

## Legal concepts of restrictive measures (sanctions)

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### 1. INTRODUCTION

The legal concepts of sanctions and measures – both terms being used separately as well as jointly and synonymously – are applied in International Law, European Law and in national law. Originating from the old administrative law and language of the United Kingdom and of France the present meaning of sanction(s), however, is based on the Charter of the UN as defined and applied by the Security Council (UNSC).<sup>1</sup> Chapter VII of the Charter<sup>2</sup> refers to action to be taken by the Security Council in response to any “threat to the peace, breach of the peace, or act of aggression”. The UNSC also determines what measures both involving and not involving the use of armed force are to be employed to give effect to a given decision of the UNSC. Such are interruption of economic relations and of means of communication as well as severance of diplomatic relations.<sup>3</sup> Should such measures that are not involving the use of armed forces be inadequate or insufficient, the UNSC may decide

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- 1 Prior to the establishment of the UNO the Covenant of the League of Nations provided enforcement of international responsibilities through economic and military sanctions. However, the Covenant did not provide for binding decisions: The Council of the League was only responsible for recommending military force. [www.http: Covenant of the League of Nations.](http://www.covenantoftheliga.org/)
  - 2 UN Charter, Chapter VII “Action with Respect to the Threat to the Peace, Breaches of the Peace and Acts of Aggression.” Articles 39 – 51.
  - 3 UN Charter, Chapter VII, Article 41.

to take action which include blockades and other operations by air, sea, or land forces of Members of the United Nations to maintain or restore international peace.<sup>4</sup>

It was, however, the UN General Assembly in 1961 that approved a resolution calling on all States to conclude an agreement to ban further acquisition and transfers of nuclear weapons and prohibiting nuclear weapon States to transfer to any recipient nuclear weapons or other nuclear explosive devices... or to encourage any non-nuclear weapon State to manufacture or otherwise acquire nuclear weapons, nuclear explosive devices. A draft nuclear non-proliferation treaty was then considered in the frame of the Geneva Disarmament Conference. Within a short period of time, the Treaty on the Non-Proliferation of Nuclear Weapons opened for signature 1968, and entered into force 1970 - initially with 3 States (Soviet Union, United Kingdom and United States) of the now five nuclear weapon States i.e. China, France, Russia the United Kingdom and the United States, and an open number of non-nuclear weapon states.

The basic concepts agreed are embodied in articles I, II and III of the NPT. Article I sets forth the obligations of each nuclear-weapon State Party, notably not to transfer to any recipient nuclear weapons or explosive devices. Article II is addressed to each non-nuclear weapon State Party, not to receive the transfer, nor to manufacture nuclear weapons (etc.). A further essential provision of the NPT is contained in Article III by establishing (paragraph 1) the obligation of non-nuclear weapon States, Party to the Treaty, to accept safeguards set forth in an Agreement to be negotiated and concluded with the International Atomic Energy Agency and the Agency's safeguards system for the exclusive purpose of verification of the fulfilment of its obligations under the NPT.

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<sup>4</sup> UN Charter, Chapter VII, Article 42.

The EURATOM Treaty<sup>5</sup> establishing the European Atomic Energy Community entered into force 1958, one year after entry into force of the IAEA, creating a binding legal framework which includes a system of Safeguards and Inspections – somewhat similar to the IAEA Safeguards – for the 28 Members States of the European Union.<sup>6</sup> In the present context mention must be made to non-compliance and infringement procedures of the EU i.e. violations of European law.<sup>7</sup>

The permanent ‘link’ between the IAEA, the UNSC and the NPT is the basis of the fundamental order of a functioning international non-proliferation regime.

In the broader context covering international, European and national law, the terms ‘sanction’ and ‘measures’, frequently ‘restrictive measures’, cover a wide spectrum of legal acts notably of a punitive nature which elude a single definition. Both sanctions and measures are decided by the United Nations Security Council, the Council of the European Union and in the ‘internal’ context, by individual States. Sanctions adopted by the UNSC are uniquely of universal applicability.

