

# Chaudfontaine Group Seminar 2015

Sensitive trade control and  
sanctions: implementing  
embargoes and penalties in case  
of violations

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# SANCTIONS IN TRADE CONTEXT



In general → sanction is the reaction for the violation of a rule

In trade context → 2 categories:

1. **“INTERNAL” SANCTIONS** (within trade): penalties for the violation of export control regimes
2. **“EXTERNAL” SANCTIONS**: economic measures for achieving policy/political purposes

# “INTERNAL” SANCTIONS (1)



mainly triggered  
at national level



- Sender: national States;
- Target: individuals/enterprises violating export control rules;
- Purpose: punitive/deterrent;
- Nature:
  - Administrative;
  - Criminal; and
  - Civil.

## “INTERNAL” SANCTIONS (2)

- At the international level:
  - a) Legally binding → NPT, BWC, CWC, UN resolutions (57/66 of 2002, 1540/2004)



- b) Politically binding → export control regimes

Both the frameworks invite States to introduce measures for cases of violation of export control rules

## “INTERNAL” SANCTIONS (3)



- At the EU level:

Regulation 428/2009 (dual use regulation)

Regulation 258/2012 (establishing export authorization, and import and transit measures for firearms and related items)

Regulation 1236/2005 (concerning trade in certain goods which could be used for capital punishment and torture)



do not indicate specific penalties, but affirm that each State shall lay down rules on penalties in case of infringement

# “EXTERNAL” SANCTIONS (1)

→ International, regional (EU) and national level

- Sender:
  - International community
  - Regional systems (EU)
  - National States
- Target:
  - States (comprehensive sanctions)
  - individuals/enterprises (targeted sanctions)
- Purpose: political/policy change
- Nature:
  - Trade: embargo (general or specific)
  - Financial : asset freeze
  - Transport: visa/travel bans



# “EXTERNAL” SANCTIONS (2)



## INTERNATIONAL SANCTIONS:

- UN Charter, Chapter VII (in particular art. 41): sanctions through UNSC Resolutions (unanimously adopted), provided that there is a threat to peace and security;
- binding on all UN Member States: implementation left to States (art. 48);
- Types: general embargoes, Arms embargoes, asset freeze, travel bans
- Measures towards countries or targeted individuals
- SC Sanctions Committee/Panel of Experts (UN subsidiary body) for the monitoring of the implementation of sanction resolutions

