Implementation and monitoring of the EU sanctions’ regimes, including recommendations to reinforce the EU’s capacities to implement and monitor sanctions

Executive summary

Introduction

• It is increasingly recognised that the use of sanctions is not cost-free for the European Union (EU) and its Member States, and that the effective implementation and enforcement of sanctions is a prerequisite for their geostrategic success, credibility and political sustainability.

• By assessing recent practical and institutional developments in the EU sanctions policy cycle, this Study demonstrates how EU institutions and Member States need to improve their engagement further in the various phases of policy-making: planning, implementation, and monitoring and evaluation.

Planning phase

• Following Russia’s invasion of Ukraine in February 2022, the international coordination of unilateral sanctions, including those adopted by the EU, has increasingly taken place within the Group of Seven (G7) context. This reflects a trend responding to the decline in United Nations Security Council (UNSC) sanctions activity due to Russia’s veto. Multilateral sanctions are increasingly replaced by the coordinated efforts of Western-led sanctions coalitions, usually including the United States of America, the EU, the United Kingdom, Canada, Australia and New Zealand. A set of like-minded partners also align fully or partially with these measures.

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Cooperation with these partners and increasing domestic costs for applying broad sanctions against large geostrategic adversaries, such as Russia, has increased pressure on the EU to improve its sanctions implementation record.

The European Commission’s proactive role in designing sanctions is altering the institutional balance in its favour, thereby helping it to realise its ambition of becoming the ‘geopolitical Commission’.

Implementation phase

In contrast to the centralised nature of EU sanctions decision-making, any implementation and enforcement has traditionally relied on a decentralised system, in accordance with the subsidiarity principle enshrined in the EU Treaty.

The system’s decentralised nature has resulted in a mosaic of implementation and enforcement practices across the EU, with more than 160 designated competent authorities in Member States. This scattered approach is no longer considered satisfactory given the new emphasis on uniform and strict implementation that was brought about by the 2022 sanctions against Russia.

Member States rely on widely different ‘national sanctions implementation systems’, with variations in: the number of National Competent Authorities (NCAs), ranging from 1 to 27 designated; the centralisation or decentralisation of their domestic cooperation; the coordination forums within which they operate; as well as their (missing) mandates for granting authorisations and licences to private actors.

Besides the general confusion and mutual misunderstanding such dissimilar implementation systems create for both public and private actors across the EU, this scattered approach leads to contradictions in Member States’ legal interpretations of key sanctions provisions. This, in turn, poses a risk to the internal market’s equity.

Wide discrepancies between Member States are also amply documented in terms of penalties for sanctions violations. One of the first steps taken with a view to strengthening enforcement has been that of classifying the violation of sanctions as a ‘Euro-crime’ under Article 83.1 of the Treaty on the Functioning of the EU. This will allow the Commission to establish common definitions and minimum penalties for sanctions breaches throughout the EU.

Monitoring and evaluation phase

Whereas the daily monitoring of sanctions implementation is predominantly led by the Commission, it is also assisted by the European External Action Service (EEAS) and the Council Secretariat, thereby establishing feedback loops to ensure a continued improvement of existing sanctions regimes.

The institutions’ heightened focus on monitoring sanctions implementation and effectiveness has increased the reporting requirements for NCAs amongst Member States. However, it is not always readily understood how this additional level of monitoring data informs policy-making.

The European Parliament (EP) plays an active and notable advocacy role, taking early steps to increase its institutional capacities in the sanctions field. More concerted efforts could be undertaken to establish stronger know-how and better monitoring tools for Members of the European Parliament.

Any evaluation of the performance of sanctions regimes is traditionally conducted in the geographical Council Working Parties’ framework. However, there is still no agreed evaluative framework that could be applied to assess progress. Moreover, there is no mechanism foreseen for the collection of information that would build institutional memory about previous sanctions regimes, the formulation of lessons learned, or knowledge transfer from the UNSC context.
The EU has started to frame initiatives to address any circumvention of sanctions. This important focus includes the appointment of an Envoy for the Implementation of Sanctions, whose role is still being developed.

**Recommendations**

To improve implementation and enforcement performance, it is recommended that the EU:

- Agrees on a joint definition of NCAs and their tasks with a view to facilitating coordination between different NCAs and with EU stakeholders;
- Ensures adequate guidance for EU economic operators to support their compliance with sanctions legislation;
- Enhances implementation and enforcement expertise in the planning phase of sanctions regimes, including in the EP and its Secretariat; and
- Designs a new horizontal sanctions regime to counter circumvention.

To improve scrutiny and political input, it is also recommended that the EP:

- Creates structures to foster technical understanding and know-how by formalising a Committee on Foreign Affairs’ Working Group on sanctions, and, in the medium term, considers establishing a Subcommittee on Sanctions;
- Builds and retains technical expertise among EP advisors in the fields of sanctions, anti-money laundering and export controls. Dedicated training programmes could also be considered;
- Establishes, independently from those in other EU institutions, a monitoring repository that can serve as an independent and systemised knowledge base for the EP to obtain a better overview of general implementation challenges or possible specific cases of sanctions violations at the level of Member States;
- Demands technical briefings after each new/amended sanctions regime from the EEAS or the Commission to enhance the quality of the EP scrutiny. This would eventually also make the EP more influential in the design and management of EU sanctions policy. In the absence of formal powers in the sanctions decision-making process, the EP can avail itself of traditional tools of parliamentary scrutiny to increase its influence by providing informed recommendations to guide the design and amendment of sanctions.

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This document is the executive summary of the study ‘Implementation and monitoring of the EU sanctions’ regimes, including recommendations to reinforce the EU’s capacities to implement and monitor sanctions’. The full paper, which is available in English can be downloaded at: https://www.europarl.europa.eu/RegData/etudes/STUD/2023/702603/EXPO_STU(2023)702603_EN.pdf

This executive summary will be available in the following languages: English and French. The study, which is available in English, and the summaries can be downloaded at: ThinkTank

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