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The European Union’s Sanction Policy – Challenges and Opportunities of the 2024 Hungarian EU Presidency

During the 2011 Hungarian EU Presidency, restrictive measures were not among the priorities; however, due to the “Arab Spring”, they became an important part of the portfolio. The current legislation on restrictive measures against Russian entities and individuals regarding Ukraine is in force until 31 July 2024; hence, this dossier will be handled during the Hungarian EU Presidency. Currently, the most significant risk in the policy field on restrictive measures is a tit-for-tat between the EU and the Global South. This would cause massive harm to the EU’s reindustrialisation and economic security, as well as to Hungary’s economy. Awareness of the possible implications of a trade war and the expected damage to the EU economy should be raised. The unanimity voting would increase the effectiveness of the EU decision-making; however, it could harm Member States’ critical sectors or national security.

Introduction

The current legislation on restrictive measures against Russian entities and individuals regarding Ukraine is in force until 31 July 2024; hence, this dossier will be handled during the Hungarian EU Presidency.

In addition to its timeliness, the policy field is relevant in several ways, as follows:

- The latest sanctions packages of the EU aim to target third countries, such as India and China, in order to stop possible circumventions of the restrictive measures against Russia.
- The EU’s official China strategy, published in December 2023, clearly references its most important trading partner in Asia as an economic competitor and systemic rival.
- China introduced restrictions on the export of various forms of antimony, chromium, cobalt, copper, graphite, indium, lead, magnesium, talc, tantalum and tin in 2016, respectively, of gallium and germanium

in 2023. The EU aims to settle the trade dispute at the WTO. However, the Dispute Settlement Body postponed its establishment at its meeting on 8 November 2016, which has not been replaced since. Regarding the latest dispute, no official complaint has been registered on the website of the WTO.¹

- Similar countermeasures of restricting exports or imports could seriously harm the EU’s economic competitiveness.
- In the short and medium term, we cannot see that Russia’s economy would significantly weaken to the degree that it could not continue the war against Ukraine. The restrictive effects of the measures might take longer than expected to become visible, leading to a prolonged war. (Note that the Cold War had the objective of luring the USSR into the arms race until it could not finance it – that lasted for decades.) On the long term, however, this is likely to change.
- At present, Russia and Iran are the two countries most subjected to multilateral sanctions, and both have experienced the disadvantages of being disconnected from SWIFT. This is a strong signal to other countries but not necessarily an incentive for them to stop the sanctioned behaviour and change policy. The most recent example is the enlargement of the BRICS countries, whereby the two heavily sanctioned countries can find close allies and sustain their regimes. Moreover, the BRICS+ have been working to strengthen their currencies for some time, and currently, a growing number of transactions are made in their currencies.
- Countries of the Global South, although not a homogenous group, are increasingly calling for reform of international organisations such as the UNSC, the IMF and the World Bank. The EU’s normative power to transmit its values internationally seems to be diminishing, and tensions between the blocs seem to be increasing.

What we know from the existing literature

Economic sanctions rarely force political elites to abandon their objectionable behaviour; in fact, this is called the naive theory of economic warfare.

¹ World Trade Organization s. a.

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Sanctions tend to reinforce the power of the challenged leader and increase his popular support.²

The vast majority of targeted, sectoral and comprehensive sanctions, whether country-wide or sectoral, did not contribute to forcing or changing the politics of repressive political regimes. Restrictive measures are the least likely to achieve their objectives in the case of authoritarian regimes.³ Sanctions typically have the potential to limit a contested behaviour in the first place.

The EU's sanctions policies are most likely to target authoritarian regimes – that is, they are least likely to change or force the desired political change. EU sanctions are successful against countries with some form of dependency relationship with the EU or an interest in cooperating with the EU because of economic and trade links or prestige concerns.⁴

The 2011 Hungarian EU Presidency from the policy point of view

Hungary took over the rotating Presidency of the Council of the European Union in the first half of 2011, in a trio presidency with Spain and Belgium. The earlier economic crisis shaped the former trio's program. Thus, the main focus areas were relaunching economic growth, support for social cohesion, addressing challenges related to the common energy market, and implementation of the Stockholm Program, including common management and asylum.

