrictive measures against natural or legal persons”. (para 81)

Nonetheless, the Court concluded, that it lacks jurisdiction to review part of contested CFSP Council Decision, based on Article 29 TEU, which lay down measures of general application based on objective criteria and do not target identifiable natural or legal persons. By contrast, the Court found that part of contested CFSP Council Decision, based on Article 29 TEU, that constitute restrictive measures with individual nature directed at specific entities, including Rosneft, thus falling within the scope of judicial review under Article 275(2) TFEU. (paras 95, 97-98, 100, 102-104, 107)

At the same time, the Court affirmed its full jurisdiction over the contested regulation, and in that regard held, that “the jurisdiction of the Court is in no way restricted with respect to a regulation, adopted on the basis of Article 215 TFEU, which gives effect to the positions adopted by the Union in the context of the CFSP. Such regulations constitute EU acts, adopted on the basis of the TFEU Treaty, and the CJEU must, in accordance with the powers conferred on them by the Treaties, ensure the review, in principle the full review, of the legality of those acts”. (para 106)

Overall, *Rosneft* illustrates the Court’s commitment to safeguarding the unity and effectiveness of EU law by avoiding lacunae in judicial protection, while simultaneously adhering to the structural constraints that delimit its jurisdiction under the CFSP framework.

In its judgment of 6 October 2020 in Case C-134/19 P, *Bank Refah Kargaran*<sup>106</sup>, the Court emphasised that “the last sentence of the second subparagraph of Article 24(1) TEU confers on the CJEU jurisdiction to give rulings on actions, brought subject to the conditions laid down in the fourth paragraph of Article 263 TFEU, concerning the review of the legality of Council decisions, adopted on the basis of provisions relating to the CFSP, which provide for restrictive measures against natural or legal persons”. (para 27) In

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<sup>106</sup> See judgment of the Court (Grand Chamber) of 6 October 2020 in Case C-134/19 Bank Refah Kargaran, ECLI:EU:C:2020:793.



this case, the Court annulled, in so far as concerned the appellant, CFSP Decisions based on Article 29 TEU adopting restrictive measures and Regulations enacted under Article 215 TFEU relating to restrictive measures which, although not falling within the scope of the CFSP, implemented those decisions, on the ground that they were inadequately reasoned. (para 28)

Additionally, in case *Bank Refah Kargaran* the Court also extended its jurisdiction to rule on action for damages for harm allegedly caused by restrictive measures, taken in CFSP decision.

The exercise of jurisdiction was grounded in fundamental constitutional principles, notably the rule of law, whereby the existence of effective judicial review—serving to secure compliance with EU law—represents a cornerstone of that principle. (paras 35–36)

At the outset, the Court confirmed, that it has jurisdiction to rule on an action for damages in so far as it concerns restrictive measures provided for by Regulations based on Article 215 TFEU (paras 39, 30, 37), at the same time Article 275 TFEU does not expressly mention the jurisdiction of the Court to rule on harm allegedly caused by restrictive measures taken in CFSP Decisions. (para 31) Simultaneously, the Court grounded its reasoning in the view that the CFSP Decisions and the regulations enacted pursuant to Article 215 TFEU to implement them, may not be substantively identical, as it was in this case, and that the public designation of persons subject to restrictive measures - accompanied by opprobrium and suspicion – may cause harm and thus justify bringing an action for damages in compensation for that harm. (para 42)

Accordingly, the Court held that it had “jurisdiction to rule on an action for damages insofar as it seeks to obtain compensation for the harm allegedly caused by restrictive measures adopted against the natural or legal persons pursuant to CFSP Decisions”. (para 44).

In the recent landmark case C-351/22 *Neves 77 Solutions SRL*<sup>107</sup> and joined cases C-29/22 P, C-44/22 P *KS and KD*<sup>108</sup>, the Court answered novel questions on the scope of CFSP jurisdiction, marking a crucial step toward defining borders of judicial review in CFSP.

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<sup>107</sup> See Judgement of the Court (Grand Chamber) of 10 September 2024 in case C-351/22, *Neves 77 Solutions SRL*, ECLI:EU:C:2024:723.

<sup>108</sup> See Judgement of the Court (Grand Chamber) of 10 September 2024 in joined cases C-29/22 P, C-44/22 P *KS and KD*, ECLI:EU:C:2024:725.

First, in case *Neves 77 Solutions*, the Court clarified the scope of the CFSP “claw-back” mechanism, determining that preliminary references concerning the interpretation of CFSP decisions on restrictive measures fall within its jurisdiction. (para 61)

The Court concluded that, having regard to Articles 19, 24 and 40 TEU and Article 215(1) TFEU, read in the light of Articles 2 and 21 TEU, it has jurisdiction to give a preliminary ruling under Article 267 TFEU on the interpretation of a measure of general scope contained in an act adopted in the context of the CFSP, where the Council should have implemented that measure in a regulation under Article 215 TFEU in order to ensure uniform application of that measure at EU level, but have not implemented. (paras 41, 42, 46, 53)

The Court once again emphasised that effective judicial protection, aimed at ensuring compliance with EU law, lies at the very core of the rule of law. (paras 48-51)

In joined Cases C-29/22 and C-44/22 *KS*, which did not concern restrictive measures but whose reasoning may be applied by analogy to sanctions cases, the Court affirmed its jurisdiction by emphasising its competence to review the legality of CFSP acts and omissions that do not entail political or strategic choices, including matters relating to the operational and day-to-day management of missions such as EULEX Kosovo. (para 157).

The Court emphasised that fundamental principles, including the rule of law and the right to an effective remedy, are applicable even to CFSP matters, enabling judicial review of administrative decisions and management aspects (para. 131). In establishing jurisdiction to review non-strategic CFSP decisions affecting fundamental rights, the Court effectively articulated a form of political question doctrine, comparable to that developed in United States foreign policy jurisprudence. The resulting exclusion of “political or strategic” choices from judicial review under the CFSP reflects an effort to preserve the political discretion inherent in the Union’s external action<sup>109</sup>. The Court reaffirmed its earlier position in the Order of 25 September 2025<sup>110</sup>.

Thus, the Court’s approach in CFSP matters respects the politically sensitive nature of the CFSP. At the same time, it integrates the CFSP into the broader EU legal framework where necessary to safeguard fundamental rights and uphold the rule of law. Consequently,

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<sup>109</sup>Kamya Chawla, “Bridging the CFSP Gap. How the CJEU further integrates foreign policy jurisdiction into the EU legal framework”, (October, 2024) < <https://verfassungsblog.de/bridging-the-cfsp-gap/> > accessed 12 December 2025.