In specific cases only, the term “embargo” i.e. the oldest term applied to punitive measures by one or several States against another State is still being used. It originates in the Napoleonic wars and defines a government decision prohibiting commercial trade, notably the departure of commercial ships in the context of international hostilities. Presently, an embargo means a government order to

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5 “The European Atomic Energy Community and its primary law” Wolfgang Kilb; in “International Nuclear Law: History Evolution and Outlook” pp.43 90. 10<sup>th</sup> Anniversary of the International School of Nuclear Law. OECD 2010 NEA no. 6934.

6 Euratom is a separate legal entity within the EU at the same level as the EU Treaty and the TFEU( Treaty on the Functioning of the EU).

7 Wolfgang Kilb: *ibid.* pp: 67-70.

restrict commerce or other exchanges with a given country: There are also different types of embargoes applied in addition to trade embargos namely strategic embargos, oil and arms embargos.<sup>8</sup>

The term 'arms control' is not linked to the present subject. It is generally associated with the concept of arms limitation and of disarmament.

## **2. LAWFUL AUTHORITIES EMPOWERED TO ADOPT AND IMPLEMENT SANCTIONS**

The origin, legal validity, scope, content, purpose and duration of a sanction or restrictive measure is determined by the powers of the competent statutory body i.e. the UNSC, the EU Council and the government of the sovereign State.

Both the UN Security Council and the EU Council may decide, adopt and implement sanctions / restrictive measures on States, economic entities and individuals: sanctions decided by the UNSC are of direct concern to all UN Member States as well as to the EU; Sanctions / restrictive measures adopted by the European Council (regulations) are directly applicable to the EU Member States. They are binding in their entirety. EU regulations take precedence over conflicting – internal – measures of a Member State.

Certain intergovernmental organizations<sup>9</sup> are also empowered by their Statute to adopt measures against States upon a decision taken by the respective governing body. Notably, the IAEA Statute under Article XIX 'Suspension of privileges' provides that "A Member that is in arrears in the payment of its financial contributions shall have no vote, etc." A member which has persistently violated the

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**8** Example: UNSC Resolution 1747 'Iran embargo'. Presently over ten States are under UNSC arms embargo.

**9** The OSCE is sometimes erroneously mentioned as mandated to adopt sanctions or measures. The OSCE is an international forum for confidence building measures and security cooperation in Europe by inter alia establishing a Code of Conduct on Political – Military Aspects.

provisions of the Statute or of any agreement entered into by it pursuant to this Statute may be suspended from the exercise of the privileges and rights of membership by the General conference recommendations by the Board of Governors.

The third level is the sovereign State: Sanctions adopted autonomously i.e. by a national Government in conformity with its laws, either in implementation of or in addition to measures adopted by UNSC or EU Council, are binding on the citizen, on companies or other legal entities of that country. Such sanctions are notably administrative / financial or criminal penalties.

## **2.1. The United Nations Organisation**

Two intergovernmental organizations hold the legal capacity to adopt and enforce sanctions on the basis of their respective Statutes. First, historically,<sup>10</sup> the UN Charter<sup>11</sup> granted<sup>12</sup> the UN General Assembly clearly defined but limited functions and powers: The General Assembly may consider any question or any matter within the scope of the Charter, make recommendations to ‘the Members of the UN or to the Security Council’ as well as “discuss any question relating to the maintenance of international peace and security brought before it by any Member or by the Security Council”.<sup>13</sup>

Chapters V, VI and VII concern the powers of the Security Council, – notably its main roles: Chapter VI, “Pacific Settlement of Disputes” - notably – disputes brought to the Security Council by any Member State, and Chapter VII<sup>14</sup> which defines specifically the powers to “make recommendations or decide what measures

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**10** The League of Nations provided in its Covenant enforcement of international responsibilities by way of economic and military sanctions.” <http://www.CovenantoftheLeagueofNations>.

