

Wartime sanctions on individuals in the European Union

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Master's Thesis in European and International Trade Law

HARN63

Spring 2022

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**SCHOOL OF
ECONOMICS AND
MANAGEMENT**

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Abstract

Sanctions have been in place for many, many years and are, so to speak, an internal tool for influencing foreign policy. Sanctions are intended, as part of other foreign policy activities, to influence the policies or activities of another state or group of people that are considered to be a threat to international peace and security. This thesis examines how wartime sanctions on individuals work, their impact on the overall situation, and other aspects related to sanctions and also highlights how the problems to identify individuals in sanctions list in the EU and how the listing procedure could be improved and trying to seek answers on how the law affects a sanction and its scale imposed on an individual and how effective are sanctions and what should be done to make them more impactful. It is also inspected how the law affects the so-called strength and scale of sanctions.

Keywords: CSFP, European Union, restrictive measures, sanctions

Abbreviations

CFSP Common Foreign & Security Policy

DG FISMA Directorate-General for Financial Stability, Financial Services and
Capital Markets Union

EU European Union

ICAO International Civil Aviation Organization

OSCE Organization for Security and Co-operation in Europe

UN United Nations

1. Introduction

1.1 Background

The importance of sanctions and their legal regulation has grown greatly over the last fifteen years. Over the last decade, the EU has imposed more than 20 sanction regimes on third countries.¹ Over time, the European Union has paid more and more attention to sanctions and their influence in preventing and curbing conflicts or crises. Sanctions are not just targeted at states or their bodies², but at individuals who, for example, have the power to influence the political power of that country. Some would say that sanctions work well as a so-called penalty payment if no agreement is reached.³

Sanctions are intended to affect and prevent the actions of a state, group or individual operating in an incorrect manner. As we have seen, sanctions may not always produce the desired outcome in the short term, they affect the activities of the targeted third party, both politically and economically, so that it is not profitable to continue in the way that is generally condemned.

Undeniably, the proliferation and intensity of EU sanctions has increased over time since the Maastricht Treaty. With the autonomy, the EU member states did not plan sanctions themselves, but delegated a large part of that work to the official bodies of the EU.⁴

Since 2001, sanctions have played an important role in various security issues. Sanctions not only target states, but also groups or even certain individuals. The Common Foreign and Security Policy (CFSP) was developed in co-operation with EU leaders, recognizing the need for a comprehensive approach by the EU to address crisis situations. The term "sanctions" is a well-known term, although it

¹ Di Masi, L., 2015. *An overview of EU sanctions case law*. Global Trade and Customs Journal, 10(7/8), pp.1

² Giumelli, F., 2013. *How EU sanctions work*. Chaillot papers, 129, pp.9-18

³ McCormack, D., & Pascoe, H., 2017. *Sanctions and preventive war*. Journal of Conflict Resolution, 61(8), pp.1714

⁴ Giumelli, F., 2013. *Beyond Intergovernmentalism: The Europeanization of restrictive measures?* Journal of contemporary European research, 9 (3), pp.390–405

also has other meanings. For example, the UN Charter does not include that term at all, but rather refers to the term "restrictive measures" imposed in response to violations of peace or aggression.⁵

Sanctions are imposed on individuals who can influence the country's political power and put political pressure on them to make a corrective move on convicted acts.

The current conflict between Russia and Ukraine stirs interest in how sanctions actually work in wartime. The political pressure increases as the number of sanctions increases and get tougher. The current situation certainly serves as a so-called modern model, so that sanctions and their functionality can be modified to be the most effective, while still maintaining all the principles that one wants to respect when imposing sanctions.

1.2 Purpose and research question

Sanctions themselves can restrict the actions of a third state, group or person in many ways. The purpose of this thesis is to make the purpose of the sanctions understandable in the first sections and to make it easier for the reader to understand the bigger picture as well as how the law affects sanctions. In the end, however, it is a question of how wartime sanctions affect individuals from a legal and political perspective.

Based on this, the research questions are as follows:

- How the law affects a sanction and its scale imposed on an individual?
- How effective are sanctions and what should be done to make them more impactful?

1.3 Delimitations

The limitation of the research can be generally considered to be within wartime sanctions and, after all, focusing on the sanctions on individual people. I set May

⁵ Anthony, I., 2002. *Sanctions applied by the European Union and the United Nations*. SIPRI YEARBOOK, pp.203-204

2022 as the limit until which I will use published articles or studies in my research. The research focuses on economic sanctions than on monitoring human rights principles, for example. Although the subject area is very topical and debatable, there are only a few academic works or writings that could be considered relevant to this topic. When you consider that the topic falls within wartime sanctions, which have not actually been used on this scale for many years.

1.4 Materials and method

The aim of the study is to examine the EU system of sanctions, based on wartime sanctions and how / why they are targeted at individuals or groups and how they affect the actual state or group subject to sanctions. The research utilizes qualitative and legal dogmatic methods examining how different instruments of the law in the EU influence the implementation of sanctions.

For collecting relevant empirical data, I used sources related to law, sanctions, economics studies, and political and international relations studies, among others. I used specific keyword combinations to find relevant data such as "sanctions in the EU", "wartime sanctions" and "sanctions on an individual person". Running these keywords through the search engines was also limited to only find sources that were about the approach in the EU. I made a list of the sources of keyword search results and their contents and gathered data from them that was intended to be used when preparing the research. After compiling a list of these sources, based on what I read, I compiled paragraphs that briefly explained the necessary things. The EU's official sources contained a lot of data related to the topic, and their utilization when preparing the research was topical and reasonable. EU's official bodies offered supporting information packages related to the topic.

