

EU Restrictive Measures: How to Make Them More Efficient and Effective

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Executive Summary

- > After Russia's full-scale invasion of Ukraine, the restrictive measures adopted by the European Union (EU) have become a prominent tool of its Common Foreign and Security Policy (CFSP). They reaffirm the position, identity, and interests of the EU as a global actor.
- > After two years of implementing these measures, the EU is well-advised to draw some lessons and envisage changes to improve the efficiency and effectiveness of future restrictive measures.
- > To this effect, this policy brief makes three recommendations:
 - > First, the EU should adopt more horizontal sanctions regimes, including one related to violations of territorial integrity.
 - > Second, to become more effective and avoid the veto power of some member states, CFSP decisions on restrictive measures should be adopted by Qualified Majority Voting.
 - > Third, to enhance its effectiveness and efficiency, the team of the EU Sanctions Envoy should be reinforced so as to improve the EU's know-how in the enforcement of sanctions and the countering of their circumvention.

In recent years, the European Union (EU) has been facing major geopolitical crises. Russia's full-scale invasion of Ukraine in February 2022 and the ongoing war in the country represent probably the most relevant one. The EU's response to these challenges has been multi-faceted but comprises two main elements. First, in the summer of 2022, the European Council decided to grant Ukraine (in addition to Moldova) candidate status and, subsequently, started the accession negotiations with these countries,

thus reinvigorating the debate on the EU's enlargement and differentiated integration (Griffin and Gstöhl 2024, 1). Second, the Council of the European Union (henceforth, the Council) adopted 13 packages of restrictive measures (also called 'sanctions') against Russian individuals, entities, banks, companies, etc.

The unparalleled scale of these sanctions (Council of the European Union 2024b) and the controversies surrounding them make it necessary for the EU to reflect on a reform of its restrictive measures regime to make it more efficient and effective. "An essential tool of the EU's Common Foreign and Security Policy (CFSP)" (Council of the European Union 2024a), sanctions typically help the EU reach two aims. The first objective is to be recognised as a player with a distinct identity on the global stage (Nivet 2015, 138). As such, being able to adopt sanctions forms part of the EU's DNA as a foreign policy actor. As defined in Article 21(1) of the Treaty on the European Union (TEU), in foreign policy the EU should act according to fundamental principles, including "democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law". This last element is especially relevant in the case of the Russian full-scale invasion of Ukraine because the military aggression violated one of the fundamental principles of international law related to the territorial integrity of countries (Article 2(4) of the United Nations Charter). Russia's violation of Ukrainian borders might represent the start of an era of revisionism of frontiers. With a reform of the restrictive sanctions regime, the EU needs to prepare itself for the possibility that other countries could equally violate the territorial integrity of third states.

Second, sanctions are coercive tools that help the EU to signal that it is operational in CFSP matters. The renewed relevance of restrictive measures for the CFSP highlights

the need to consider how they can help the EU boost its role as a foreign policy actor by further enhancing the effectiveness of its CFSP decisions and instruments. A thorough reform thereof would underline that the EU has not only the ambition but also the – sufficiently coercive – tools to be fully operational.

Starting thus from the assumption that the EU should reform its restrictive measures to make them more efficient and effective in order to strengthen its role as a foreign policy actor, this policy brief initially provides a brief overview of what restrictive measures are and why they are relevant for the CFSP. Subsequently, by assessing the restrictive measures adopted after February 2022 and their challenges, it argues that there is a need for the EU to discuss the extent to which it can reinforce and improve its ability to work more effectively through sanctions. This includes addressing intricate challenges such as avoiding their circumvention by sanctioned parties. Addressing several key aspects – the agenda-setting, the policy formulation, the decision-making process at the Council level, and the monitoring of sanctions as part of their implementation –, the policy brief then suggests three main policy recommendations. First, the Council should make more extensive use of horizontal sanctions regimes, including one on the violation of the territorial integrity of countries. Second, to guarantee a more efficient and smooth decision-making process, the Council should adopt CFSP decisions linked to restrictive measures by Qualified Majority Voting (QMV). Third, the team of the EU Sanctions Envoy at the European External Action Service (EEAS) should be reinforced to identify and remedy challenges in implementing sanctions.

The EU restrictive measures: a significant CFSP tool

From a historical perspective, the imposition of restrictive measures is not novel, as the European Economic Community first and then the EU have been adopting sanctions since the 1980s when sanctions were imposed on the Soviet Union and Argentina (Giumelli, Hoffmann, and Książczaková 2021, 5). As underlined by Nivet (2015, 138, own translation), restrictive measures “confirm that the international action of the Union responds sometimes as much to a wish to exist, to be recognised as an actor carrying an identity embodied in specific values and principles, as to a wish to transform its strategic environment”. This assumption about the link between values and the geopolitical landscape is necessary to understand why the EU adopts restrictive measures. Furthermore, Eckes (2018, 207) highlights that “EU sanctions play a particular role in CFSP in that they directly legally target individuals, i.e., natural and legal persons,

and list them as supporting either a target political regime or terrorism. ... [S]anctions are a strand of CFSP with exceptional operational means”.