<sup>110</sup> See Order of the General Court (Sixth Chamber) of 25 September 2025 in case T-771/20 RENV, *KS, KD, v Council of EU, European Commission, EEAS*.

the CJEU do not exceed its jurisdiction but rather reinforce the coherence and integrity of EU law across all policy areas.

In conclusion, the adoption and implementation of EU sanctions can be likened to a complex orchestra, in which each actor plays its own indispensable instrument, contributing to the coherence and effectiveness of the regime, while the CJEU serves as the lead conductor, ensuring that all elements harmonize within the broader EU legal framework, safeguarding fundamental rights, upholding the rule of law, and maintaining the overall integrity and legitimacy of EU sanctions.

### **Chapter 3: Legal Challenges Arising from the Judicial Review of EU Sanctions**

#### **3.1 Principle of Proportionality, as One of the Fundamental Principles of EU**

Although the origins of the principle of proportionality can be traced back to antiquity, in modern legal systems it has evolved into a general principle of law shaped by ideas underpinning liberal democracy, in particular the aim of safeguarding the individual vis-à-vis the State and the assumption that the law must pursue a legitimate and practically meaningful objective. As a general principle of the Community legal system, proportionality derives its origin from German law. The principle finds only limited expression in the Treaty of Rome but has been developed by the Court as a fundamental principle deriving from the rule of law and requiring in particular that “the individual should not have his freedom of action limited beyond the degree necessary in the public interest”<sup>111</sup>.

The principle of proportionality applies both to Community and to national measures and covers both legislative and administrative action. Primarily, it is used as a ground of review of Community measures. Although the principle is particularly important in the field of economic law, in its case-law the Court has applied it in diverse areas, so that it now permeates the whole of the Community legal system<sup>112</sup>.

The principle of proportionality is now explicitly enshrined in Article 5(4) TEU as a part of the principle of subsidiarity. It provides that, where action by the Union is justified under subsidiarity, such action must not exceed what is necessary to achieve the objectives

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<sup>111</sup> See Judgement of the Court of 29 November 1956 in case 8/55 *FEDERATION CHARBONNIÈRE DE BELGIQUE v HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY*, ECLI:EU:C:1956:11; Judgement of the Court of 17 December 1970 in case 11/70, *Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel*, ECLI:EU:C:1970:114.

<sup>112</sup> Takis Tridimas, “The Principle of Proportionality in Community Law: From the Rule of Law to Market Integration”, 31 *Irish Jurist* (NS) 83, p. 84-85 <  
<https://heinonline.org/HOL/Page?handle=hein.journals/irishjur27&id=95> > accessed 15 December 2025.

of the Treaty, with these requirements being further elaborated in a Protocol annexed to the Treaty.

The meaning of proportionality in EU law has been largely shaped by the EU courts. In any proportionality assessment, it is necessary first to identify the relevant interests and to assign some weight to them, as this is essential for any balancing exercise. From the case law, it is clear that courts examine whether a measure is suitable or appropriate to achieve its intended objective.

The Court also consider whether the measure is necessary, or whether the same goal could have been achieved by a less burdensome method. These two elements — suitability and necessity — correspond to the first two elements of the classic German formulation of proportionality and are well-established in EU law.

There is, however, more uncertainty regarding the third element, often called proportionality *stricto sensu*, which involves a more explicit balancing of the advantages and disadvantages of the measure. The case law is unclear on this point. This is significant, because including the third element changes the nature of the test: if proportionality only requires suitability and necessity, a measure is considered legal once these conditions are met, even if the burdens it imposes may outweigh the benefits. The addition of the third element obliges the court to conduct further analysis to ensure that the measure is not excessive.

While Union courts do not always explicitly refer to proportionality *stricto sensu*, they generally do so when applicants specifically raise arguments about it. How the courts apply this balancing in practice remains an open question, which can be examined through relevant case law.

Another important aspect influencing proportionality is the intensity of judicial review — that is, how closely courts scrutinize the measure. In particular, judicial review of EU restrictive measures on the basis of proportionality is most commonly associated with discretionary policy decisions, in areas where the EU institutions are afforded a broad margin of discretion<sup>113</sup>.

The area of the adopting restrictive within the CFSP framework is characterised by a wide margin of discretion on the part of the institutions responsible for adopting such

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<sup>113</sup> Paul Craig, *EU Administrative Law* (Oxford University Press 2012), p. 590-591.

measures<sup>114</sup>. According to the Guidelines, restrictive measures “must always be proportionate to their objective”<sup>115</sup>. In this context, proportionality serves a dual function. First, it operates as a safeguard for fundamental rights, ensuring that sanctions do not unduly infringe individual freedoms, as required by Article 52(1) of the CFR. Second, it functions as a general principle of good governance under Article 5(4) TEU, ensuring that EU acts remain reasonable and appropriately targeted.

Thus, in its full form, proportionality consists of a three-step test:

- (i) Suitability: Is the measure capable of achieving its intended objective?
- (ii) Necessity: Is there a less restrictive alternative that could achieve the same goal?
- (iii) Proportionality *stricto sensu*: Does the burden imposed by the measure exceed what is justified by the importance of the objective pursued?

The final step is not always clearly applied. The Courts tend to engage with it only when the applicants specifically raise relevant arguments, and even then, the distinction between the second and third step is often blurred. In practice, less restrictive alternatives may be overlooked, and the overall test applied inconsistently<sup>116</sup>.

The three essential components of the proportionality test—the suitability of the measure to achieve the objective (appropriateness), the necessity of the measure in that no less restrictive alternative is available, and the proportionality *stricto sensu*, requiring a balance between the measure’s benefits and its adverse effects—provide a framework for analysing the CJEU’s application of the principle of proportionality in cases challenging restrictive measures. Such an analysis enables the identification of patterns and regularities, and helps discern trends in judicial practice.