**11** The Charter of the United Nations Organisation entered into force 24. 10. 1945. The Statute of the International Court of Justice was set up by the Charter.

**12** Charter of the United Nations: Chapter IV: The General Assembly. Articles 10-22.

**13** UN Charter Article 10. 11.

**14** UNO Charter: Chapter VII: “Action with Respect to Threats to the Peace, Braches of the Peace, and Acts of Aggression. “articles 39-41, 42”.

shall be taken... to maintain or restore international peace and security". The Security Council may decide to adopt measures that do not involve the use of armed force in order to give effect to its decisions..<sup>15</sup> Article 41 encompasses a broad range of enforcement options that do not involve the use of armed force.

However, if those measures are considered to be inadequate, the Security Council may also take action that include blockades and other operations by land, sea or by air and sea as well as land forces of Members of the UN".<sup>16</sup>

Under present international circumstances such decisions, however, appear to be politically unrealistic.

In terms of international legal hierarchy, in the present context, the UN Charter provides that "[T]he Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the Charter"<sup>17</sup> Measures adopted by the UN Security Council under Chapter VII are considered international binding law" (quote UNSC). Decisions of the Security Council on non-procedural matters notably on specific sanctions or measures require an affirmative vote of nine members of the Council including concurring votes of the permanent members of the Security Council: such Resolution is not adopted in the case of a veto by one or more Permanent Members.<sup>18</sup>

A somewhat different novel link was recently established between the Organisation for the Prohibition of Chemical Weapons (OPCW) and the United Nations Security Council on the basis of a UNSC resolution. The newly established "OPCW-United Nations-Joint Investigative Mechanism" submitted for the first time a Report to the Security Council.<sup>19</sup> "The Mechanism was mandated to iden-

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**15** UN Charter, Chapter VII, Article 41.

**16** UN Charter, Chapter VII, Article 42.

**17** UN Charter, Article 25.

**18** UN Charter. Article 27.

**19** UN Security Council. S/ 2016/142: Letter dated 12 February 2016 from the (OPCW) Secretary -General addressed to the President of the Security Council. Pursuant to para. 11 of SC Resolution 2235 (2015).

tify to the greatest extent feasible individuals, entities groups or Governments who were perpetrators, organizers, sponsors or otherwise involved in the use of chemicals as weapons.”<sup>20</sup> The UNSC resolution,<sup>21</sup> however, does not refer to any sanction regime in the this context but to ceasefire monitoring, verification and reporting mechanism, prevention and suppression of acts committed by terrorist groups (named) and, to UN support for a continued political process.

→ **UNSC SANCTIONS PRACTICE**<sup>22</sup>

Over the past fifty years the Security Council has established 26 sanctions regimes<sup>23</sup> concerning States as well as ‘entities’ as e.g. ISIL (Da’esh,) Al-Qaida and the Taliban. As of 31 December 2015, there were a total of 623 individuals and 398 entities designated for targeted sanctions measures such as asset freeze, travel bans and arms embargos and financial and commodity restrictions.<sup>24</sup> Over the recent past, cooperation on sanctions was expanded between the Security Council and Interpol.<sup>25</sup>

A number of country or entity-specific Sanctions Committees function independently and follow regularly the effects of the sanctions adopted. Each of these sanctions committees is chaired by a non-permanent member of the Security Council committees. There is also a comprehensive list of individuals under sanction as well as a ‘Focal point for Delisting’ and an ‘Office of the Ombudsperson’. The

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**20** Security Council Doc. S/2016/142 12. February 2016. Page 3.

