



# EU sanctions regime

The EU applies sanctions within the framework of the Common Foreign and Security Policy (CFSP) on an autonomous EU basis or by implementing binding Resolutions of the UN Security Council. The sanctions target governments and non-state entities, and comprise measures such as arms embargoes, financial restrictions and restrictions on admission. They apply to EU and non-EU nationals doing business within the EU territory. Due to the allocation of powers between the EU and member states the application of sanctions follows a complicated procedure, which may imply the adoption of Common Positions, Council Regulations and Council Decisions, as well as national laws. This briefing gives an overview of the EU sanctions regime currently in place.

## Economic sanctions

Economic sanctions may include trade restrictions (eg import and export bans on specific products such as oil, timber or diamonds, as well as arms embargoes) and financial restrictions.

Arms embargoes apply to (but are not limited to) the items found in the EU's *Common Military List* and are usually accompanied by a ban on the provision of related financial and technical assistance. The most recent version of the *Common Military List* was adopted by the Council on February 2009 on the basis of Council Common Position 2008/944/CFSP (which replaced the former 1998 EU Code of Conduct on Arms Exports). Since arms embargoes fall within the competence of member states, the EU *Common Military List* merely acts as a reference point for member states' national military lists, but does not necessarily replace them. Subject to prior approval or notification, limited exemptions apply to protective equipment for UN, EU and associated personnel as well as to non-lethal equipment for humanitarian or protective use, institution building programmes and demining operations.

In addition, exports of dual-use items are subject to control in accordance with the EU Dual-Use Regulation (Council Regulation (EC) No 1334/2000). The Commission regularly publishes information and updates on export controls for dual-use items (available at [http://ec.europa.eu/trade/issues/sectoral/industry/dualuse/index\\_en.htm](http://ec.europa.eu/trade/issues/sectoral/industry/dualuse/index_en.htm)).

Financial restrictions include, in particular, the obligation to freeze all funds and economic resources of the targeted

persons and entities, and the prohibition of making funds or economic resources available directly or indirectly to or for the benefit of these persons.

This prohibition is to be understood in a comprehensive manner and refers to any type of economic advantages, not only including funds or other financial assets, but all advantages that can be used for obtaining funds, goods or services (eg cash payment, lodgement of a cheque, wage, rent, supply and redemption of all types of goods). In addition, the term 'economic resources' comprises all documents embodying a commercial value, or rights to goods or claims (eg warehouse warrants and warehouse receipts). It is further important to note that the prohibition also covers the indirect supply of financial assets. This particularly includes payments that have not been directly made in favour of a targeted person (but of a third person), but that nevertheless result in the economic advantage of that person (eg supply of goods or funds on demand of a targeted person to a third person, resulting in the settlement of debts owed by the targeted person to the third person).

Subject to prior approval or notification, exemptions are available under specific conditions (eg funds necessary for basic expenses, including payments for foodstuffs, rent or mortgage, medicines and medical treatment). The European Commission publishes a consolidated and regularly updated list containing the names and identification details of all persons, groups and entities targeted by financial restrictions (available at [http://ec.europa.eu/external\\_relations/cfsp/sanctions/list/consol-list.htm](http://ec.europa.eu/external_relations/cfsp/sanctions/list/consol-list.htm)). Further practical guidance on issues

arising in the implementation of financial restrictions is provided by the *EU's Best Practices for the Effective Implementation of Restrictive Measures* (available at <http://register.consilium.europa.eu/pdf/en/07/st11/st11679.en07.pdf>).

## Targeted persons and entities

The sanctions may target governments of third countries, or non-state entities and individuals (such as terrorist groups and terrorists). The EU has imposed sanctions against several countries, including Iran, Sudan, Syria, Belarus and North Korea. A full list of target countries is available at [http://ec.europa.eu/external\\_relations/cfsp/sanctions/measures.htm](http://ec.europa.eu/external_relations/cfsp/sanctions/measures.htm).