Unanimity lies at the very core of the adoption of sanctions. According to Articles 29 and 31 TEU, the Council adopts CFSP decisions by unanimity. Should such a decision contain elements related to financial or economic aspects, it has to adopt a regulation to implement them, but this time by QMV (Article 215 TFEU). Other aspects that can be included in the CFSP decision are travel restrictions and visa bans. Moreover, restrictive measures are not adopted indefinitely but usually for a short period and must be renewed in case the Council establishes that they still need to be kept in place (Council of the European Union 2018, 14-15).

This decision-making process highlights four main aspects. First, the adoption of restrictive measures relies mainly on an intergovernmental political exercise from which the European Parliament is excluded. Second, because of the unanimity rule, a single member state can veto the adoption of a CFSP decision on restrictive measures and, therefore, weaken the ability of the EU to act fast and effectively. Third, adopting restrictive measures implies the need to guarantee that unanimity can be sustained over time, as sanctions have a limited duration, and their renewal requires consensus in the Council. Finally, and added to this, as underlined by Finelli (2023, 737), “[r]estrictive measures essentially rely on a decentralised implementation and enforcement system, which contrasts with their centralised decision-making process”. Given this last element, there is a need for the EU to establish a sound overview and supervision process for the implementation of the sanction regimes.

While restrictive measures have had a prominent place in the national and European public debates since February 2022, they encounter challenges in three main respects: the agenda-setting of the sanctions regime, the policy formulation and the decision-making process (mainly relying on unanimity), and the implementation of sanctions. The next section discusses the existing limitations of the current system of EU restrictive measures, preparing the discussion of potential remedies.

EU restrictive measures: problems with the current system

Bosse (2022, 535) underlines that Russia’s ongoing war of aggression against Ukraine “marks a fundamental rupture in Europe’s post-Cold War security environment, which has sparked a process of redefinition of member states’ security preferences”. This momentous event shows that

restrictive measures are becoming more important for the EU and its CFSP. The Council was able to approve sanctions that changed the EU's approach towards restrictive measures from a targeted to a more comprehensive one. In this regard, Meissner and Graziani (2023, 386) note that "the scope of the EU's sanctions against Russia has become more comprehensive over time and the entailed costs for the entire population have expanded". This unprecedented shift must be seen as a major change in how the EU perceives sanctions.

In light of these developments, the EU should develop a profound reflection on sanctions as an effective CFSP tool. Such a systematic reflection proves particularly fundamental given broader global developments and the prospects of a future EU enlargement. The upcoming legislative term 2024-2029 represents the right moment for it.

The adoption of 13 packages of restrictive measures against Russia within 24 months represents a significant step for the EU towards stressing its stance on foreign policy issues and principles of international law. As Portela and Kluge (2022, 7) underscore, the "collective use [of sanctions] has allowed the EU to frame a unified stance and demonstrate its commitment to international norms like state sovereignty and the inviolability of borders". These norms should also help the EU identify challenges that might occur in the future, including in other parts of the world. This implies anticipating the most prominent challenges that might arise as well as developing tools to tackle within the CFSP toolbox. It requires the EU to develop a more efficient way of applying restrictive measures, including the implementation of horizontal sanctions regimes, so as to highlight that it is not only able to react to a specific event but also to proactively position itself.

Yet, reflections to date around the EU's sanction regimes have revealed several limitations in the decision-making process, especially at the Foreign Affairs Council. Although unanimity was always reached when adopting new packages of sanctions against Russia, this has not always been easy. Even a single contrary position hinders the capacity of the EU to adopt new restrictive measures, and it often depends on the capacity of the High Representative of the European Union for Foreign Affairs and Security Policy/Vice-President of the European Commission (HR/VP) and the different Council bodies whether consensus is found or not. At the start of the EU's new legislative term in 2024, the EU institutions should therefore kick off a discussion on ways to improve the decision-making process for adopting restrictive measures.