**21** UN Security Council Resolution S/RES/2254b(2015) 18 December 2015.

**22** Terminology of the UN Charter in particular the UNSC i.e. ‘measures’ a generic term, used exclusively as a synonym to ‘sanctions’. UN Charter, Chapter VII: Article 39-42

**23** <https://www.un.org/sc/suborg/en/sanctions>.

**24** Security Council Sanctions Committee website / also: United Nations Security Council Sanctions List.

**25** S/RES /1699 (2006).Security Council resolution on increased cooperation between the United Nations and Interpol.

Security Council also applies sanctions as part of a comprehensive strategy encompassing peacekeeping to support peaceful transitions, constrain terrorism and protect human rights.<sup>26</sup>

→ **THE CASE OF IRAN**<sup>27</sup>

The long, sensitive and complex history of the discovery first in 2002 of non-declared nuclear installations in Iran, followed by further IAEA reports concerning notably the enrichment plant in Natanz, the UNSC adopted 2006 a Resolution under Chapter VII on sanctions against Iran. The European Council adopted a sequence of sanctions 2010, and further broadened measures in 2011 and 2012.<sup>28</sup> The 'Joint Plan of Action' adopted January 2015 by the E3+3<sup>29</sup> was accepted by Iran. The final agreement reached including the end of the sanction regime... is beyond the scope of this article.

### **3. THE EUROPEAN UNION**

#### **3.1. Principles**

The possibility to adopt and apply sanctions against a State for the European Union should be considered carefully. Regarding its organization and its powers to constrain its members, the EU

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- 26** History of a case of political sanctions: 1966 The United Nations Security Council took a historical step: For the first time in its 21 years of existence, it resorted to mandatory economic sanctions to try to bring down a legitimate government. Object of the sanctions was Prime Minister Ian Smith's white-supremacist regime in Rhodesia, which has been deplored as an international renegade ever since it broke away from British rule thirteen months earlier. By a vote of 11 to 0 with four abstentions the Security Council declared an international embargo on 90% of Rhodesia's exports, forbade the U.N.'s 122 UN Member States to sell oil, arms, motor vehicles or airplanes to the Rhodesian 'Regime'.
- 27** "Internationale Verhandlungen mit dem Iran: ein letzter Zwischenbericht?", Dr. Odette Jankowitsch-Prevor. In., atw International Journal for Nuclear Power nucmag.com 8/9 2015 Vol.60 (2015) Issue 4. April.
- 28** Council Implementing Regulation (EU) no. 54/2012 and Regulation no. 961/2010; thereafter Implementing Regulations no. 54/2012.
- 29** Code for: { E= Europe} Germany, France, UK, + China, Russia, USA.

is more than an international organization, however, it is still an association of states that can't do more than its members have agreed to delegate.

The difficulty with restrictive measures is that they are pursuing a political objective (fight against terrorism, WMD proliferation, human rights violation) but consist in most of cases in economic restrictions (exports and imports prohibition, freezing of financial assets). Even though EU Member States have agreed to develop a common foreign policy, this is a competence subject to specific rules and procedures. Decisions are in most cases adopted unanimously by the member States within the Council, legislative acts are excluded and the EU Court of Justice has no jurisdiction. That is since the entry into force of the Lisbon Treaty.

To the contrary, economic restrictions are elements of the export policy, a subsection of the common commercial policy, i.e. in the exclusive competency of the EU based on EU law adopted in co-decision by the Council and the Parliament.

To reconcile the Foreign Policy of Member States and Common Commercial Policy, the EU Treaty includes a provision which grants the Council to decide on "the interruptions or reductions in part or completely, of economic and financial relation with one or more third states" and "it shall inform the European Parliament thereof".

However, most sanctions involving the interruption of economic relations usually start by a weapons trade prohibition. The regulation of this trade is an exception to the EU Common Commercial Policy and has been considered by Member States as their national exclusive competence.

Therefore, EU restrictive measures adopted against third states could take different forms depending on the category of goods or services targeted (i.e. weapons, dual-use items, capital movements and payments).