Sanctions against Iran comprise: embargoes on arms, certain dual-use items and goods, and technology that could contribute to civil or military nuclear activities. Further, the sanctions include export controls of certain goods, the prohibition of procurement of certain goods, and financial restrictions for certain persons and entities. Financial restrictions (freezing of funds and economic resources, prohibition of financial transactions) particularly target the Iranian banks Sepah and Melli. The Iranian Saderat Bank is not subject to financial restrictions (whereas, under the US sanctions regime, it is), but it is required to exercise continuous vigilance over account activity with respect to money laundering and financing of terrorism.

Sanctions against Sudan include an arms embargo, a ban on provision of certain services, and financial restrictions for individuals who impede the peace process in Darfur. With respect to Syria, the EU sanctions regime requires the freezing of funds and economic resources of persons suspected of involvement in the planning, sponsoring, organising or perpetrating of the murder of the former prime minister of the Lebanon, Rafik Hariri. Belarus is subject to financial restrictions for persons responsible for the violations of international electoral standards in the presidential elections on 19 March 2006 and the crackdown on civil society and democratic opposition, as well as to all persons and entities associated with them. Finally, North Korea faces an arms embargo, an export ban of certain goods (particularly luxury goods) and technologies, a ban on the provision of certain services, and financial restrictions. An overview of all

countries affected by EU sanctions and the corresponding restrictive measures is available at [http://ec.europa.eu/external\\_relations/cfsp/sanctions/measures.htm](http://ec.europa.eu/external_relations/cfsp/sanctions/measures.htm).

EU measures applying to individuals and groups not directly related to a third country are designated in the so-called 'EU terrorism list' (the most recent version of the list can be found in Council Decision 2009/62/EC of 26 January 2009).

## Scope of application

The sanctions have to be applied by (a) all persons and entities *doing business in the EU*, including nationals of non-EU countries, and (b) by *EU nationals and entities* incorporated or constituted under the law of an EU member state when doing business outside the EU. The EU emphasises that it refrains from adopting legislative instruments that have extraterritorial application, in breach of international law. In this context, the EU has been critical of the US in its adoption of Cuba sanctions under the Helms-Burton Act (in certain circumstances the Act applies to non-US firms doing business outside the US territory).

## Enforcement and penalties

Rules on penalties applicable to infringements of the EU sanctions regime are laid down in the member states' national laws. For example in Germany, section 34 of the Foreign Trade and Payments Act (AWG) provides for a prison sentence of up to five years. In serious cases, such as an act that causes the risk of a serious detriment to Germany's external security, disturbs the peaceful co-existence of nations, or considerably disturbs Germany's foreign relations, there is a minimum prison sentence of two years (with a maximum sentence of 15 years). In the case of negligent actions the authorities may impose a prison sentence of up to three years, or a punitive fine of up to €1.8m. They may consider violations of notification duties as an administrative offence resulting in a fine of up to €500,000. In any case, the authorities will confiscate any economic advantage resulting from the violation.

In recent years, German courts have frequently dealt with the violation of export embargoes. A prominent example involves the export of heavy lorries to the

Iranian government by a German-Iranian businessman. The German government banned these lorries for export as it feared they might be used as rocket launcher vehicles (particularly against Israel). However, the Higher Regional Court (OLG) of Munich dismissed the charges against the businessman, considering the strict German export rules incompatible with the more lenient EU sanctions regime. The case is currently pending before the Federal Supreme Court (BGH). The final decision is expected possibly to challenge the German sanctions regime as a whole.

## In-house export control

Corporates rely heavily on an efficient in-house export control to ensure that embargoes and financial restrictions are complied with. It is essential for a corporate to examine carefully all relevant circumstances and rules before an export or a financial transaction is carried out. A central co-ordination unit for in-house export control should be established where possible and this unit should take decisions with respect to all personnel involved in the corporate's export or financial transactions. It is particularly important for a corporate to supervise its personnel effectively as it is liable for any failure of its personnel that could have been prevented by the proper organisation and monitoring of the corporate's export and transaction activities, including further training of its employees.

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