1.5 Structure

The first part of the thesis considers why sanctions are used, what they can do, how they are implemented, and the legal aspects of EU action on sanctions. This section also reviews the history of sanctions and other information of general interest regarding sanctions. After this section, the focus is more on the subject of the thesis itself, i.e., wartime sanctions, taking advantage of previous episodes of

world events in which sanctions have been imposed on specific states, groups, or individuals. The final section examines the whole topic based on the research question and discusses how sanctions against individuals are regulated.

2. Framework of sanctions

2.1 Background

The measures, mainly referred to as sanctions, taken should target those who have been identified as responsible for the policies or actions that led to the EU's decision to impose restrictive measures, as well as those who benefit from and support such policies and actions. Such targeted measures are more effective than indiscriminate measures and to minimize the harmful consequences for those who are not responsible for such policies and actions. It could be said that after 1992 with the Maastricht Treaty EU started to use political sanctions.

The measures used in each situation vary according to the goals of the restrictive measures and their likely effectiveness in achieving those goals under given circumstances, following the EU's targeted and differentiated approach. These include, but are not limited to, freezing of funds and economic resources, restrictions on entry, bans on arms exports, bans on the export of equipment that could be used for internal repression, other export restrictions, import restrictions and flight bans. Prohibitions on the provision of financial services, including in connection with export bans on certain products, have also been used, as well as investment bans. In this context, sectoral bans or measures have also been used to prevent the misuse of equipment, technology, or software intended to control and intercept the Internet or other communications.⁶

Sanctions aim to have political and economic effects. They apply to all persons inside or outside the EU who are EU citizens, to companies and organizations incorporated under EU law (including branches of EU companies operating in third countries), and to all business activities carried out only in a specific part of EU or throughout the EU.⁷

The rise of EU sanctions regimes over the last 20 years has not been matched by an increase in the material and human resources of the EU or the Member States

⁶ Council of the European Union. *Sanctions Guidelines – update*. 4 May 2018, 5664/18, pp.8-10

⁷ European Union. *General Framework for EU Sanctions*. 9 October 2020

dealing with sanctions. In fact, existing resources are mainly used to implement sanctions systems and not to prepare them. Although existing resources have so far been sufficient to impose sanctions that require little effort to design and implement - such as visa bans and the freezing of funds for a limited number of individuals and entities, they are not sufficient to meet the challenges of more sophisticated and stringent sanctions regimes. Such complex sanctioning regimes require more careful preparation because of the much larger and more complex technicalities and potential consequences involved. However, due to the limited resources available for ex-ante evaluation and contingency planning, the EU will face a challenge when deciding to impose this type of sanction.⁸ Sanctions directed at countries outside the EU have pretty much been left out of the academic discussion, namely, the sanctions directed at these countries are aimed at the administration of these countries, its supporters, and entities related to the administration.

2.1.1 History

The use of sanctions has been a so-called internal tool in foreign policy throughout history. Sanctions have been aimed at having a political, economic or ideological impact. States have relied on the ability of sanctions to influence foreign policy and national security alongside financial pressure. Trade embargoes and naval embargoes were common, especially in wartime situations, and reduced the economic strength of the targeted states. In these situations, the blockade may even have been reinforced by military forces with the aim of besieging that state.⁹

In the 19th century, economic sanctions were essentially pacific blockades, meaning that a state or party was denied access to specific ports. The first pacific blockades date back to 1827 when Greece fought for its independence against the Ottoman Empire. During the battle, Britain, France, and Russia deployed their fleets off the coast of Greece to prevent support for the attacking party by the sea. The intention was to prevent the supply and reinforcement of the attacking party. These ships had no purpose in the war but were intended to act as a restrictive factor, a sanction to prevent the Ottoman Empire from entering Greece freely

⁸ De Vries, A., Portela, C., & Guijarro-Usobiaga, B., 2014. *Improving the Effectiveness of Sanctions: A Checklist for the EU*. CEPS Special Reports, (95), pp.5-6

⁹ Kern, A., 2009. *Economic sanctions. Law and Public Policy*. Houndmills, Basingstoke, Hampshire England: Palgrave Macmillan, pp.10-12

through the sea. However, not all pacific blockades were just wartime restrictive measures. They were also used as a tool to get a particular state to pay its loans or reach an agreement in international disputes.¹⁰ Later, after 1993, it became apparent that the growth of democracy brought sanctions to a wider use during the transition period.¹¹

2.2 Persons and entities

The listing of the persons and entities targeted must respect fundamental rights in accordance with the Treaty of European Union. In particular, the appropriate judicial rights of listed persons and entities must be fully guaranteed in accordance with the case law of the Court of Justice of the European Union, including the rights of the defense and the principle of effective judicial protection.

The decision to impose restrictive measures on a person or entity requires clear, case-by-case criteria to determine which persons and entities may be included in the list and should also apply to delisting. These clear criteria are defined in CFSP legal instrument. This applies to measures to freeze funds and economic resources, both where persons are listed in the context of measures against one or more third countries and also where the measures are directed against individuals and entities.