Finally, EU restrictive measures are based to a large extent on the implementation of a given, specific UNSC resolution. Out of a total number of 41 States only 12 States are targeted by EU sanctions that are not implementing UNSC resolution.<sup>30</sup>

→ **RESTRICTIVE MEASURES ON CONVENTIONAL WEAPONS TRADE ADOPTED BY THE EU**

Even though EU treaties do not exclude the possibility for the EU to regulate weapons trade, Member States have always acted as if this was one of their exclusive competencies.<sup>31</sup> Therefore, in case the scope of restrictive measures against a State or against non-State actors includes conventional weapons, only a CFSP Council decision can potentially be adopted on the basis of article 29 TEU. Such decision usually defines the political objective of the measure(s) as well as the authorities targetted but does not provide the list of weapons concerns by the measures.

Since entry into force of the Lisbon Treaty and the increasing concern about terrorist acts and WMD proliferation, restrictive measures regarding transfer of conventional weapons have been part of a set of broader measures which include conventional weapons related material, dual-use items, certain services, as well as the freezing of funds and economic interrests. However, a considerable majority of CFSP Council decisions taken include embargos on conventional weapons. This is usually formulated as e.g. the following: “The sale, supply, transfer or export of arms and related material of all types,

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**30** States concern by EU restrictive measures not grounded on an UNSCR are Belarus (Council decision 2012/642/CFSP (OJ L 285, 17.10.2012, p. 1)), Burma (Council decision 2013/184/CFSP (OJ L 111, 23.4.2013, p. 75)), Burundi (Council decision (CFSP) 2015/1763 (OJ L 257, 2.10.2015, p. 37)), China (Declaration of European Council, Madrid, 27.6.1989)), Egypt (Council decision 2011/172/CFSP (OJ L 76, 22.3.2011, p. 63)), Republic of Guinea (Conakry) (Council decision 2010/638/CFSP (OJ L 280, 26.10.2010, p. 10)), Moldova (Council decision 2010/573/CFSP (OJ L 253, 28.9.2010, p. 54)), Russian Federation (Council decision 2014/386/CFSP (OJ L 183, 24.6.2014, p. 70)), Syria (Council decision 2013/255/CFSP (OJ L 147, 1.6.2013, p. 14)), Tunisia (Council decision 2011/72/CFSP (OJ L 28, 2.2.2011, p. 62)), USA (Joint Action 1996/668/CFSP (OJ L 309, 29.11.1996, p. 7) and Council regulation (EC) no. 2271/1996 (OJ L 309, 29.11.1996, p. 1)).

**31** See Article 352 of the Treaty on the Functioning of the European Union (TFEU).

including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned to Sudan by nationals of Member States or from the territories of Member States, or using their flag vessels or aircraft, shall be prohibited whether originating or not in their territories”.<sup>32</sup>

The Council does not list in the annex of its decision weapons and munitions or categories covered by the embargo. The exact scope is left under the interpretation of Member States authorities. However, a common military list used as reference by most of Member States has been adopted and regularly updated.<sup>33</sup>

Except for Belarus, Myanmar, the Russian Federation, Syria and China conventional weapons restrictive measures adopted by the EU consists in implementation of an UNSCR.

Restrictive measures on dual-use items adopted by the EU contrary to conventional weapons, restrictive measures concerning dual-use items are an exclusive competence of the EU. The process requires the adoption of two instruments.

Firstly, a foreign policy decision adopted by the Council setting the political objective of restrictive measures and operations targeted. E.g. for Belarus where the Council expressed “concern about the continued lack of respect for human rights, democracy and rule of law in Belarus, and that political prisoners have not been released or rehabilitated”<sup>34</sup> or for the Russian Federation where the Council condemned “the unprovoked violation of Ukrainian sovereignty and territorial integrity by the Russian Federation and called on the Russian Federation to immediately withdraw its armed forces to the areas of their permanent stationing, in accordance with the

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**32** Council decision 2014/450/CFSP of 10 July 2014 concerning restrictive measures in view of the situation in Sudan and repealing Decision 2011/423/CFSP (OJ L 203 11.7.2014, p. 106–112).

