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BOFAXE



The legal framework of EU restrictive measures regarding Ukraine

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Focus

The European Parliament has recently imposed restrictive measures on Ukrainian authorities. The legal framework for this decision is discussed.

European Commission,
Restrictive measures, 2008.
http://eeas.europa.eu/cfsp/sanctions/docs/index_en.pdf#1

European Parliament,
Resolution 2014/2595(RSP).
<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2014-0170&language=EN&ring=P7-RC-2014-0219>

Council of the European Union,
Council Decision 2014/145/CFSP.
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2014:078:FULL:EN:PDF>

The situation in Ukraine deteriorated in mid-February as human rights were reportedly being violated during the anti-government protests. Diplomatic efforts to find a political and peaceful solution did not achieve their goal, necessitating the EU to respond and condemn the excessive violence of all involved parties. The European Parliament issued resolution 2014/2595(RSP) on 27 February 2014 in which it calls for the enactment of the targeted sanctions introduced in the conclusions of the extraordinary Foreign Affairs Council.

The EU has two legal bases to impose sanctions: Firstly, when the UN Security Council (UNSC) declares a situation as a threat to peace, this organ is entitled to make recommendations. Depending on the evolution of the situation, they can further impose sanctions through resolutions, which are legally binding under Chapter VII for all state parties to the UN Charter. Secondly, the EU can impose autonomous restrictive measures (sanctions) within the framework of the Common Foreign and Security Policy (CFSP). Article 215 of the Treaty on the Functioning of the European Union (TFEU) provides a legal basis for restrictive measures, when these are necessary to achieve the objectives of the CFSP. Resolutions issued by the European Parliament in this regard are legally binding and directly applicable for all member states. "Sanctions are an instrument of a diplomatic or economic nature which seek to bring about a change in activities or policies such as violations of international law or human rights, or policies that do not respect the rule of law or democratic principles." (European Commission, 2008, p. 1). Regarding the Ukrainian case, the UNSC did not declare the situation in Ukraine as a threat to peace and therefore the UN legal framework on sanctions is not applicable. The EU sanctions that have been imposed against the Ukrainian government are thus issued under the European legal framework of the CFSP.

Sanctions issued under this legal framework should be guided by principles set out in "EU Best Practices for the effective implementation of restrictive measures (2007)", "Basic principles on the use of restrictive measures" (2004) and "Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy" (2009). Many of these principles have been addressed in Resolution 2014/2595(RSP) issued by the European Parliament. The restrictive measures include a foreign policy dimension that, in this case, aims to stop the human rights violation and tries to implement a functioning democratic system. Furthermore, the sanctions specifically target the responsible individuals and entities and try to minimize adverse effects and consequences for others. Additionally, the restrictive measures are in accordance with international law and international obligations of the European Community. Finally, the measures respect human rights and fundamental freedoms and further are proportional to their objectives. A few other principles have not been addressed by the resolution. Firstly, measures have to be appropriate in order to promote the desired outcome. Time will learn if this is the case regarding the imposed sanctions. The resolution also does not cover two further principles of clear criteria for targeted sanctions and appropriate exemptions for basic human needs. Conclusively, the sanctions introduced by the EU are based on the legal framework of the CFSP. The resolution addresses most of the principles set out in the three guiding documents.

The recent violation of Ukrainian sovereignty by Russian armed forces, has led the European Parliament, on 17 March 2014, to impose sanctions against officials held responsible for this situation (Council Decision 2014/145/CFSP). These restrictive measures are also issued under the legal framework of the CFSP and their possible expansion will depend on further steps taken by the Russian Federation which could destabilize the situation in the Ukraine, including the referendum condemned by the EU and the possible annexation of Crimea.

Verantwortung

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