Proposed listings must be accompanied by precise, up-to-date, and defensible justifications. In cases where decisions of the CFSP provide for restrictive measures directed not only at those responsible for certain policies or activities but also at members of their families, their under-18s should, in principle, not be targeted.

In order to make economic freezing measures and entry restrictions more effective and to avoid unnecessary problems due to the same name or almost identical

¹⁰ Davis, L., & Engerman, S., 2003. *History lessons: sanctions-neither war nor peace*. Journal of economic perspectives, 17(2), pp.188-189

¹¹ Giumelli, F., Hoffmann, F., & Książczaková, A., 2021. *The when, what, where and why of European Union sanctions*. European Security, 30(1), pp.17-18

names (possibility of mistake) for identification, as many specific identifiers as possible should be published when the restrictive measure is adopted.¹²

Identification is crucial to ensure that non-targeted individuals and entities are not affected by targeted restrictive measures, in particular, to assist the private sector in taking such measures. It cannot be ruled out that in some cases a person's assets may be frozen or admission denied if this is not the case, due to the identity of the named person. To find a better grounding on the issue, the Member States and the Commission should have procedures in place to ensure consistency in their findings on allegations of false identity.

If only the name of the designated person or entity is known, the implementation of the measures may prove problematic in practice, as the list of possible targets may be long. This is the reason why more credentials are needed. Even with more identifying information, it can still be difficult to distinguish between named individuals and entities. It has occurred that in some cases freezing the funds of a person or entity that is not the target of restrictive measures or denying a person access to the territory of an EU Member State because the identity of the person concerned is compatible with that of the designated person or entity. The Member States and the Commission should agree on procedures to ensure that their solutions to allegations of error are consistent in this respect.¹³

In order to improve the effectiveness of restrictive measures, as many specific identifiers as possible should be available at the time of identification and published when restrictive measures are adopted. The identification of individuals and entities should be standardized as far as possible. In the case of natural persons on the list, efforts should be made to include, in particular, names (if also available in the original language) with an appropriate transliterated prescribed in the travel documents or in accordance with the International Civil Aviation Organization (ICAO) standard, pseudonyms, gender, date, and place of birth, nationality and current address, identity card or passport number. In the case of groups, legal persons or entities, the information should aim in particular to include the full name, principal place of business, place of registration of the place

¹² Council of the European Union. *Restrictive measures (Sanctions)- Update of the EU Best Practices for the effective implementation of restrictive measures*. 4 May 2018, 8519/18, pp.7-9

¹³ *Ibid*, pp.7-9

of business, date and number of registration.¹⁴ Of course, pursuing this kind of so-called dream situation is not always possible, but perhaps cooperation between registrars in different countries or regions would help and speed up the process. There would be more reliable information about the entities or persons subject to sanctions, and thereby it could be more certain that it is the person or entity that is meant and not, for example, someone with the same name.

Individuals or groups can also be removed from the list of these measures. A transparent and efficient delisting procedure is essential for the credibility and legality of sanctions. This kind of operating model would certainly also help and there would not be so many incorrect listings. Delisting may be appropriate in various cases, including evidence of erroneous listing, a significant subsequent change in factual information, the appearance of additional evidence, the death of a listed person, or the dissolution of a listed entity. Delisting is particularly appropriate whenever the criteria for listing are no longer met.

All relevant information should be taken into account when dealing with delisting requests. In addition to the processing of delisting requests, a regular review shall be carried out, with the assistance of all Member States, in accordance with the relevant act, to examine whether there are still grounds for keeping a person or entity on the list. Persons and entities included in the list may bring an action against an act addressed to them. Such actions are brought before the General Court of the European Union. The judgment of the General Court can be appealed to the European Court of Justice. The annulment of measures imposing restrictive measures against a person or entity shall not take effect immediately after the judgment has been given, unless the court expressly so provides.¹⁵

2.3 Policy making

The Council of the EU imposes restrictive measures in the context of the CFSP. First, the Council adopts a decision in the field of CFSP in accordance with Article 29 of the Treaty of European Union (TEU). The measures set out in the Council Decision will be implemented at either EU or national level. Member

¹⁴ *Supra nota 6*

¹⁵ *Supra nota 12*, pp.4-10

States which are legally obliged to act in accordance with Council decisions in the field of the CFSP, directly implement specific measures. Such measures include, for example, arms export bans or restrictions on entry as mentioned earlier. Other measures suspending, in whole or in part, economic relations with a third country, including the freezing of funds and economic resources, shall be implemented by a regulation of the Council acting by a qualified majority on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission in accordance with Article 215. The European Parliament must be informed. These regulations are binding and directly applicable throughout the EU. Their legality is reviewed by the Court of Justice and the General Court in Luxembourg. The legality of Council decisions in the field of the CFSP concerning restrictive measures against natural or legal persons is also monitored.

The Directorate-General for Financial System Stability, Financial Services and Capital Markets Union (DG FISMA) prepares proposals for sanctions regulations to be approved by the Council of the European Union and represents the European Commission in sanctions-related discussions with member states in the Council. Party of Foreign Relations Advisers. The Directorate General of FISMA is also responsible for transposing certain United Nations sanctions into EU law.

DG FISMA is also responsible for monitoring the implementation and enforcement of EU sanctions on behalf of the European Commission in all Member States. DG FISMA is increasingly supporting Member States in their efforts to apply sanctions by responding to interpretation questions raised by national competent authorities and economic and humanitarian actors.