# “EXTERNAL” SANCTIONS (3)

## EU SANCTIONS:

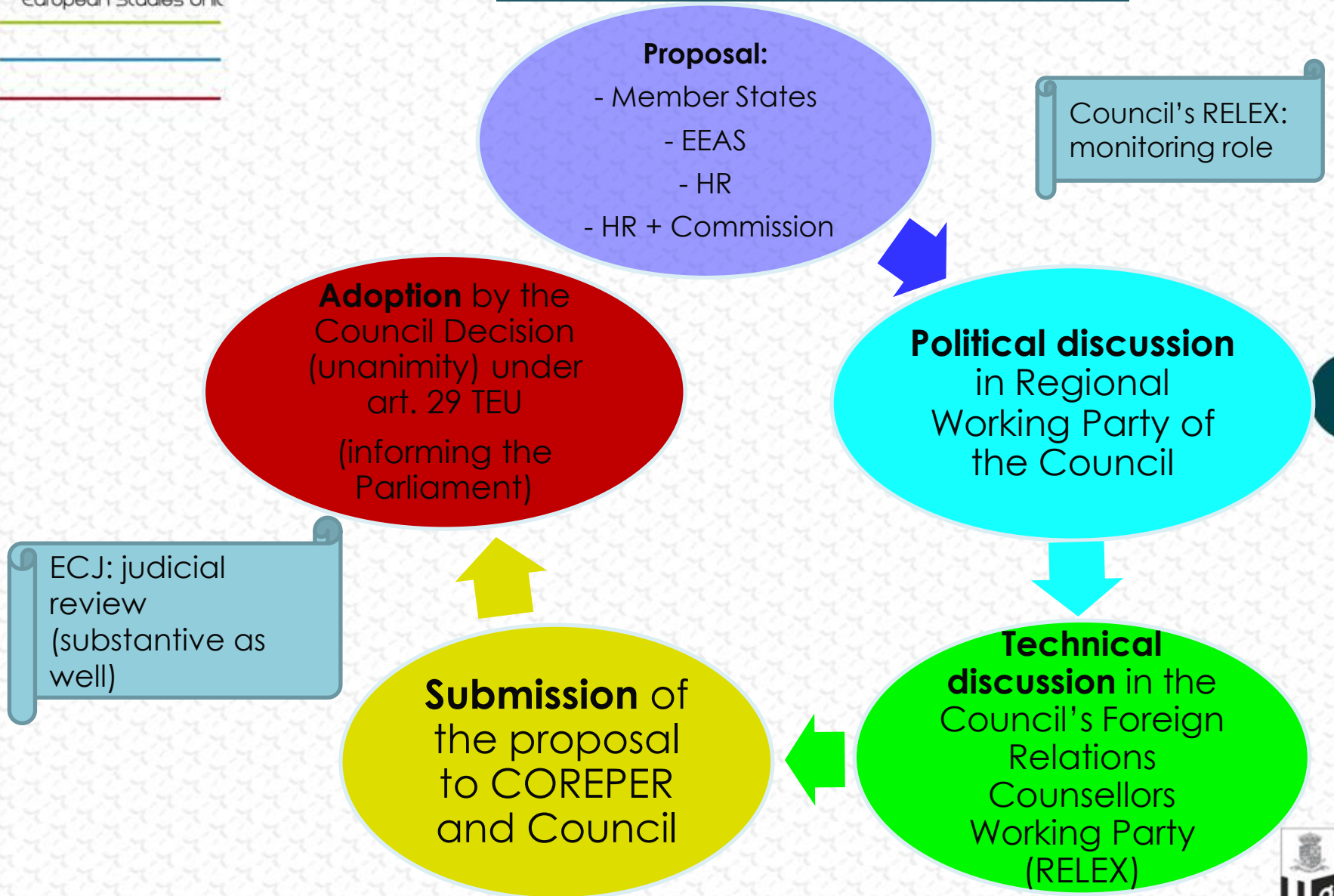
Restrictive measures adopted in the framework of the CFSP:

- The cut across the horizontal (between EU institutions) and vertical (between EU and Member States) division of competences;
- Different decision making procedures and legal instruments;
- EU implementing UNSC sanctions or autonomous ones (but “in conformity with international law”)





# COMPLEX PROCEDURE: EU INSTITUTIONS INVOLVED



## Implementation of Council Decisions

General embargo and financial measures: **EU Regulation** (art. 215 TFEU)

- proposal: HR and Commission
- Analysis by RELEX and COREPER
- Adoption: Council (qualified majority)

States MAY adopt **secondary sanctions**

Arms embargo and travel bans: **direct implementation by States**

- States' duty to notify the Commission on the measures adopted
- Possibility of infringement procedure

# An example: Russia

- **Assets freeze and visa bans** upon individuals and entities threatening Ukraine's sovereignty: **Council Decision** 145/2014/CFSP (measures extended until 15.03.2016) → implementation by MS
- **Restrictions for Crimea and Sevastopol:** prohibitions on imports from these areas, no investments, no export of certain goods to these areas: **Council Decision** 386/2014/CFSP followed by **Regulations** 692/2014 and 1351/2014 (measures extended until 23.06.2016)
- **Economic sanctions upon Russia: Council Decision** 512/2014 (lastly modified by Decision 872/2014 and 1764/2015) followed by **Regulation** 833/2014 (lastly modified by Regulations 960/2014, 1290/2014 and 1797/2015: measures prorogued until 31.01.2016)



## NATIONAL SANCTIONS:

- imposed by a country towards another one, as a matter of foreign security policy (unilateral sanctions)
- they may supplement UNSC sanctions, or be autonomous from them
- implementing EU sanctions (both the Council decisions and the EU regulations): “effective, dissuasive, proportionate measures”

# CONCLUSION

- sanctions: “multilevel” system, involving different political and legal actors;
- political/economic/social effects: positive, negative and unexpected effects...

Are sanctions effective, and represent really an evolution in the trade context?



# Thanks for your attention!

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