The EU should also reflect upon the concrete implementation of sanctions. One of the most prominent issues that have emerged regarding sanctions adopted in the aftermath of Russia's full-scale invasion of Ukraine is their circumvention by third parties. As indicated in the Council Decision (CFSP) 2023/874, the European Council insisted on the "full and effective implementation [of sanctions] and the prevention of their circumvention, especially for high-risk goods, in close cooperation with partners and allies". Circumvention of EU sanctions is a relevant topic because it might undermine their efficiency and effectiveness. As Finelli (2023, 761) argues, "[t]he exceptional circumstances in relation to the war in Ukraine have progressively redesigned the enforcement of EU restrictive measures, with a view to countering sanctions breaches, as well as circumvention, *by all means*". Therefore, greater attention to avoiding the circumvention of sanctions and the monitoring of their implementation imposes itself. It should push the EU to consider increasing its investment in related know-how, expertise, and professional competencies.

All these elements combined plead in favour of a thorough EU reflection on its approach towards restrictive measures. The next section will present policy recommendations on how the EU could increase the efficiency and effectiveness of its sanctions based on the lessons it learned from Russia's full-scale invasion of Ukraine.

Policy recommendations: how to make EU restrictive measures more efficient and effective

In light of the new geopolitical scenario presented above and the EU's legislative term 2024-2029, the three recommendations listed below are directed at two main categories of decision-makers: those who decide on the future of sanction-related processes and can decide on reforming them, and those who act in the system to operationalise those reforms.

These recommendations relate to the three different stages previously mentioned. First, a more widespread use of horizontal sanctions regimes would further develop agenda-setting in the realm of sanctions. Second, the adoption of QMV in the adoption of the CFSP decision would improve the decision-making process of restrictive measures. Third, the reinforcement of the EU Sanctions Envoy's team would ameliorate relevant aspects of the implementation of restrictive measures. If applied in their entirety, these reforms are bound to strengthen the EU's ability to use this CFSP instrument more adequately and efficiently.

Establish horizontal sanctions regimes and use them more extensively

Russia's full-scale invasion of Ukraine has reminded the EU about the importance of the principles of international law, especially territorial integrity and the sovereignty of states, prompting a reflection on how to better deliver in case of grave violations of these principles. In this respect, it would be important for the Council to establish more horizontal sanctions regimes, including in relation to the protection of territorial integrity. As underlined by Portela (2019), "[h]orizontal sanctions regimes ... are themed rather than country-based. They allow for the listing of individuals and entities responsible for activities that contravene a specific norm, irrespective of their location". Horizontal sanctions regimes might give the EU more flexibility to intervene and address instances that go against Article 21 TEU and/or the fundamental principles of international law, especially those related to the sovereign equality of states (Article 2(1) of the United Nations Charter).

To prepare for possible future violations of such principles across the globe, the Council should thus adopt CFSP decisions that establish horizontal sanctions regimes. Such a reform of the current system will be crucial for two reasons. First, the establishment of horizontal sanctions regimes would send a powerful signal about the EU's seriousness when it comes to countering violations of international law. Second, such systematic, institutionalised, and more straightforward sanctions regimes would also demonstrate the EU's ability to anticipate future scenarios and display heightened preparedness on matters of global relevance. It would ultimately allow the EU to develop an effective response to violations of principles listed in Article 21 TEU and the United Nations Charter forming part of its identity and legal order.

When adopting new horizontal sanctions regimes, the EU's experience with adopting restrictive measures might help the Council and the Commission to draw on existing practices to create new ones. For example, the Council should take inspiration from similar existing regimes, such as the EU Global Human Rights Sanctions Regime (HRSR) adopted in December 2020, which represents a "framework for targeted restrictive measures applie[d] to acts such as genocide, crimes against humanity and other serious human rights violations or abuses" (Council of the European Union 2020). Nevertheless, difficulties such as defining the criteria to sanction legal persons, entities and companies might arise. To counter such difficulties, investing in resources and people working on restrictive measures might help to render such horizontal sanctions

regimes more efficient. In this regard, the first and third policy recommendations are interlinked.

Consequently, the Council should develop a common position on horizontal sanctions regimes and find a consensus after the elections to the European Parliament in June 2024 and the appointment of the new EU's 'top jobs' this summer.

Switch to Qualified Majority Voting for the adoption of restrictive measures

Establishing new horizontal sanctions regimes is only one of the solutions the EU could implement following the experience of its dealings with Russia's full-scale invasion of Ukraine and to anticipate future violations of territorial integrity, since it would cover only a fraction of the instances where the Council adopts sanctions. Also of relevance is to give the latter more room for manoeuvre to impose restrictive measures without being constrained by unanimity.

One suggestion to enable this has been made by the European Parliament in its recent proposals for the amendment of the Treaties. The Parliament suggested modifying Article 31(1) TEU so that it reads: "[d]ecisions under this Chapter shall be taken by the European Council and the Council acting by a *qualified majority*. The adoption of legislative acts shall be excluded" (Amendment 47, European Parliament 2023). Moreover, this is complemented by another proposed Amendment (46) to Article 29 TEU, which includes the possibility for the Council to act by QMV in case of "the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries".