## **3.2 The Application of the Principle of Proportionality by the CJEU in the Review of Restrictive Measures**

### **3.2.1 First Step of the proportionality test: appropriateness (suitability)**

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<sup>114</sup>Marise Cremona, “Effective Judicial Review Is of the Essence of the Rule of Law: Challenging Common Foreign and Security Policy Measures Before the Court of Justice”, (Articles Special Section – The New Frontiers of EU Administrative Law: Is There an Accountability Gap in EU External Relations?), (European Papers, Vol. 2, 2017, No 2), pp. 671-69 <[https://www.europeanpapers.eu/system/files/pdf\\_version/EP\\_eJ\\_2017\\_2\\_11\\_Article\\_Marise\\_Cremona\\_00173.pdf](https://www.europeanpapers.eu/system/files/pdf_version/EP_eJ_2017_2_11_Article_Marise_Cremona_00173.pdf)> accessed 14 December 2025.

<sup>115</sup> See Guidelines on the implementation and evaluation of restrictive measures (sanctions) in the framework of the Common Foreign and Security Policy (2018), updated, paras 9.

<sup>116</sup>Marie Terlinden, “Sanctions without scrutiny? The Role of Proportionality in the Case Law of the European Union Courts”, (May 2025) (Working Paper no. 248), <[https://ghum.kuleuven.be/ggs/publications/working\\_papers/wp-ggs-marie-terlinden-may-2025.pdf](https://ghum.kuleuven.be/ggs/publications/working_papers/wp-ggs-marie-terlinden-may-2025.pdf)> accessed 15 December 2025.

According to established case-law of the CJEU, the first step in the proportionality assessment examines whether “the measures adopted by the EU institutions do not exceed the limits of what is appropriate and necessary to achieve the objectives pursued by the legislation in question”<sup>117</sup>. In other words, the question is whether the measure is suitable to achieve a legitimate aim<sup>118</sup>. The first step refers to the relationship between the means and the end, the means employed by the measure must be suitable, namely reasonably likely, to achieve its objectives<sup>119</sup>.

Consequently, “where there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued.”<sup>120</sup>

In the context of CFSP restrictive measures, the Court acknowledges that the Council has a broad margin of discretion in this area and, accordingly, is called upon to undertake complex assessments, while emphasising that judicial review is limited. From the Court’s perspective, “the legality of a measure adopted in these areas can be challenged only if the measure is *manifestly inappropriate* in light of the *objective* pursued by the competent institution”<sup>121</sup>.

Consequently, the legality of a measure adopted can be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institution is seeking to pursue<sup>122</sup>.

In the context of restrictive measures, the objectives pursued by the Council—such as exerting direct or indirect pressure on the Government of the Russian Federation or

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<sup>117</sup>See Judgement of the General Court of 30 November 2016 in case T-720/14 Arkady Romanovich Rotenberg v Council of the EU, ECLI:EU:T:2016:689, para 178; Judgement of the General Court of 03 July 2024 in case T-742/22 Dmitry Arkadievich Mazepin v Council of the EU, ECLI:EU:T:2024:433, para 208.

<sup>118</sup>Takis Tridimas, “The Principle of Proportionality in Community Law: From the Rule of Law to Market Integration”, 31 Irish Jurist (NS) 83, p. 91-91 < <https://heinonline.org/HOL/Page?handle=hein.journals/irishjur27&id=95> > accessed 15 December 2025.

<sup>119</sup> Ibid p. 84.

<sup>120</sup>See Judgement of the General Court of 30 November 2016 in case T-720/14 Arkady Romanovich Rotenberg v Council of the EU, ECLI:EU:T:2016:689, para 178; Judgement of the General Court of 03 July 2024 in case T-742/22 Dmitry Arkadievich Mazepin v Council of the EU, ECLI:EU:T:2024:433, para 91.

<sup>121</sup>See Judgement of the General Court of 30 November 2016 in case T-720/14 Arkady Romanovich Rotenberg v Council of the EU, ECLI:EU:T:2016:689, para 179; See Judgement of the Grand Chamber of 28 March 2017 in case C-72/15 PJSC Rosneft Oil Company, ECLI:EU:C:2017:236, para 146; See Judgement of the Court of 13 March 2025 in case C-271/24 P Igor Shuvalov v Council of the EU, ECLI:EU:C:2025:180, para 76; Judgement of the General Court of 03 July 2024 in case T-742/22 Dmitry Arkadievich Mazepin v Council of the EU, ECLI:EU:T:2024:433, para 112.

<sup>122</sup>Takis Tridimas, “The Principle of Proportionality in Community Law: From the Rule of Law to Market Integration”, 31 Irish Jurist (NS) 83, p. 86-87 < <https://heinonline.org/HOL/Page?handle=hein.journals/irishjur27&id=95> > accessed 15 December 2025.

increasing the cost of continued aggression<sup>123</sup> —are anchored in the strategic aims set out in Article 21(2)(b) and (c) TEU. These objectives include the promotion and consolidation of democracy, the rule of law, human rights, and the principles of international law, as well as the preservation of peace, the prevention of conflicts, the strengthening of international security, and the protection of civilian populations<sup>124</sup>. The Council employs broad and strategic terminology in defining these objectives, and the broader the formulation of an objective, the less likely it is that a restrictive measure will be deemed manifestly unsuitable or disproportionate.

In case *Arkady Romanovich Rotenberg v Council of the EU*, the applicant claims that restrictive measures at issue (freezing of funds and travel restrictions (para 1-9)) «constitute an unjustified and disproportionate restriction of his fundamental rights, including, in particular, the right to property, the right to privacy and the freedom to conduct a business», as it is unclear how maintaining the restrictive measures concerning him could result in pressure being brought to bear on the decision-makers responsible for the annexation of Crimea. (para 164).

At the same time, the Court stated, that so far as applicant “was among those responsible for policies and actions that undermined or threatened the territorial integrity, sovereignty and independence of Ukraine, or stability or security in Ukraine” (para 181), “restrictive measures at issue are intended to exert pressure on the Russian authorities to bring to an end their actions and policies destabilising Ukraine”, “which falls within those pursued under the common foreign and security policy (CFSP) and referred to in Article 21(2)(b) and (c) TEU, such as the consolidation of and support for democracy, the rule of law, human rights and the principles of international law, and the preservation of peace, prevention of conflicts and strengthening of international security and the protection of civilian populations”. (para 176)

In light of the above, the Court reached the conclusion, that “in the light of the importance of the objectives pursued by the restrictive measures at issue, the adverse consequences of their application to the applicant are not manifestly disproportionate”. (para 180)

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<sup>123</sup>See Judgement of the General Court of 30 November 2016 in case T-720/14 *Arkady Romanovich Rotenberg v Council of the EU*, ECLI:EU:T:2016:689, para 182; Judgement of the Court of 13 March 2025 in case C-271/24 P *Igor Shuvalov v Council of the EU* (ECLI:EU:C:2025:180)(para 79); Judgment of the General Court of 4 June 2025 in case T-271/23 *Alfa-Bank JSC v Council*, (ECLI:EU:T:2025:559), para 64.