**33** Common military list of the European Union adopted by the Council on 9 February 2015 (OJ C129 21.4.2015, p. 1–32).

**34** Council decision 2012/642/CFSP of 15 October 2012 concerning restrictive measures against Belarus.

relevant agreements”.<sup>35</sup> Concerning operations most of Council decisions used the UNSC 1540 wording by controlling “sale, supply, transfer or export” and also providing “directly or indirectly, technical assistance, brokering services or other services related”.

Regarding the list of items to be controlled, the situation is somewhat more difficult as the Council does not often use the term dual-use<sup>36</sup> and items are usually not listed in its decisions. Most restrictive measures request to control “arms related materiel and services” that include only dual-use items related to conventional weapons and not to WMD. Only in decisions concerning the Russian Federation, Iran and North Korea the scope is enlarged to dual-use goods and technology related to WMD.

A Council regulation implementing and defining restrictive measures systematically completes the Council decision. As long as these measures constrain by interrupting partly or completely economic relation with a third country, the EU common commercial policy, an EU exclusive competence ruled by EU law, it requires the adoption of an EU regulation on the basis of article 217 of TFEU. E.g. the Regulation adopting restrictive measures against the Central African Republic provides that “certain measures set forth in UNSCR 2127 (2013) as well as in UNSCR 2134 (2014) fall within the scope of the Treaty on the Functioning of the European Union and, therefore, notably with a view to ensuring their uniform application by economic operators in all Member States, regulatory action at the level of the Union is required for their implementation”.<sup>37</sup>

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**35** Council decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine (OJ L229 31.7.2014, p. 13).

**36** Only in decisions concerning Iran (Council decision 2010/413/CFSP (OJ L 195, 27.7.2010, p. 39)) and the Russian Federation (Council decision 2014/512/CFSP (OJ L 229, 31.7.2014, p. 13)).

**37** Council regulation 224/2014 of 10 March 2014 concerning restrictive measures in view of the situation in the Central African Republic Council decision 2014/512/CFSP (OJ L 70, 11.3.2014, p. 01).

If most Regulations restate objectives and principles of the restrictive measures as defined by Council decision (prohibition to export, supply services and providing technical assistance.), Regulations also include necessary elements to implement the Decision, as the list of items concerned by the measures. E.g. for North Korea where the Regulation stipulates that it “derogates from existing Community legislation that provides for general rules on exports to, and imports from, third countries, and in particular from Council regulation (EC) No 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology; most of these items and technology should be covered by this Regulation”.<sup>38</sup>

If restrictive measures are like for weapons implemented by Member States authorities, for dual-use items, the list is legally binding and regulation principles might be challenged in front of the EU Court of Justice.

→ **RESTRICTIVE MEASURES ON FREEZING OF  
FUND AND FINANCIAL ASSETS ADOPTED BY  
THE EU**

The Council regularly adopted restrictive measures on freezing funds and financial assets since the relevant provision has been introduced in the Treaty. As concerns dual-use items, two instruments, are required namely a CFSP Council decision setting objectives and principles as well as a Council regulation designating natural and legal persons, entities or bodies concerned by the measures. The EU Parliament contested in 2012 the legal basis for that Regulation. The view was that since entry into force of the Lisbon Treaty, restrictive measures directed against certain persons and entities must have been adopted in codecision and not by the Council alone. The Court of Justice rejected that argument.<sup>39</sup>

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**38** Council regulation 329/2007 no. 329/2007 of 27 March 2007 concerning restrictive measures against the Democratic People’s Republic of Korea (OJ L 88, 29.3.2007, p. 01).