FISMA's Directorate-General is putting more and more effort into enhancing the application of EU sanctions and improving the EU's resilience against extraterritorial sanctions imposed by third countries. This is reflected in Commissioner Mairead McGuinness's mission letter and the Commission's Work Program 2020 as part of economic self-determination.¹⁶

¹⁶ European Commission, *Overview of sanctions and related tools*, [online] Available at: <https://finance.ec.europa.eu/eu-and-world/sanctions-restrictive-measures/overview-sanctions-and-related-tools_en>, [Accessed: 2 July 2022]

The European Commission set up a "Freeze and Seize Task Force" in 2022 to ensure that EU sanctions against Russian and Belarusian oligarchs are effective. The Freeze and Seize Task Force is composed of the Commission, the national contact points of each Member State, Eurojust and Europol and, where appropriate, other EU agencies and bodies. It directs the efforts of EU Member States, Eurojust, Europol and other similar entities to seize and freeze the assets of Russian and Belarusian oligarchs under national law. The coordination of the actual operation in these activities is carried out by Eurojust and Europol.

This group has an important role to play in the sharing of information within the EU and would aim to have an effective approach in which this Freeze and Seize Task Force coordinates Member States' efforts to freeze and seize the funds of listed persons. In today's world, the existence of such a group is important, as the funds of listed persons can be located anywhere, and it is thus easier to freeze and seize them when a special working group is set up to coordinate the activities of the various parties.¹⁷

2.4 Exemptions on sanctions

It is important that legislation on economic restrictions, restrictions on admission and other restrictive measures provide for appropriate exceptions to take into account, in particular, the basic needs, legal costs, exceptional costs or, where applicable, humanitarian needs or international obligations of Member States, including in international organizations or as host countries of the OSCE, in the implementation of various restrictive measures.

Exemptions should be granted on a case-by-case basis by the competent authorities, allowing them to assess all relevant interests and impose conditions to ensure that the exemptions do not nullify or circumvent the objective of the restrictive measure. Exemptions should be granted on the basis of the relevant legislation. If it is justified to grant an exemption from one restrictive measure (e.g., economic restrictions), it does not automatically justify the granting of an

¹⁷ European Commission, 2022, *Enforcing sanctions against listed Russian and Belarussian oligarchs: Commission's "Freeze and Seize" Task Force steps up work with international partners* [online] Available at: <https://ec.europa.eu/commission/presscorner/detail/en/IP_22_1828> [Accessed: April 18 2022]

exemption from another measure affecting the person or entity concerned (e.g., restrictions on entry).

If the request for an exemption for the release or making available of funds or economic resources concerns an activity prohibited under the relevant act (which is not covered by any clause in previous agreements or a similar exemption provision), the competent authority should refuse the exemption. This should also be the case where the relevant derogating provision does not explicitly provide for a refusal in such situations.

2.4.1 Kadi v. Council and Commission (joined cases C-402/05 P and C-415/05 P)

This legal case is significant from that point of view, because the “operation” had to be modified in order to get the persons who are intended to be on the "list". Sometimes the listed persons may be incorrect, and the interpretation is only done based on the available identification information, and thus one cannot be completely sure of the persons, which admittedly sounds skeptical.

The UN Security Council imposed sanctions under Chapter VII of the UN Charter against individuals and entities allegedly associated with Osama bin Laden, the Al-Qaida network and the Taliban in its efforts to combat terrorism. The UN Sanctions Committee has drawn up a list of alleged perpetrators, and sanctions have included the freezing of funds of such individuals and entities.

In order to implement Security Council resolutions, the Council of the European Union adopted a regulation freezing the assets of persons on the list, including Yassin Abdullah Kadi and the Al Barakaat International Foundation, based in Saudi Arabia. The defendants brought an action before the Court of First Instance seeking the annulment of the Council regulations on the ground that they infringed a number of their fundamental rights, including the right to respect for property, the right to be heard and the right to effective judicial review.

The Court of First Instance rejected all the defendants' arguments but upheld the validity of the regulation and expressly stated that it had no jurisdiction to review the validity of the contested regulation or, indirectly, the validity of the relevant

Security Council resolution other than the *jus cogens* norms. Kadi and Al Barakaat appealed the verdict.

In particular, the Court of First Instance held that the Community judicature did not, in principle, have jurisdiction to review the validity of the contested regulation, since the Member States were required to comply with Security Council resolutions. The Court held that the Council had competence to adopt a regulation on the basis of Articles 60, 301 and 308 of the EC Treaty.

However, the Court of Justice held that the Court of First Instance erred in finding that it did not have jurisdiction to review the legality of the contested regulation. It made clear that a distinction could and should be made between the review of the legality of an international agreement and the examination of an EC measure intended to implement the disputed international agreement. The Court of Justice has confirmed in principle that the review of the validity of any EC measure in the light of fundamental rights must be regarded as an expression of the constitutional guarantee deriving from the EC in a Community based on the rule of law. Consequently, the Court must ensure full review of the legality of all EC measures in the light of fundamental rights which form an integral part of the general principles of Community law, including the review of Community measures such as the contested regulations implementing resolutions adopted by the Security Council.