<sup>124</sup>See Judgement of the General Court of 30 November 2016 in case T-720/14 *Arkady Romanovich Rotenberg v Council of the EU*, ECLI:EU:T:2016:689, para 176; Judgment of the General Court of 4 June 2025 in case T-271/23 *Alfa-Bank JSC v Council*, (ECLI:EU:T:2025:559), para 229.

The court reached a similar conclusion in case T-1095/23 *OT v Council of the EU* in recent Judgement of 23 July 2025<sup>125</sup>. In the relevant case, “the applicant particularly criticises the Council for failing to review the impact of the restrictive measures in order to ascertain whether they had in fact contributed to achieving the objectives sought, submitting that the objectives sought by the restrictive measures have not been achieved in the circumstances of the present case, given that the war has been lost”. (para 206)

In response to the applicant’s arguments, the Court held that the restrictive measures pursue an EU-recognised objective of general interest, namely exerting pressure on the Russian authorities to end policies destabilising Ukraine by targeting influential actors and key economic sectors. By reducing State revenue and limiting Russia’s capacity to undermine Ukraine’s sovereignty and territorial integrity, the measures contribute to international security objectives falling within the CFSP under Article 21(2)(c) TEU (para. 210).

In conclusion, the Court’s position is that, given the broad scope of the aims and objectives of the CFSP, the Council has wide discretion to determine the persons and entities subject to restrictive measures<sup>126</sup>, and that such persons may have either a direct or indirect link—or no link at all—to the behaviour targeted by the measures.

Notably, in case *Alfa-Bank JSC v Council*<sup>127</sup>, the Court stressed that the applicant’s inability to influence Russia’s political direction did not affect the appropriateness of the measures, as they served as an indirect instrument to shape the broader political behaviour of the Russian authorities. (para 241)

Meanwhile, in case T-233/22 *Ekaterina Islentyeva v Council of the EU*<sup>128</sup>, the Court concluded, that restrictive measures consisting in a prohibition on landing in, taking off from, or overflying the territory of the EU, applicable to any aircraft subject to “technical or operational” control by a Russian citizen, in so far as they encompass Russian nationals holding a private pilot’s licence, are manifestly inappropriate having regard to the objective of exerting pressure on the Russian President and his government with a view to

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<sup>125</sup>See Judgement of the General Court of 23 July 2025 in case T-1095/23 *OT v Council of the EU*, ECLI:EU:T:2025:744.

<sup>126</sup>See Judgement of the Grand Chamber of 28 March 2017 in case C-72/15 *PJSC Rosneft Oil Company*, ECLI:EU:C:2017:236, para 88.

<sup>127</sup>Judgment of the General Court of 4 June 2025 in case T-271/23 *Alfa-Bank JSC v Council*, (ECLI:EU:T:2025:559).

<sup>128</sup>See Judgement of the General Court of 20 December 2023 in case T-233/22 *Ekaterina Islentyeva v Council of the EU*, (ECLI:EU:T:2023:828).



bringing violations of international law to an end and safeguarding the territorial integrity of Ukraine. (para 50)

Although such judicial decisions are relatively uncommon, they illustrate that discretionary powers are bounded, even when pursuing broadly defined objectives.

In most cases, the Court effectively confirms that the restrictive measure is not manifestly disproportionate and proceeds to the next stage of the test.

### **3.2.2 Second step of the proportionality test: necessity**

The second step of the proportionality test concerns the requirement of necessity, which obliges the Court to assess whether the measure is necessary to achieve that aim, namely, whether there are other less restrictive means capable of producing the same result (the least restrictive alternative test)<sup>129</sup>.

This stage is, however, arguably where the CJEU exercises the least rigorous scrutiny. While the test formally requires a comparison of available options, the Court frequently refrains from engaging in substantive analysis, seemingly in order to avoid second-guessing the Council's political choices or technical assessments. Consequently, the Court rarely engages in a meaningful examination of the alternatives put forward by the applicants<sup>130</sup>.

In the context of asset freeze cases, the Court often relies on a formulaic justification, stating that: “alternative and less restrictive measures, such as a system of prior authorisation or an obligation to justify, a posteriori, how the funds transferred were used, are not as effective in achieving the objectives pursued, particularly given the possibility of circumventing the restrictions imposed”. This standard response is repeated across numerous rulings<sup>131</sup>.

The Court generally dismisses proposed alternatives as “less effective,” often without providing concrete evidence, taking into account the specific circumstances of the case, or conducting even a minimal analysis of either the proposed or the implemented measure, nor making any comparison between them. Moreover, the Court does not explain why the

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<sup>129</sup> Takis Tridimas, “The Principle of Proportionality in Community Law: From the Rule of Law to Market Integration”, 31 Irish Jurist (NS) 83, p. 84 < <https://heinonline.org/HOL/Page?handle=hein.journals/irishjur27&id=95> > accessed 15 December 2025.

<sup>130</sup> Marie Terlinden, “Sanctions without scrutiny? The Role of Proportionality in the Case Law of the European Union Courts”, (Working Paper no. 248), (May 2025) < [https://ghum.kuleuven.be/ggs/publications/working\\_papers/wp-ggs-marie-terlinden-may-2025.pdf](https://ghum.kuleuven.be/ggs/publications/working_papers/wp-ggs-marie-terlinden-may-2025.pdf) > accessed 17 December 2025.

<sup>131</sup> See Judgement of the General Court of 30 November 2016 in case T-720/14 Arkady Romanovich Rotenberg v Council of the EU, ECLI:EU:T:2016:689, para 182; Judgement of the General Court of 24 September 2025 in case T-409/24 Al-Aqeelah Takaful Insurance Company v Council of EU, para 115.

broader, more intrusive measure was chosen to achieve the pursued objective, or why a more limited approach would have been insufficient.