**39** Judgement of the Court 19 July 2012 Case C-130/10.

EU financial regulations on restrictive measure are the most frequently adopted instruments; they are, however, also most contested by the targeted persons and entities. This concerns in particular foreign terrorist organisations (AL Qaida) and certain citizens from Iran, Syria, Ukraine, and Russian Federation. The Court had to consider on several occasions action against a Regulation initiated by a natural or legal person who considered to be inadvertently included in the list. The Court affirmed that in some cases the Council did not have the competence for listing the entities (without a joint proposal from the EU's High Representative).<sup>40</sup> In other cases sanctions pronounced lacked intention and evidence,<sup>41</sup> or violated the principle of legal certainty<sup>42</sup> because of insufficient elements of proof, or their secrecy and vagueness.<sup>43</sup>

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- 40** Cases T-9/13 and T-10/13, *National Iranian Gas Company (NIGC) and Bank of Industry and Mine (BIM) v. Council*, 29 April 2015, not yet published.
- 41** See case T-380/14, *Pshonka v. Council*, case in course, submitted on 30 May 2014, against the lack of motivation and evidence as for the involvement of the target person in the pillage of Ukrainian funds.
- 42** See case T-12/11, *Iran Insurance Company v. Council*, 6 September 2013, published in the electronic Reports of Cases (Court Reports - general - 'Information on unpublished decisions' section); case T262/12, *Central Bank of Iran v. Council*, 18 September 2014, not yet published.
- 43** See, for example, as for Iranian entities, ECJ (European Court of Justice), case T-181/13, *Sharif University of Technology v. Council*, 3 July 2014, not yet published; case T-228/02, *Organisation des Modjahedines du peuple d'Iran v. Council*, 12 December 2006, ECR, 2006, II-04665; case T-489/10, *Islamic Republic of Iran Shipping Lines and Others v. Council*, 16 September 2013, published in the electronic Reports of Cases (Court Reports - general); case T-494/10, *Bank Saderat Iran v. Council*, 5 February 2013, published in the electronic Reports of Cases (Court Reports - general); case T-35/10, *Bank Melli Iran v. Council*, 6 September 2013, published in the electronic Reports of Cases (Court Reports - general); case T-390/08, *Bank Melli Iran v. Council*, 14 October 2009, ECR, 2009, II-03967; case T-284/08, *People's Mojahedin Organization of Iran v. Council*, 4 December 2008, ECR, 2008 II-03487; case T-256/07, *People's Mojahedin Organization of Iran v. Council*, 23 October 2008, ECR, 2008, II-03019; case T-262/12, *Central Bank of Iran v. Council*, 18 September 2014, not yet published; case T-392/11, *Iran Transfo v. Council*, 16 May 2013, not yet published; case T-13/11, *Post Bank Iran v. Council*, 6 September 2013, published in the electronic Reports of Cases (Court Reports - general - 'Information on unpublished decisions' section); case T-563/12, *Central Bank v. Council*, 25 March 2015, not yet published; case T-9/13 and T-10/13, *National Iranian Gas Company (NIGC) and Bank of Industry and Mine (BIM) v. Council*, 29 April 2015, not yet published; case T-433/13, *Petropars et others v. Council*, 5 May 2015, not yet published; T-176/12, *Bank Tejarat v. Council*, 22 January 2015, not yet published; T-420/11 and T-56/12 *Ocean Capital Administration GmbH & Others, and IRISL Maritime Training Institute and Others v. Council*, 22 January 2015, not yet published.

### **3.2. Sanctions adopted and implemented by individual States “internal sanctions”**

The sovereign State, its laws and regulations as discussed in several contributions to this Volume are the definitive level of implementation of sanctions. This “third level” somewhat hypothetically presented as following the highest level, namely the UNSC sanction regimes having universal validity and second, by the EU Council regulations entering directly the legal corpus of the sovereign State, Member of the EU. In the present context, this applies in particular to EU dual-use regulations including control lists of dual-use items requiring inter alia an export licence.

However, the hierarchy of sanctions and their implementation need to be presented from the perspective of the State: regardless of the source having adopted a binding sanction regime, penalties both administrative and criminal are autonomously decided by the sovereign State Member of the United Nations and of the European Union.

In the following chapters of this publication, these issues are discussed and analysed notably as regards the State.