In other words, at the time, sanctions policy was not a priority for the trio or the Hungarian Presidency. Nevertheless, the Hungarian Presidency had a particularly busy time implementing restrictive measures, mainly because of the "Arab Spring". The series of events triggered strong international reactions, to which the EU responded swiftly by introducing various restrictive measures:

1. Tunisia: The EU independently of the UN Security Council (UNSC), imposed financial restrictive measures against the former president and his spouse; later implemented the UNSC Decision 2011/72/CFSP.
2. Libya: The EU adopted the UNSC Decision on an arms embargo and assets freezing, imposing restrictive measures against the Libyan Government. On 17 March, the UNSC adopted Resolution 1973, reaffirming its previous

² GALTUNG 1967.

³ HUFBAUER et al. 1990; NOSSAL 1999; KAEMPFER–LOWENBERG 1999; MARINOV 2005.

⁴ PORTELA 2012.

measures and authorising foreign intervention to protect civilians.⁵ The long-term consequences, particularly in the migration crisis, are highly controversial.

3. Egypt: Freezing of funds and economic resources of the former president and his family members.⁶
4. Iran: Freezing of funds and economic resources of persons responsible for serious human rights violations in Iran; sectoral restrictive measures, such as the export of goods related to nuclear and missile technology; and a ban on the export of equipment and technology for use in key sectors of the oil and gas industry.
5. Syria: Restrictive measures against those responsible for the violent repression of Syrian civilians,⁷ ban of arms exports, and freezing of funds and economic resources of certain persons and entities.

Restrictive measures unrelated to the Arab Spring

6. Bosnia and Herzegovina: Freezing of funds and economic resources of persons whose activities violate the sovereignty, territorial integrity, constitutional order and international legal personality of Bosnia and Herzegovina, seriously undermine the security situation in Bosnia and Herzegovina, or violate the Dayton–Paris General Framework Agreement for Peace.⁸

State of play in the current challenges of the policy

Currently, 45% of restrictive measures enacted by the EU are in the sanctions regime related to Ukraine: 421 entities and 1,721 individuals, 1,715 travel bans and 2,142 financial sanctions.⁹ These sanctions are divided into two regimes: restrictive measures regarding actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (which has most of the current designations) and restrictive measures directed against certain persons, entities and bodies given the situation in Ukraine (misappropriation of state funds regime).

⁵ UNSC Resolution S/RES/1973 (2011).

⁶ Council Regulation (EU) No. 270/2011.

⁷ Council Decision 2011/273/CFSP.

⁸ Council Decision 2011/173/CFSP.

⁹ EU Sanctions Tracker s. a.