In this regard, the Court has at times emphasised that the applicant did not put forward any alternative, less restrictive measures that could effectively achieve the objectives pursued<sup>132</sup>

In this regard, a significant case is the Judgement of the General Court of 15 May 2024 in T-235/22, *Russian Direct Investment Fund v Council of the EU*<sup>133</sup>. The applicant contended that the measures at issue (financial restrictive measures) were not necessary and did not genuinely achieve the objective pursued, since its activities and the projects it co-financed did not contribute to the “military operation in Ukraine” and did not finance, enable, or assist the actions of the Russian armed forces in Ukraine. The applicant further argued that the Council had not explained why the stated objective of the contested acts could not have been attained through more targeted restrictive measures, such as measures applying only to projects which the Council considered to be of particular value to the Russian State for military purposes. (para 81)

The Court held that the contested restrictive measures were consistent with the objectives pursued, observing that targeting the Russian sovereign wealth fund in its entirety—given its significance as a major channel for foreign investment in the Russian Federation—rather than in a more limited fashion, such as singling out projects of particular value to the Russian State for military purposes, was justified despite the applicant’s objections. (para 94)

Thus, the Court dismissed the alternative, merely asserting that the restrictive measure at issue was consistent with the objective pursued, “contrary to” the targeted alternative proposed. Nevertheless, the Court offered no explanation as to why the broader, more intrusive measure was preferred, nor why the more limited approach would be inadequate.

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<sup>132</sup>See Judgement of the General Court of 13 September 2023 in case T-305/22 Viktor Filipovich Rashnikov v Council of EU, ECLI:EU:T:2023:530, para 134; Judgement of the General Court of 20 December 2023 in case T-313/22 Roman Arkadyevich Abramovich v Council of the EU, ECLI:EU:T:2023:830, para 146.

<sup>133</sup>See Judgement of the General Court of 15 May 2024 in case T-235/22 Russian Direct Investment Fund v Council of the EU, ECLI:EU:T:2024:311.

As we see, in some cases the Court finds that a measure is compatible with the principle without searching for less restrictive alternatives or even where such alternatives seem to exist<sup>134</sup>.

In summary, the Court rarely undertakes a systematic evaluation of the feasibility of alternative measures, instead prioritising the presumed effectiveness of those adopted by the Council. This renders the necessity review a low-intensity review, effectively amounting to a formal stage within the framework of the principle of proportionality.

### **3.2.3 Third step of the proportionality test: *stricto sensu***

In cases concerning restrictive measures where applicants rely solely on the general principle of proportionality, the Court typically confines its review to the first two stages: suitability and necessity. Where fundamental rights are implicated, however, the Court conducts its analysis under Article 52(1) of the CFR, which allows for limitations on rights only if they are prescribed by law, necessary, and genuinely pursue objectives of general interest. Such restrictions must furthermore avoid causing disproportionate or intolerable interference that would undermine the very essence of the rights at issue. In these circumstances, the Court applies the full three-stage proportionality test. The final stage—proportionality *stricto sensu*—is generally considered only in cases involving fundamental rights, and even then only where the applicant explicitly raises arguments regarding the intensity of the interference<sup>135</sup>.

Consequently, the final step of the test – proportionality *stricto sensu* – requires a genuine balancing of interests: weighing the burden imposed on the applicant against importance of the objective pursued. In practice, however, this step is often omitted or merged with the necessity analysis<sup>136</sup>.

In case C-729/18P *VTB Bank PAO formerly v Council of EU*<sup>137</sup> the Court emphasised, that the fundamental rights invoked by the appellant, namely the freedom to conduct a business and the right to property, are not absolute and may be subject to

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<sup>134</sup> Takis Tridimas, “The Principle of Proportionality in Community Law: From the Rule of Law to Market Integration”, 31 Irish Jurist (NS) 83, p. 84 < <https://heinonline.org/HOL/Page?handle=hein.journals/irishjur27&id=95> > accessed 15 December 2025.

<sup>135</sup> Marie Terlinden, “Sanctions without scrutiny? The Role of Proportionality in the Case Law of the European Union Courts”, (Working Paper no. 248), (May 2025) < [https://ghum.kuleuven.be/ggs/publications/working\\_papers/wp-ggs-marie-terlinden-may-2025.pdf](https://ghum.kuleuven.be/ggs/publications/working_papers/wp-ggs-marie-terlinden-may-2025.pdf) > accessed 17 December 2025.

<sup>136</sup> Marie Terlinden, “Sanctions without scrutiny? The Role of Proportionality in the Case Law of the European Union Courts”, (Working Paper no. 248), (May 2025) < [https://ghum.kuleuven.be/ggs/publications/working\\_papers/wp-ggs-marie-terlinden-may-2025.pdf](https://ghum.kuleuven.be/ggs/publications/working_papers/wp-ggs-marie-terlinden-may-2025.pdf) > accessed 17 December 2025.

<sup>137</sup> See Judgement of the Court (Seventh Chamber) of 25 June 2020 in case C-729/18P *VTB Bank PAO formerly v Council of EU*, European Commission, ECLI:EU:C:2020:499.

restrictions justified by the EU's public interest objectives, provided that such restrictions genuinely serve objectives of general interest and do not result in disproportionate or intolerable interference that would undermine the very essence of the guaranteed rights. (para 80)

The Court confirmed, that by their very nature, restrictive measures impact property rights and the freedom to conduct a trade or business, thereby causing harm to individuals who bear no responsibility for the circumstances that prompted the adoption of the sanctions. (para 81) Nevertheless, in light of the importance of the objectives pursued by the Council—which form part of the broader aim of maintaining peace and international security under Article 21 TEU—restrictive measures in question were not regarded as disproportionate. (para 82)

Thus, the Court tends to prioritise the Council's objectives over any interference with individual rights. It often reiterates settled case law stating that “negative consequences, even of a substantial nature” can be justified by the importance of the public interest pursued. This standard formula effectively bypasses the required balancing exercise: in most cases, the Court does not examine in any detail the adverse effect of the measure on the applicant's interests<sup>138</sup>.

In the Judgement of the General Court of 11 September 2024 in case T-494/22 NKO AO National Settlement Depository (NSD) v Council of the EU, the Court, weighing up of the competing interests shows that the disadvantages of the restrictive measures for the applicant are not disproportionate given the fundamental importance of maintaining peace and international security (para 139)<sup>139</sup>.