The Court of Justice then examined the legality of the regulation itself, instead of referring the case back to the Court of First Instance. It considered that, in the circumstances surrounding the inclusion of the appellants' names in the list of persons and entities whose assets were to be frozen, the rights of the defense, the right to be heard and the right to effective judicial review, were manifestly infringed.

The Council never disclosed to Kadi and Al Barakaat the evidence against them to justify the inclusion of their names in the list. Their convictions were overturned

by the decision of the Court of Justice and thus they were no longer subject to sanctions by those listed on terrorism contacts.¹⁸

2.5 Jurisdiction

Article 29 of the Treaty on European Union (TEU) empowers the Council of the European Union to impose sanctions on governments of third countries (non-EU countries), non-state actors and individuals (e.g., terrorists) in order to change their policies or activities.

Under Article 215 of the Treaty on the Functioning of the European Union (TFEU), the Council may adopt the necessary measures to implement decisions taken under Article 29 TEU in order to ensure that they are applied in a uniform manner in all Member States.

The EU adopts sanctions (restrictive measures) either as the EU's own measures (i.e., autonomous sanctions) or to enforce United Nations Security Council resolutions if third countries, natural or legal persons, groups or non-state actors do not respect international law, respect human rights, pursue policies or activities that are contrary to the rule of law or the principles of democracy. These sanctions are preventive and non-punitive instruments that allow the EU to respond rapidly to political challenges and events in accordance with the principles of the Common Foreign and Security Policy.

EU sanctions are agreed in the Common Foreign and Security Policy (CFSP), an intergovernmental framework in which decisions are taken unanimously and in which each Member State has a formal veto. According to the Lisbon Treaty, a CFSP act must be adopted in accordance with Chapter 2 of Title V of the Treaty on European Union (TEU) on a joint proposal from the High Representative and the European Commission. However, single market measures, i.e., economic and financial measures, must be implemented through the Community once they have been agreed. They therefore require the adoption of a first-pillar regulation implementing the prohibitions set out in the CFSP act. As the Community has to take decisions affecting the common market, the EC Regulation, adopted by

¹⁸ CJEU Judgement, 3 September 2008, in joined cases of C-402/05 P and C-415/05 P. *Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities*. ECLI:EU:C:2008:461

qualified majority, complies with the CFSP measure. The current legal basis is Article 215 of the Treaty on the Functioning of the European Union (TFEU), which explicitly provides for the adoption of sanctions against third countries as well as against individuals, groups and non-state actors.

However, not all sanctions affect the common market. Where the agreed measures fall within the competence of the Member States rather than the Community, the Member States are responsible for implementation. In these cases, no Community action is required. This applies to arms embargoes due to the exclusion of the arms trade from the common market, but also to visa bans, which are two of the mostly frequently used measures.¹⁹

EU sanctions are part of a wider political dialogue. Restrictive measures must be aimed at minimizing the consequences for the civilian population. The EU therefore considers that, in a given situation, it is appropriate to impose targeted and differentiated sanctions on a country or part of a country, members of the government, individuals, groups or entities. Although sanctions are intended to prevent and minimize harm to the civilian population, they affect the lives of everyone in that country or group. Economic sanctions simply affect the price level of daily products and resources.

The EU can impose gradually tightening sanctions on third countries. These include diplomatic sanctions and economic sanctions. Diplomatic sanctions can mean, for example, the expulsion of diplomats and the suspension of official visits, the suspension of bilateral or multilateral cooperation with the EU, and the boycott of sporting or cultural events. Economic sanctions may include a ban on arms exports to the European Union's Common Military List, restrictions on imports and exports of both civilian and military products (dual-use items).

In addition, the EU can impose restrictive measures, such as a visa ban or a travel ban to prevent people from entering the EU, or sectoral sanctions on, for example, the import or export of certain products or technologies. Of course, this is also affected by the exceptions. In certain cases, exemptions from the freezing of funds and the export of products may be granted to meet basic needs (for example, the

¹⁹ European Parliament, 2018. *Targeted sanctions against individuals on grounds of grave human rights violations-impact, trends and prospects at EU level*. Policy Department for External Relations, pp.11-13

export of food or medicine) may be allowed. EU Member States may also grant exemptions from travel bans (for example, admitting a banned person to a UN conference in the region).²⁰

²⁰ *Supra* nota 7

3. Wartime sanctions

This section includes regulations and guidelines from different crises which all are so-called wartime crises. The starting point is that terrorism belongs to this section because it is a so-called ongoing war to fight against terrorism, which has always been present. Conflicts between Russia and Ukraine from the conquest of Crimea to more recent situations are also under discussion.

3.1 Sanctions against terrorism

After the attacks of 11 September 2001, the European Union created a list of persons, groups and entities involved in terrorist acts and subject to sanctions / restrictive measures. Set down in 2001/931/CSFP²¹, these were additional measures adopted in order to implement UN Security Council resolution 1373 (2001)²².

The position 2001/931/CSFP guides the criteria for listing persons, groups and entities. It lists the actions that constitute terrorist acts for these purposes and defines the restrictive sanctions to be applied. These restrictive sanctions are sanctions that relate to freezing of funds and financial assets or sanctions related to police and judicial cooperation. Additionally, Council regulation 2580/2001²³ provides for the freezing of all funds and other financial assets belonging to these persons, groups and entities. It could be said that no funds, financial assets and economic resources can be made available to them, directly or indirectly.