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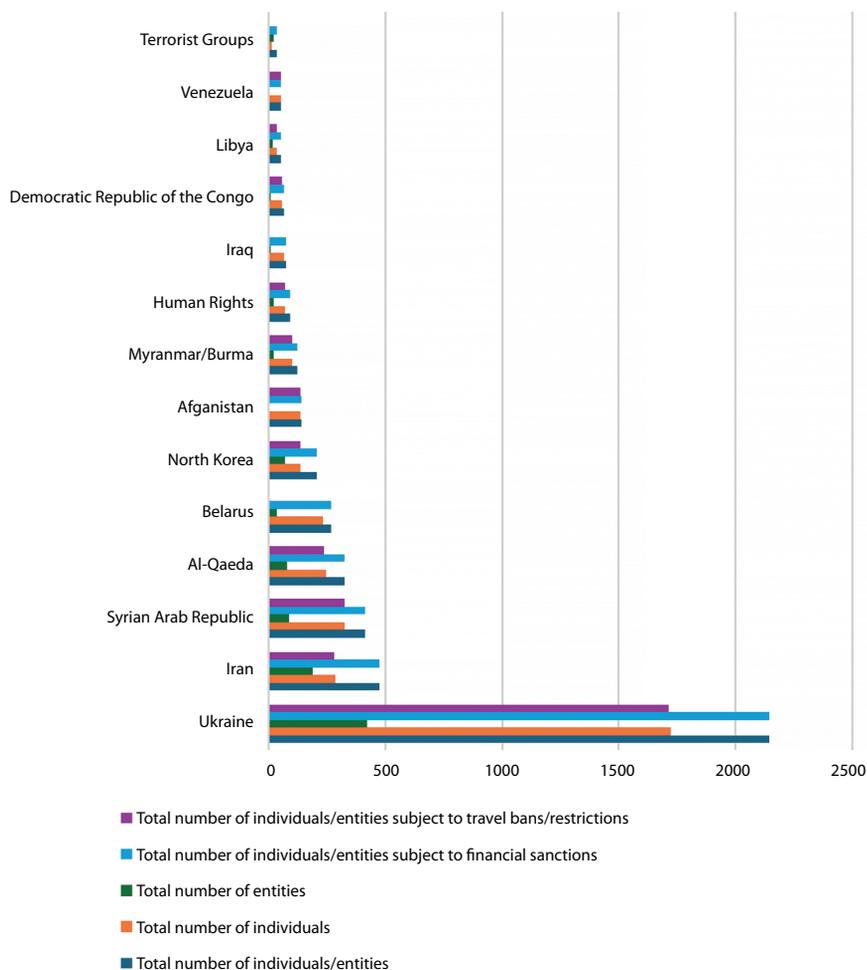


Figure 1: EU Sanctions Regime as of March 2024

Source: EU Sanctions Tracker s. a.

Institutional setting

- Restrictive measures are decided upon and legislated within the EU's Common Foreign and Security Policy pillar framework. The decision-making process is intergovernmental and is one of the few institutions where the Council's twenty-seven Member States must vote unanimously – except for the appointment of special representatives. Abstention on specific issues is not an obstacle to unanimity.

- Legislative acts can be adopted at the initiative of the European Council, individual Member States, the Commission, or the High Representative. Consequently, the European Commission plays a relatively less important role in decision-making. The European Parliament has no role in decision-making at all; the Council must only inform the Parliament.
- The European Magnitsky Act has been adopted in some form by the EU.¹⁰ It has been used sporadically and does not include human rights violations related to corruption.¹¹ The Magnitsky Acts are designed to allow countries issuing sanctions for serious human rights violations and abuses around the world to impose restrictive measures against certain individuals and organisations, regardless of their geographical location.
- The EU accepted the Action Plan on Human Rights and Democracy 2020–2024, published in March 2020.¹² This plan sets very ambitious targets for the human rights strategy, as it aims to be a “human rights superpower”.
- In June 2023 the Commission issued its Communication on the European Economic Security Strategy and set out the guidelines that the EU intends to use in its relations with both its Member States and third parties.¹³ Although neither Russia nor China are named in the document, the types of threats listed refer to the two major powers.
- An essential element of the Economic security strategy is its objective to diversify supply chains and export markets by building broad partnerships, emphasising the role of an international rules-based economic order and multilateral institutions. It highlights the development of partnerships with countries seeking to reduce similar risks and finalise further free trade agreements. It emphasises promoting research and development in strategic areas such as advanced semiconductors, quantum computing, biotechnology, clean energy and critical raw materials. In addition, it is considered vital to protect existing technologies in areas such as key enabling technologies with possible military applications, such as quantum technology, advanced semiconductors, or specific areas of artificial intelligence.

¹⁰ Council Regulation (EU) 2020/1998.

¹¹ RUSSELL 2021.

¹² European Commission 2020.

¹³ European Commission 2023a.

