

What is the scope of EU sanctions?

EU sanctions are adopted under the Common Foreign and Security Policy (CFSP), which aims to protect and promote:



**Preservation
of peace**



**Preservation
of conflicts**



**Democracy
values**



**Rule of
law**



**Human
rights**

They have been employed for a variety of reasons, including the prevention of human rights abuses, chemical weapons use, cyberattacks, misappropriation of public funds...

And Corruption?

In 2022, EC President Ursula von der Leyen proposed adding transnational corruption to the list of wrongdoings that justify EU restrictive measures.

In May 2023, the High Representative of the Union for Foreign Affairs and Security Policy presented a proposal for establishing such a sanctions regime, which was endorsed by the European Commission.

What is the legal framework in which sanctions are adopted?

3 scenarios are possible:

- 1** Restrictive measures implementing collective economic sanctions, authorised by the UN Security Council.
- 2** Restrictive measures going beyond sanctions authorised by the UN.

- 3** **Sanctions adopted outside UN action.**

→ Legality and legitimacy of these unilateral sanctions is not universally recognised.

This is the case of sanctions targeting high-level corruption, already employed by the US, Canada and the UK.

EU sanctions are first adopted unanimously by the Council under the CFSP. At this stage, they are binding only on EU Member States.

Next, a Council Regulation, adopted by qualified majority, defines the precise scope of the sanctions and makes them directly applicable in the EU Member States.

What types of sanctions are in place?

1 Geographical or country-specific

- 29 out of 35 EU sanctions regimes are country-specific²
- broader range of measures, e.g. targeting economic sectors or banning investments

2 Thematic or horizontal

Terrorism

Chemical weapons use

Cyberattacks

Human rights abuses

Misappropriation of public funds¹

Corruption

These mainly employ:

- Asset freezing
- Travel bans

Sanctions can target:

- Third states - Article 215 (1) TFEU
- Non-state actors (entities or individuals) - Article 215 (2) TFEU

EU sanctions regime (under consideration) for high-level corruption will be comparable to other EU horizontal sanctions.

1. From a technical point of view, the EU sanctions regime targeting the misappropriation of public funds was introduced based on several country-specific regulations.

2. As of May 2024

What challenges do EU sanctions pose?



HUMAN RIGHTS: Are sanctions a means of enforcing human rights or do they violate them?



EVIDENCES: To target unlawful acts (e.g. misappropriation of public funds) outside the EU, is it acceptable to impose sanctions relying on evidence provided by third countries subject to internal interference?



INTERNATIONAL LAW does not regulate the legality of sanctions adopted outside the UNSC framework. But could these violate WTO obligations and Bilateral Investment Treaties (BITs)?



IMMUNITIES: Do sanctions targeting heads of state, heads of government, foreign ministers and government officials violate international immunities?

More in D.4.1 "Report on the limitations of the current EU restrictive measures (sanctions) regimes" available on KLEPTOTRACE website

How human rights considerations shaped the EU sanctions?

1

They prompted a shift from comprehensive economic sanctions to targeted sanctions, to limit the negative impact on civilian populations.

2

EU sanctions allow for a number of exemptions to their enforcement based on human rights considerations (e.g. for humanitarian purposes, to meet the basic needs of listed individuals, to pay for legal services).

3

To ensure a transparent de-listing process, a review of the lists of sanctioned entities is required, (a) when observations or new evidence are submitted, (b) or periodically, even in the absence of a de-listing request.

4

Any violation of a fundamental right may be referred for judicial review.

"...targeted measures are more effective than indiscriminate measures and minimise adverse consequences for those not responsible..."

(EU Guidelines on Implementation and Evaluation of Restrictive Measures)

On what grounds can sanctions be challenged before the Court of Justice of the European Union?

Judicial review

Compliance of restrictive measures with EU law:



Erroneous assessment of the factual basis



Lack of adequate reasons for inclusion in a sanctions list



Disproportionate violation of fundamental rights

Defence

Effective judicial protection

Freedom of expression and information

Property

Freedom to conduct business

Next deliverable expected in Nov. 2024: "Legal and policy recommendations on EU and national sanction regime"

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KLEPTOTRACE is co-funded by the European Union. More information on the project and the full report can be found at: www.transcrime.it/kleptotrace/