The list of persons, groups and entities is created from accurate information ensuring that a decision has been taken by a judicial or equivalent competent body in respect of the person, group or entity concerned. It may concern the initiation of

²¹ Council of the European Union, Council Common Position 2006/380/CFSP of 29 May 2006 Updating Common Position 2001/931/CFSP on the Application of Specific Measures to Combat Terrorism and Repealing Common Position 2005/936/CFSP. 2006/231/CFSP

²² UN Security Council, Security Council resolution 1373 (2001) on threats to international peace and security caused by terrorist acts. S/RES/1373 (2001)

²³ Council of the European Union, Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, OJ L 344, 28/12/2001

investigations or prosecution for a terrorist act or an attempt to carry out or facilitate such an act or condemnation for any of those actions. The identifications by the UN Security Council are also included in the list.²⁴

The Council of the European Union states that the list shall be drawn up on the basis of precise information showing that a decision has been taken by a judicial authority or an equivalent competent authority concerning the person, group or entity concerned. The decision may relate to the initiation of an investigation or prosecution of a terrorist offense, its attempt or its promotion, or the conviction for such an act. The list may also include persons, groups and entities identified by the UN Security Council as having links with terrorism and sanctioned by it. The Council shall review the list at regular intervals and at least every six months.

In addition to the periodic reviews, the Council may at any time adopt a decision to add or remove persons, groups and entities from the list. Such persons, groups or entities may be added on a proposal from a Member State or a third country. A request for delisting may be made by the listed persons, groups or entities or by the Member State or third country that originally submitted the listing. Amendments to the list shall be approved by the Council and published in the Official Journal of the European Union. The Council also approves the justification for the fulfilment of the listing criteria for each person, group and entity subject to restrictive measures under Council Regulation 2580/2001 (freezing of funds and economic resources).²⁵

3.2 Russo-Ukrainian war

The imposition of sanctions has political as well as economic influence, as both aspects are present when considering, for example, the current conflict between Ukraine and Russia. It is clear that political pressure will increase as the level of sanctions rises and the impact of sanctions will be clearly visible in the national economy, which will also have a major impact across the globe. The effect of

²⁴ EU Commission Implementing Regulation (EU) 2018/50 of 11 January 2018 amending for the 280th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the ISIL (Da'esh) and Al-Qaida organisations. C/2018/0208

²⁵ Council of the European Union, EU terrorist list [online] Available at: <https://www.consilium.europa.eu/en/policies/fight-against-terrorism/terrorist-list/> [Accessed: 2 August 2022]

trade restrictions alone will set in motion major changes on the European side in order to be able to operate without being dependent on third parties.

3.2.1 Conflict in Crimea (2014)

In 2014, Putin decided that Crimea should be annexed to Russia and at the same time made the decision that pro-Russian support is present in the surrounding areas.²⁶ On 22 July 2014, the European Council considered that, if Russia did not comply with the requirements set out in the European Council conclusions and in the Council's own demands in conclusions, it would be ready to introduce significant new restrictive measures without delay. It was therefore considered appropriate to apply new restrictive measures in order to increase the costs to Russia of actions undermining Ukraine's territorial integrity, sovereignty and independence and to promote a peaceful settlement of the conflict. These measures shall be reviewed and may be suspended or revoked or replaced by new restrictive measures in the light of developments in the field. These measures concern, inter alia, the freezing of the funds and other economic resources of certain natural and legal persons, entities and bodies due to the illegal integration of Crimea and Sevastopol into Russia.²⁷ These measures were implemented under the guidance of regulations, such as Council Regulation (EU) 692/2014²⁸, Council Regulation (EU) 269/2014²⁹ and Council Regulation (EU) 833/2014³⁰.

Pursuant to that Council Regulation, it was appropriate to restrict the export of certain dual-use items and technology in accordance with Council Regulation No 428/2009 and to restrict the provision of certain related services and the supply of certain arms and defence equipment if Member States apply an export ban on those items. However, this meant that the ban should not affect the export of products if they are not intended for military purposes. The articles of the

²⁶ Gierczak, B., 2020. *The Russo-Ukrainian Conflict*, pp.6-7

²⁷ Council of the European Union, Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, OJ L 344, 28/12/2001

²⁸ Council of the European Union, Regulation (EU) No 692/2014 of 23 June 2014 concerning restrictions on the import into the Union of goods originating in Crimea or Sevastopol, in response to the illegal annexation of Crimea and Sevastopol, OJ L 183, 24/6/2014

²⁹ Council of the European Union, Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, OJ L 78, 17/3/2014

³⁰ Council of the European Union, Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, OJ L 229, 31/7/2014

regulation contain various bans on products and technologies, which aim to prevent military benefits, for example by halting supplies that develop weapons technology.³¹

3.2.2 Invasion of 2022

On February 21, 2022, Russia recognized the Donetsk and Luhansk regions outside the control of the Ukrainian government, and on February 24, 2022, without prior provocation, launched an unjustified invasion of Ukraine, and as a result, the EU imposed a series of new sanctions on Russia. Since February 2022, the EU has imposed on Russia five so-called a package of sanctions including targeted restrictive measures (personal sanctions, economic sanctions, and diplomatic action). At the same time, Belarus has been targeted alongside Russia for its involvement in the attack on Ukraine and its support on Russia's actions.