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- The latest document of critical raw materials was updated by the European Commission in 2023. China is the largest global supplier of the vast majority of the seventy elements listed as critical raw materials, and there are several raw materials currently *only* supplied by China. Exposure to raw materials from China makes the EU's economic security extremely vulnerable and puts the economy at a competitive disadvantage.¹⁴
- The national security strategy of the USA, as released in 2022, seeks to strengthen its position in a multipolar world. As such, it aims to offer new possibilities to countries disenchanted by the post-Cold War world order and selects its partners in regard to their relation to USA rivals: China, Russia, Iran or the BRICS group.¹⁵

Challenges of the policy field

- The pursuit of unanimity undoubtedly slows down this Council formation, making it less effective. Therefore, it is not surprising that many are calling for the abolition of unanimity and the introduction of qualified majority voting.
- The European Parliament is the most vehement proponent of qualified majority voting, with a commissioned study highlighting the expected benefits of the institutional and legislative change. The EP calls for changes to the EU treaties to achieve this, among other things.¹⁶
- The EP calls for an EU-wide Magnitsky Act, respectively, their wider enactment.¹⁷ The EP considers that the use of this instrument would allow for more frequent, swift and independent restrictive measures without needing the support or votes of Member States.
- Due to the Action Plan on Human Rights and Democracy, it can be expected that many actors will push for its more comprehensive implementation, leading to more restrictive measures. This might alienate possible trade partners that possess some critical raw material needed for the economic security of the EU.

¹⁴ European Commission 2023b.

¹⁵ FAUST 2023.

¹⁶ WESSEL-SZÉP 2022.

¹⁷ RUSSELL 2021.

- The introduction of sectoral or economic sanctions affecting strategic industries, bans on technology exports, or restrictions on common R&D projects could hinder the development of several Member States' companies.
- Russian countersanctions affect Member States to different degrees. While some have little trade with Russia, other countries are more exposed to economic losses due to Russian retaliation.
- While China will not likely engage in a total trade war with the EU and the USA, it will likely introduce further countermeasures, restricting the export of some critical raw materials or raising prices. The EU's dependence on these critical raw materials is arguably as alarming as its dependence on relatively cheap Russian energy.
- It is extremely difficult to monitor the implementation of restrictive measures in third countries. Therefore, this raises the question of the EU's administrative capacity, on the one hand, and the likely effectiveness of the measures if monitoring is – at best – extremely limited.
- The United States regards both China and Russia as rivals and selects its partners based on their relationship to its challengers, therefore the EU is in a very delicate position.
- The effectiveness of restrictive measures requires very strong cooperation between the sender countries, in this case, first of all, Canada, Japan, the U.K. and the USA. Yet neither of these partners has the needed capacities to monitor the impact of their restrictive measures.
- This raises the concern that the burdens of these major economies are unequally distributed when compared to countries circumventing the restrictive measures. This might harm the economic competitiveness of the G7 countries.
- The restrictive measures increase the likelihood of a growing black or grey market. Additionally, it strengthens the sanctioned countries' internal markets, pushing them into autarchy, while they usually redistribute the resources and aim to fill the void created on the markets.

Hungary's national interest in the policy field

Holding the rotating presidency of the European Union ensures the continuity of the EU agenda, driving forward the Council's work on EU legislation and facilitating orderly legislative processes and cooperation between Member

States. In this order, Member States must act as honest brokers. In this role, Hungary would welcome a quick agreement between Member States regarding the details of the restrictive measures against Russia.

Hungary is one of the European countries that was heavily reliant on Russian energy. According to the IMF, a total gas supply shut-off could have caused a 6.5% negative impact on the country's economic output.¹⁸ In 2022, Hungary started diversifying its energy sources and suppliers; however, this is still a relatively long process that requires heavy investments and several years. Due to its current dependence on Russian energy supplies, the country's best interest is to have good working relationships with the Federation.

Hungary is a landlocked country with one of the most open economies in the world; trade and its openness are crucial for its national interest. Restrictions imposed against overwhelmingly authoritarian regimes rarely achieve the goal of making the regime democratic. Their introduction should be considered in light of their long-term political and economic results, especially regarding sectoral and trade restrictions. The possibility of an emerging trade war between the EU and China, India, or any other third state, as an instalment of restrictive measures related to the Ukraine sanction regime, could negatively impact Hungary's economy. The national interest would, therefore, call for active participation in mitigating the conflict between the EU and possible targets of future sanctions.