Such a move to QMV might be problematic to implement, as it would indeed require a change in the Treaties, and some EU member states might be reluctant to renounce complete control over the adoption of sanctions. Nevertheless, possible political discussions and debates on a Convention to change the Treaties might encourage and propel the debate on the very nature of the EU's CFSP, and many arguments plead in favour of making a move to QMV. First and foremost, decision-making by a qualified majority significantly enhances the Council's ability to act swiftly in case of urgency and to avoid vetoing. Moreover, QMV would prove quintessential to push the CFSP further towards supranational functioning more generally, making it more efficient and effective.

Reinforce the team of the EU Sanctions Envoy at the EEAS

Switching to QMV to adopt sanctions might not solve issues related to the EU's ability to draft sanctions regimes that address such potential issues as the circumvention of sanctions or lack of their full implementation. Therefore, if the EU aspires to strengthen its role as a sanctioning actor, it also should invest more in people working in the field to further develop real 'EU expertise' when it comes to sanctions. Consequently, the team working with the EU Sanctions Envoy at the EEAS, which deals with these issues, should be reinforced.

Since the EU does not have exclusive competence in the realm of CFSP, this 'reinforced' and permanent team should have a triple role. First, on a general level, its reinforcement would underscore the importance of restrictive measures for the CFSP to EU and non-EU audiences, indicating that the EU minds its interests in foreign policy; second, reforming this team would increase its role as a point of coordination and information exchange between the EU, its member states, and third countries; and third, it would improve the know-how, expertise, and ability of the EU to act in the field of enforcement of sanctions. This stronger team would also tackle a specific need, namely that the EU currently has limited human capacity regarding sanctions in comparison, for instance, to the United States, as highlighted by David O'Sullivan, the current EU Sanctions Envoy, in a lecture held at the College of Europe in Bruges in October 2023.

This last policy recommendation also follows a proposal of the Dutch government "to set up a sanctions headquarters in Brussels, aimed at circumvention" (Brzozowski 2023). Although the reinforcement of the team working with the EU Sanctions Envoy would have a budgetary impact on the EU, as it would, among other expenses, require hiring new specialists, analysts, and other personnel, it would strengthen the EU as a sanctions actor in the long term. The capacity and know-how would prove of primary importance for developing adequate responses to future scenarios in which the Council decides to adopt any restrictive measures.

Conclusion

The scale and impact of the sanctions imposed on Russia after February 2022 underline the importance of adopting effective CFSP decisions. As restrictive measures are a distinct tool in the eyes of both the European public and the international community, one could argue that they

shape the EU's identity and standing on the global stage. Given their importance, the EU must reflect on its own experience and practice in the realm of sanctions and try to devise strategies that will strengthen this CFSP instrument further. A possible Convention to change the Treaties and the new EU legislative term starting after the summer of 2024 might prove the right moment for initiating the necessary reforms.

To this end, this policy brief provided three recommendations: first, the establishment and more extensive use of horizontal sanctions regimes would prove quintessential to stress the EU's principles in CFSP (as indicated in Article 21 TEU), address their violations, regardless of their geographical locations, and deliver better and quicker decisions to target individuals. This policy brief recommends the Council adopt a new horizontal sanctions regime in response to violations of the territorial integrity of states as a way to stress the relevance of this principle of international law two years after Russia's full-scale invasion of Ukraine. Second, QMV in the adoption of the CFSP decisions on restrictive measures would provide greater efficiency and effectiveness by preventing cases when a single member state or a limited group of countries block the decision-making process. This would also contribute to a further supranationalisation of the CFSP, which, until now, has prominently remained intergovernmental. Finally, the creation of a stronger and permanent team for the EU Sanctions Envoy would improve the way the EU uses sanctions to respond to developments on the global stage.

The debate on restrictive measures gains even more relevance because of the upcoming appointments of the EU's 'top jobs' in the aftermath of the elections to the European Parliament in June 2024. The new President of the European Commission, the President of the European Council, and the HR/VP should make the debate on restrictive measures a priority for the next five years, as it would represent a continuity with the aspiration of Ursula von der Leyen to lead a "geopolitical Commission" (European Commission 2019). The likelihood of those changes might be somehow limited, as the member states could be determined to retain quasi-complete control over the sanctions' decision-making processes. Nevertheless, the precondition for their implementation is the willingness, determination and ambition of the member states themselves to realise that the CFSP needs to be taken to a higher level if the EU wants to keep up with the current geopolitical developments.

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CEPOB # 2²⁴ (March 2024)