The Court frequently conflates proportionality *stricto sensu* with the necessity test, thereby redirecting the analytical focus from a substantive assessment of the burdens imposed to the mere availability of less restrictive alternatives. Rather than rigorously evaluating the actual severity of the measures, the Court tends to rely on their purportedly temporary and reversible nature, as well as the possibility of derogations to meet essential needs<sup>140</sup>. However, such a superficial approach, which fails to correspond to the principle's

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<sup>138</sup>Marie Terlinden, “Sanctions without scrutiny? The Role of Proportionality in the Case Law of the European Union Courts”, (Working Paper no. 248), (May 2025) <[https://ghum.kuleuven.be/ggs/publications/working\\_papers/wp-ggs-marie-terlinden-may-2025.pdf](https://ghum.kuleuven.be/ggs/publications/working_papers/wp-ggs-marie-terlinden-may-2025.pdf)> accessed 17 December 2025.

<sup>139</sup>See Judgement of the General Court of 11 September 2024 in case T-494/22 NKO AO National Settlement Depository (NSD) v Council of the EU, the Court, ECLI:EU:T:2024:607.

fundamental purpose, when applied to its third component, risks undermining the value of this fundamental principle of EU law as a safeguard against arbitrariness in the exercise of discretionary powers by EU institutions.

In the Judgement of the General Court of 27 July 2022 in case T-125/22 RT France v Council of EU<sup>141</sup> the Court stated, that the restrictive measures at issue are temporary and reversible (para 154) and concluded, that “the nature and scope of the temporary prohibition at issue comply with the essence of freedom of expression and do not undermine that freedom as such”. (para 159)

The court reached a similar conclusion in relation to freedom to conduct a business, «since the measures in question are temporary and reversible, it must be held that they do not undermine the essential content of the freedom to conduct a business». (para 225)

Consequently, the Court rarely engages in a rigorous assessment at the third stage of the proportionality test. Instead, it places emphasis on the objectives pursued by the Council and their perceived importance, while largely avoiding a detailed examination of the measure’s effects on the applicants’ fundamental rights. This reflects a consistent pattern in the Court’s practice: it gives priority to foreign policy considerations and applies the principle of proportionality with a marked degree of deference to the Council’s discretion.

## **Chapter 4: Findings, Conclusions, and Perspective**

### **4.1 Findings and conclusions**

The evolution of the EU’s external relations—from the limited treaty powers and “pillar structure” to the integrated legal framework established by the Treaty of Lisbon—reflects a consistent effort to enhance coherence, strengthen the EU’s position in the world, and ensure that its external actions are guided by fundamental values, principles, and objectives. This development provides a clear legal and institutional foundation for the formulation, coordination, and implementation of the EU’s common foreign and security policy, including the adoption of restrictive measures aimed at achieving foreign policy and international security objectives.

Overall, the EU’s procedure for adopting restrictive measures illustrates a sophisticated hybrid governance framework combining intergovernmental and

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<sup>140</sup>Marie Terlinden, “Sanctions without scrutiny? The Role of Proportionality in the Case Law of the European Union Courts”, (Working Paper no. 248), (May 2025) <[https://ghum.kuleuven.be/ggs/publications/working\\_papers/wp-ggs-marie-terlinden-may-2025.pdf](https://ghum.kuleuven.be/ggs/publications/working_papers/wp-ggs-marie-terlinden-may-2025.pdf)> accessed 17 December 2025.

<sup>141</sup>See Judgement of the General Court of 27 July 2022 in case T-125/22 RT France v Council of EU, ECLI:EU:T:2022:483.

supranational elements. CFSP Council Decisions define the political and foreign policy objectives and require unanimity among Member States, reflecting the sensitive nature of foreign policy coordination. The subsequent adoption of Council Regulations under Article 215 TFEU ensures the uniform and binding implementation of economic and financial sanctions across the Union.

Unequivocally, CFSP Council Decisions adopted under Article 29 TEU and Regulations adopted pursuant to Article 215 TFEU perform complementary but distinct functions within the EU's restrictive measures framework. CFSP Decisions are political and intergovernmental in nature, requiring unanimity among Member States and establishing the objectives, rationale, and strategy for restrictive measures. They may impose arms embargoes, travel bans, or other measures that engage national competences, and require Member States to implement them at the domestic level. These Decisions are binding on Member States, but do not constitute legislative acts under Article 289(3) TFEU, reflecting their predominantly external policy character.

In contrast, Regulations under Article 215 TFEU serve as the legal instrument for the implementation of economic and financial restrictive measures, such as trade prohibitions, asset freezes, and restrictions on financial transactions. They are directly applicable and uniformly binding in all Member States, ensuring effectiveness and preventing circumvention. Regulations operationalize the objectives established in CFSP Decisions, cannot expand or modify them, and must comply with EU legal standards, including legality, proportionality, and fundamental rights protection.

Overall, the two-step system combines political flexibility and strategic guidance at the CFSP Decision stage with legal certainty and uniform enforcement at the Regulation stage. CFSP Decisions define “what” the EU aims to achieve, while Regulations define “how” those objectives are implemented, ensuring a coherent, legally sound, and effective EU sanctions policy. This framework allows the EU to respond dynamically to international crises while maintaining adherence to both EU and international law.

Evidently, the EU restrictive measures have evolved into a highly differentiated and increasingly autonomous instrument of external action under the CFSP, with the majority of current sanctions regimes operating wholly or partially outside the UN framework. The wide range of available measures and classification criteria reflects the EU's capacity to tailor sanctions to diverse objectives, targets, and geopolitical contexts. The growing use of both country-specific and thematic regimes illustrates the EU's adaptation of its sanctions policy to contemporary and emerging threats.

In turn, the EU enforcement sanctions regime is characterised by a complex and interdependent institutional framework involving the Council, Member States, the EEAS, and the European Commission. While the Council plays a central role in adopting restrictive measures and shaping their enforcement framework, Member States remain primarily responsible for implementation and enforcement at the national level, which at times results in divergences across the Union. The EEAS contributes by ensuring legal coherence and providing regional expertise, whereas the European Commission supports enforcement through regulatory drafting, monitoring, coordination mechanisms, and guidance. Recent legislative developments aimed at harmonising sanctions enforcement reflect the EU's efforts to strengthen the effectiveness and uniform application of restrictive measures, although challenges related to uneven implementation remain. Despite the complex and coordinated work of EU institutions and Member States, the application of restrictive measures does not always achieve full uniformity and effectiveness across the EU.

Overall, while the CJEU's jurisdiction in CFSP matters is formally limited under Articles 24(1) TEU and 275 TFEU, case law demonstrates that the Court interprets these restrictions narrowly to ensure effective judicial oversight.