Due to its open markets and reliance on trade with markets of different countries, Hungary emphasises its economic interests and openly pursues them. This is often perceived as not showing loyalty and commitment to its political partners in the EU, a heavily criticised policy decision. Most political partners perceive China as both an ally and a strategic rival, and the EU has begun taking several risk-reducing measures to decrease its dependence on China. A possible trade war between the EU and China seems to be gaining momentum.¹⁹ The economic consequences of it would be extremely serious for the EU and Germany's economies, and thus indirectly for Hungary's economy as well.²⁰ If tensions between political and trading partners do not ease, Hungary might lose either trade or political partners.

There is a considerable size of ethnic Hungarians living in Ukraine, whose rights were heavily affected by a law addressing the rights of national

¹⁸ FLANAGAN et al. 2022.

¹⁹ MÁTHÉ 2023.

²⁰ FELBERMAYR et al. 2021.

minorities, reducing their language rights. Hungary assumes responsibility for the ethnic Hungarians outside its borders and has attempted to negotiate the restoration of the communities' language rights, but so far, with limited success. It is essential to remember that before and during the accession process, candidate states must adhere to strict EU legislation on human and minority rights. However, once they are members of the EU, newly gained human and language rights can be revoked as the EU does not have the competence – and the political will – to enforce these rights later. Steps taken by Hungary before Ukraine accedes to the EU about the restrictive measures against Russia could be held against the Hungarian ethnic minorities after a possible accession.

The advocated qualified majority voting and the broader application of the EU-wide Magnitsky Act do increase the EU's effectiveness in taking measures against regimes, individuals and entities who violate international law or are responsible for serious human rights violations: genocide, crimes against humanity; torture and other cruel, inhuman or degrading treatment; slavery; extrajudicial, summary or arbitrary executions and killings; enforced disappearance of persons; and arbitrary arrests or detentions, as well as corruption. However, in both cases, Member States must surrender their power over such decisions to the supranational bodies. In this case, individual Member States' interests will likely not be considered. This could lead to accepting measures that potentially harm individual Member States' national interests and security.

Recommendations

Currently, the most significant risk of the policy field on restrictive measures is an instalment of a trade war between the EU and the Global South. This would cause massive harm to the EU's reindustrialisation and economic security, as well as to Hungary's economy. Currently, it seems that there is limited openness on behalf of the majority of the EU leaders to mitigate and moderate the discord with the Global South: Political declarations from both sides rarely show the intent of avoiding, defeating, compromising, accommodating, or collaborating, which is likely to lead to an escalation of the conflict.

- During the Presidency, Hungary should encourage conflict resolution, especially with China, through the WTO.
- During the Presidency, Hungary should encourage collaboration on the joint purchase of critical raw materials by the EU's political allies, especially the USA.

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- There is reasonable doubt that a comprehensive impact assessment of a trade war between the EU and the Global South has been conducted and presented to EU decision-makers. It might help ease the tensions to see the challenges from a long-term perspective, more precisely, how the high prices and/or unavailability of critical and strategic raw materials impact the EU's automotive industry, technological development, the military industry and the security of the EU, as well as its overall productivity.
- The summary of the impact assessments could be made available to political decision-makers before dossiers dealing with issues such as trade, sanctions, or external policy.
- Russia will hold the chairmanship of BRICS+ in 2024. The BRICS summit will be held in October during the Hungarian Presidency of the EU. It might be useful to draw attention to the long-term effects of a possible trade war during this time.
- The G20 meeting in 2024 will be held during the Hungarian EU Presidency. It will take place in Brazil, a BRICS+ country, and will focus on the Russian-Ukrainian issue and the reform of international institutions. This forum could serve as a platform to ease tensions.
- The Hungarian Presidency could create an additional forum for dialogue between the EU and the countries of the Global South and possibly reduce the growing tensions.
- A treaty change would be necessary to change the voting mechanism in EU external policy; therefore, losing the veto power is not an imminent danger. However, the possibilities of making decisions in external policy questions with a qualified majority should be limited.
- As Hungary is perceived by its political partners as distrusted, strengthening the diplomatic channels and softening the rhetoric to ensure loyalty toward political partners would be welcome. As part of the EU, this could be especially important in the case of the USA.

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