The purpose of the economic sanctions is to have serious consequences for Russia as a result of its actions and to severely weaken Russia's ability to continue the attack. Sanctions shall be imposed on any person responsible for supporting, financing or implementing any measure affecting the territorial integrity, sovereignty or independence of Ukraine.

Sanctions against individuals include travel bans and asset freezes. Travel bans prevent sanctioned persons from entering or passing through the EU by land, air or sea. The freezing of funds means that all accounts of listed individuals and entities with EU banks will be frozen. It is also prohibited to make funds or property available to them directly or indirectly. This will ensure that the funds can no longer be used to support the Russian administration and that their holders cannot seek refuge in the EU.

In February 2022, the EU also banned all Russian carriers from entering EU airports and flying in EU airspace. In other words, aircraft registered in Russia or elsewhere, leased to a Russian citizen or Russian community, cannot land at EU

³¹ Council of the European Union, EU restrictive measures against Russia over Ukraine (since 2014) [online] Available at: <<https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/>> [Accessed: 2 August 2022]

airports or fly over EU countries. The ban applies to both public and private aircraft, such as private commercial aircrafts.³²

During the conquests of the regions of Crimea and eastern Ukraine, Western sanctions remained relatively modest. Their effectiveness and impact have been disputed in several EU countries, but no similar echo has emerged from the 2022 sanctions. The economic sanctions imposed so far have hit Russia significantly. The ruble depreciated sharply, and it will take time to recover. The Moscow stock exchange has been closed for a long time since the first day of the attack³³, and it has not been fully opened. Any additional sanctions could only exacerbate the economic situation and overall well-being yet at the same time influencing the governance of Russia. Russia's ability to respond to sanctions is limited, because, for example, closing gas pipelines to Europe would hurt European countries, but it would also harm itself, as the loss of gas revenue would be a severe blow to a war-torn country. From this it can be interpreted that the sanctions imposed by the EU have been somewhat successful, although the situation in the war has not been directly affected. Namely, in the long run, sanctions on the economy will push Russia's power tight. The impact extends to civilian population and through their dissatisfaction to the government.

3.3 Analysis of "wartime sanctions" and their efficacy

The EU may impose progressively more stringent sanctions on third countries, and these restrictive measures include diplomatic sanctions and economic sanctions, as mentioned earlier in the paragraphs of this study.

It is unequivocally clear that the level of sanctions will increase as the crisis situation or other situation is tried to be more severe than before or its situation has not changed to what is being sought. One can imagine a situation where a war has begun between two different countries and sanctions have been tried to calm the situation right from the start. It will be noted later that sanctions have not affected the war situation, so sanctions will be increased, or existing sanctions will

³² Council of the European Union, EU sanctions against Russia explained [online] Available at: <<https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/sanctions-against-russia-explained/>> [Accessed: 5 August 2022]

³³ Elbahrawy F., 2022. Russia Keeps Stock Trading Shut in Nation's Longest Closure, Bloomberg [online] Available at: <<https://www.bloomberg.com/news/articles/2022-03-04/russia-keeps-stock-trading-closed-in-nation-s-longest-shutdown?leadSource=uverify%20wall>> [Accessed: 10 April 2022]

be strengthened. Over time, sanctions greatly affect the activities of the target country, group or individual due to political and economic pressures.

When wartime sanctions are interpreted, the more serious violations are actually observed or the situation is not alleviated, and then the sanctions are either increased or tightened. When thinking about the aforementioned sentence "sanctions are preventive and non-punitive instruments that allow the EU to respond rapidly to political challenges and events in accordance with the principles of the Common Foreign and Security Policy", it can be clearly seen that when implementing wartime sanctions, these principles cannot always be fully adhered to. If we compare the situation with the imposition of economic sanctions, as a result of which companies operating in that country decide to close down in order to avoid an economic downturn that would be inevitable simply because of social pressure. As we have seen from the daily news, companies are going through a so-called chain reaction that they are closing down in Russia because it is simply not financially viable at the moment. This is due to both the economic situation in Russia, which is hampered by supply problems for various parts (considerably hampering the operation of factories or companies) and social pressure, which would certainly weaken the company's image and thus the market situation, which is generally reprehensible among civilians, that, for example, one fast food restaurant chain would maintain its operations and others would close their restaurants in Russia.

The scale of sanctions thus also has a major impact on the vitality of the population. The deteriorating market situation in itself makes everyday life more difficult. The use of sanctions in wartime conflicts is to some extent involved in war, but to a lesser extent. Namely, sanctions imposed because of wartime conflicts are actually the biggest thing that can be done to a conflict without military involvement to help one side or the other.

Although the UN, the EU and the United States jointly imposed large-scale sanctions to force Russia to restrict operations in Ukraine, there are many differences over their effectiveness. When you think about the sanctions that were imposed on individuals who are considered to be able to influence Russia's leadership, you can see that those sanctions are to some extent circumventable.

The fact that people's assets are frozen in Europe and investment opportunities are limited does not mean that they could not do so elsewhere in the world. It has already been reported that Russian oligarchs are relocating their assets elsewhere where they are not subject to sanctions. Indeed, many have relocated their assets to the UAE, where they are free to carry out their activities. The UAE has a neutral stance on the whole conflict.³⁴ This is, of course, a political issue that may never be resolved. For sanctions to really work, it would require a great deal of cooperation from the countries and entities of the world, so that actions and policies can be widely condemned and, therefore, there will be no detour in the event of sanctions. Thus, sanctions would also be more important and would really hit hard. This kind of drifting is, of course, only hypothetical and I don't think this kind of optimal situation would be reached. It only makes us think that international co-operation on world prosperity would be of great benefit in various crisis situations where sanctions are implemented. This, on the other hand, is the same as hoping that wars would not happen anywhere.