The CJEU has confirmed its competence to review the validity of CFSP decisions imposing restrictive measures on identifiable individuals or entities, to provide preliminary rulings on CFSP acts under Article 267 TFEU, and to adjudicate claims for damages arising from such measures. The Court also affirms that its jurisdiction applies to regulations adopted under Article 215 TFEU, even when they implement EU positions within the framework of the CFSP.

At the same time, the CJEU respects the boundaries of its jurisdiction by refraining from reviewing measures of general application or political and strategic decisions.

Thus, the Court's approach in CFSP matters respects the politically sensitive nature of the CFSP. At the same time, it integrates the CFSP into the broader EU legal framework where necessary to safeguard fundamental rights and uphold the rule of law. Consequently, the CJEU does not exceed its jurisdiction but rather reinforces the coherence and integrity of EU law across all policy areas.

The CJEU demonstrates a clear tendency to expand judicial oversight in CFSP matters—particularly over individual-targeted restrictive measures and implementing regulations—while carefully preserving the political discretion inherent in general or

strategic foreign policy decisions, thereby balancing the protection of fundamental rights, legal certainty, and the coherence of EU law with respect for CFSP autonomy.

In judicial review of restrictive measures, the CJEU applies the principle of proportionality, which serves as the primary basis relied upon by applicants.

The principle of proportionality is a fundamental principle of EU law, developed by the Court and structured around a three-step test of suitability, necessity, and proportionality *stricto sensu*, and it serves as a key standard for reviewing EU acts adopted in areas involving discretionary powers, such as the Common Foreign and Security Policy.

The first step of the proportionality test—assessing whether a measure is suitable to achieve a legitimate objective—is applied by the Court with significant deference to the Council, particularly in the context of CFSP restrictive measures. Case law demonstrates that the CJEU generally upholds measures unless they are manifestly inappropriate, even when the connection between the targeted individuals and the policy objectives is indirect or unclear. While exceptions exist, such as in *Isentyeva*, these are rare and underscore that the Council’s broad discretion is bounded but largely respected. Overall, the Court prioritizes the strategic aims of the CFSP over detailed scrutiny of individual burdens at this stage.

The second step of the proportionality test, assessing necessity and the availability of less restrictive alternatives, is applied by the CJEU with limited scrutiny. In practice, the Court often accepts the Council’s measures as necessary without a substantive evaluation of proposed alternatives or a comparative analysis, prioritising presumed effectiveness over rigorous review. Consequently, necessity review functions largely as a formal stage, reflecting the Court’s deference to the Council’s discretion and its reluctance to second-guess political or technical assessments.

The third stage of the proportionality test, which requires weighing the burdens of a measure against its objectives, is applied by the CJEU mainly in cases affecting fundamental rights. In practice, the Court often combines this stage with the necessity assessment, emphasizing the Council’s objectives while giving limited consideration to the actual impact on individuals. As a result, review at this stage is generally superficial: temporary or reversible aspects of measures are highlighted, while broader social and economic effects are often overlooked. Overall, the Court consistently prioritizes foreign policy and public interest goals, applying proportionality with considerable deference to the Council’s discretion.

## **4.2 Perspective and Propositions**



The evolution of EU restrictive measures under the CFSP demonstrates several notable trends. First, the Union has progressively developed a highly differentiated and increasingly autonomous sanctions framework, capable of operating independently of the United Nations.

The combination of CFSP Council Decisions and Article 215 TFEU Regulations reflects a hybrid governance model that integrates intergovernmental decision-making with supranational enforcement, allowing the EU to tailor sanctions to specific geopolitical contexts, threats, and targets. Second, the growing prevalence of targeted or “smart” sanctions—directed at individuals, entities, or sectors—indicates a strategic shift toward minimizing unintended humanitarian or economic consequences while maximizing policy effectiveness. Third, the enforcement of restrictive measures increasingly relies on a complex, multi-actor institutional framework, involving the Council, the Member States, the EEAS, and the Commission, highlighting both the strengths and challenges of coordination within a system of multi-level governance, while simultaneously developing new instruments and approaches aimed at enhancing the effectiveness of sanctions, ensuring their uniform application, and preventing their circumvention.

Looking forward, the prospects for EU sanctions policy suggest continued enhancement of legal certainty, procedural coherence, and enforcement harmonization. The trend toward greater standardization in the implementation of restrictive measures, including guidance and monitoring by the Commission, points to a future in which disparities in national enforcement may be further reduced, enhancing the effectiveness and credibility of EU sanctions.

Additionally, the CJEU’s evolving jurisprudence reflects a careful balance between judicial oversight and the political discretion of the CFSP, particularly in respect of targeted measures and implementing regulations. This trend suggests that the Court will continue to expand legal safeguards and accountability for individual-targeted sanctions without intruding into strategic foreign policy decisions.

A clear trend in the judicial review of EU restrictive measures is the CJEU’s consistent use of the principle of proportionality, while showing significant deference to the Council’s discretion. At all three stages of the proportionality test—suitability, necessity, and proportionality *stricto sensu*—the Court generally gives priority to the strategic and political objectives of the Common Foreign and Security Policy rather than closely examining the burdens imposed on targeted individuals. At the suitability stage, the

Court usually upholds measures unless they are clearly inappropriate, reflecting respect for the Council's assessment of legitimate policy goals.

At the necessity stage, scrutiny of alternative measures is limited, and the Court frequently upholds the Council's determination that the measures are necessary, without conducting a thorough examination of less restrictive options, even in cases where such alternatives may appear feasible.

In the final stage, proportionality *stricto sensu*, the Court frequently combines this analysis with necessity, considering social and economic impacts only superficially and emphasizing the temporary or reversible nature of the measures.

Overall, this approach illustrates the Court's effort to balance judicial oversight with respect for the political and strategic discretion inherent in CFSP decision-making.

The analysis shows that, although the principle of proportionality formally provides a comprehensive framework for judicial review, its practical application in the context of CFSP restrictive measures remains limited due to the Court's consistently deferential approach. Looking ahead, a more differentiated and structured application of the proportionality test could enhance both the legitimacy and effectiveness of EU sanctions without undermining the Council's necessary policy discretion.

In particular, greater analytical clarity is needed between the stages of necessity and proportionality *stricto sensu*. The Court could more clearly distinguish between assessing less restrictive alternatives and weighing the burdens imposed on individuals against the importance of the objectives pursued. Such clarification would improve the coherence of proportionality analysis and prevent the final balancing stage from being reduced to a largely formal necessity review. At the same time, while recognising the wide margin of discretion inherent in CFSP decision-making, judicial review should give greater attention to the concrete impact of restrictive measures on individuals and entities. This does not require the Court to replace the Council's judgment, but rather to engage more systematically with evidence regarding the severity, duration, and practical consequences of sanctions, particularly where fundamental rights are affected.

Enhanced transparency in the Council's reasoning, especially concerning the choice of specific measures and the rejection of less restrictive alternatives, would also support more meaningful judicial scrutiny. Clearer justification would not only facilitate effective judicial review but also strengthen the credibility, consistency, and rule-of-law compliance of the EU sanctions framework. In addition, improving harmonisation and monitoring mechanisms at the Union level, together with better coordination among the Council, the

EEAS, the Commission, and Member States, would help ensure uniform implementation, reduce inconsistencies in enforcement, and allow the EU to continue developing targeted and flexible measures capable of responding effectively to evolving geopolitical threats while minimising unintended economic or humanitarian impacts. Finally, supporting the progressive role of the CJEU in overseeing individual-targeted measures would help balance the protection of fundamental rights with the autonomy of CFSP political decisions.

## **ANNEXES**

### **List of Abbreviations**

| <b>Abbreviation</b> | <b>Definition</b>                                                                                        |
|---------------------|----------------------------------------------------------------------------------------------------------|
| AMLA                | the Authority for Anti-Money Laundering and Countering the Financing of Terrorism                        |
| CCP                 | Common Commercial Policy                                                                                 |
| CFR                 | The Charter of Fundamental Rights the European Union (EU)                                                |
| CFSP                | Common Foreign and Security Policy                                                                       |
| CJEU                | Court of Justice of the European Union                                                                   |
| COREPER I           | Committee of the Permanent Representatives of the Governments of the Member States to the European Union |
| COREPER II          | The Permanent Representatives Committee                                                                  |
| EC                  | European Community                                                                                       |
| ECJ                 | European Court of Justice                                                                                |
| EEAS                | European External Action Service                                                                         |
| EPC                 | European Political Co-operation                                                                          |
| Eurojust            | European Union Agency for Criminal Justice Cooperation                                                   |
| Europol             | European Union Agency for Law Enforcement Cooperation                                                    |
| FAQs                | Frequently Asked Questions                                                                               |
| FPI                 | Foreign Policy instruments                                                                               |
| HR                  | the High Representative of the Union for Foreign Affairs and Security Policy                             |
| JHA                 | the Justice and Home Affairs                                                                             |
| PSC                 | the Political and Security Committee                                                                     |
| RELEX               | the Working Party of Foreign Relations Counsellors                                                       |
| TEU                 | Treaty on European Union                                                                                 |
| TFEU                | Treaty on the Functioning of the European Union                                                          |
| UN                  | United Nations                                                                                           |
| UN Charter          | United Nations Charter                                                                                   |

|      |                                 |
|------|---------------------------------|
| UNSC | United Nations Security Council |
| U.S. | United States                   |
| WMDs | Weapons of mass destruction     |

## **Table of Legislation and Case Law**

### **1. Legislation and Other Legal Texts**

#### EU treaties, protocols and charters:

- Treaty on European Union (TEU)
- Treaty on the Functioning of the European Union (TFEU)
- EU Charter of Fundamental Rights (CFR)

#### EU regulations:

- Council Regulation (EC) № 765/2006 of 18 May 2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine (consolidated version) (2016) OJ L 134, OJ L 352M
- Council Regulation (EC) № 428/2009 of May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (Recast) (2009) OJ L 134, as amended
- Council Regulation (EU) № 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (consolidated text) (2014) OJ L 78
- Council Regulation (EU) № 833 № 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (consolidated text) (2014) OJ L 229
- Council Regulation (EU) 2024/2642 of 08 October 2024 concerning restrictive measures in view of Russia's destabilising activities (2024) OJ L (consolidated version)
- Council Regulation (EU) 2025/2037 of 23 October 2025 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (2025) OJ L
- Council Implementing Regulation (EU) 2025/1894 of 12 September 2025 implementing Regulation (EU) № 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (2025) OJ L

#### EU directives:

- Directive (EU) 2024/1226 of the European Parliament and of the Council of 24 April 2024 on the definition of criminal offences and penalties for the violation of Union restrictive measures and amending Directive (EU) 2018/1673 (2024) OJ L
- Directive (EU) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation) (2024) OJ L

#### Council decisions:

- Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (2014) OJ L 229, as amended
- Council Decision (CFSP) 2020/1999 of 07 December 2020 concerning restrictive measures against human rights violations and abuses (2020) OJ L 410I
- Council Decision (EU) 2022/2332 of 28 November 2022 on identifying the violation of Union restrictive measures as an area of crime that meets the criteria in Article 83(1) of the Treaty on the Functioning of the European Union) (2022) OJ L

- Council Decision (CFSP) 2024/2643 of 08 October 2024 concerning restrictive measures in view of Russia's destabilising activities (2024) OJ L (consolidated version)
- Council Decision (CFSP) 2025/931 of 20 May 2025 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (2025) OJ L
- Council Decision 2025/2032/CFSP of 23 October 2025 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (2025) OJ L
- Council Implementing Decision (CFSP) 2025/774 of 14 April 2025 implementing Decision 2011/235/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Iran (2025) OJ L

#### EU guidelines, communications and reports:

- Guidelines on the implementation and evaluation of restrictive measures (sanctions) in the framework of the Common Foreign and Security Policy (2018), updated
- The EU Best Practices for the Effective Implementation of Restrictive Measures
- Basic Principles on the Use of Restrictive Measures (Sanctions)
- Commission Consolidated FAQs on the implementation of Council Regulation No 833/2014, Council Regulation No 269/2014, Council Regulation (EU) No 692/2014 and Council Regulation (EU) 2022/263  
<[https://finance.ec.europa.eu/system/files/2024-01/faqs-sanctions-russia-consolidated\\_en.pdf](https://finance.ec.europa.eu/system/files/2024-01/faqs-sanctions-russia-consolidated_en.pdf)> accessed 09 December 2025

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- See Think Tank. European Parliament. Briefing of 09.02.2023. Towards an EU global sanctions regime for corruption. <[https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_BRI\(2023\)739340](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2023)739340)> accessed 07 December 2025
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