At the same time, sanctions are criticized for their impact on the population of the target country, as well as how the effectiveness of sanctions can be improved. They are somewhat contradictory because the overall impact of sanctions on the economy of the targeted state is significant. As can be seen in the situation in Russia, the impact of sanctions affects general welfare, and it takes time for the country to stabilize its economic losses. It is, in fact, quite difficult to devise sanctions that would have a major political impact and would not affect the lives of ordinary people in any way. As mentioned earlier in the text, the purpose of sanctions is not to affect the well-being of the population of the target state or to restrict their normal daily life, while it is known that when the people are in a precarious situation, the pressure of the state leadership increases. The situation is very difficult, not least because the situation of regular citizens in Russia is already at stake and the impact of the ongoing conflict is only negative, and with sanctions affecting the economy, the situation will certainly not improve if we imagine the situation of Russian citizens.

³⁴ Donnellan, A., 2022. *UAE could be Russian oligarchs' next playground*, Reuters, [online] Available at: <<https://www.reuters.com/markets/asia/uae-could-be-russian-oligarchs-next-playground-2022-03-04/>> [Accessed: 1 August 2022]

While there are controversial points in the sanctions, it is inevitably clear that there are many benefits. They send a clear diplomatic message that the actions in question will not be tolerated. The existence of sanctions is reviewed at regular intervals, and, in a functioning situation, they can be lifted when the target party is changing its actions towards the public interest. But to that extent, the Russia-Ukraine conflict is not moving in that direction, but rather sanctions and Western support for Ukraine is driving Russia towards Asia.

From the point of view of terrorism, there is no direct problem with the sanctions, but of course they could also be modified for the better. The bigger problem is the wartime sanctions and their effectiveness, also taking into account the well-being of the citizens in the country where the sanctions are applied. However, the sanctions used in eradicating terrorism could be improved in the implementation of the listed persons, as mistakes have occurred over time. The problem is that there are sometimes misunderstandings about the persons to be listed, as the persons to be listed may belong to the ISIS terrorist group, for example, which hardly provides relevant personal information to EU monitoring bodies and thus the right person with their name and identity.

4. Summary and conclusions

Sanctions are so-called penalties against a state, group or person who has acted in a manner that is generally condemned. These abusive entities or persons are subject to freezing of funds or economic resources, denials of entry, bans on the export of arms, bans on the export of military equipment, export restrictions, import restrictions and flight bans.

They are intended to have a political and economic impact and apply to any person, company, or organization inside or outside the EU. In the near future, the number of sanctions has increased greatly due to the conflict between Russia and Ukraine, and at the same time concerns about the operation of the sanctions regime raise questions. Complex and large sanction packages bring with them complex technicalities and possible repercussions. For this reason, the preparation of sanctions takes time and the settings governing them are constantly adjusted.

The Common Foreign and Security Policy (CFSP) is a body in the EU whose tools include sanctions. Sanctions enable the EU to intervene in conflict prevention or new or ongoing crises, where appropriate, and to promote peace, democracy, the rule of law, human rights and international law. These kinds of bodies are very important so that the implementation of sanctions is smoother.

As mentioned earlier, it would be important for the effectiveness of the sanctions if the countries had more convincing cooperation when implementing the sanctions, so that their effect would be more effective. Thus, sanctions targeting individual persons would also work better. Even at this moment, Russian persons who have been targeted with sanctions are drifting towards, for example, the Saudis (as referred to) or other countries that have not chosen a side in the Ukraine-Russia crisis and have not participated in international sanctions.

As the legal case *Kadi v. Council and Commission* revealed, the listing procedure may not always work as planned. A small amount of identification information may cause misunderstandings and thus the wrong person may be on the banned

list, even if this should not happen. There is no realistic solution to this, as more international cooperation would be needed to fix these kinds of situations, so that personal data would be collected in the same way in different countries and there would be no situations where only a certain person's name and place of residence are known.

The law itself has no direct effect on how the so-called strength of the sanction imposed on an individual is being regulated. It is based almost directly on the fact that, if previous sanctions do not work, previous sanctions will be strengthened or new sanctions will be imposed on the same targets in order to exert more political pressure and thus put an end to the wrongly condemned practice or conflict. This, of course, remains for the CFSP and the Union's foreign affairs and security policy to examine on what extent sanctions will be imposed.

It will be interesting to see how sanctions change and evolve over time, as there has not been so much talk among legal scholars about wartime sanctions, as there has been no war of this scale for a moment. There will certainly be legal studies on the conflict between Russia and Ukraine, which will also provide more information on the effectiveness of sanctions and how they can be improved for the future and how any new conflicts can be curbed as effectively as possible. There will certainly be changes in the mechanisms of sanctions to make them more effective and to minimize the potential suffering of the people, which is hardly an easy task. However, the situation is affected by the political activities of the parties to the conflict, which are deeply rooted in history. This sentence specifically means how the country's activities also affect various diplomatic events.

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