International Sanctions and their Impact on Transnational Trade and Investment Operations. Special Reference to the Restrictions Imposed by the European Union

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I. INTRODUCTION AND DELIMITATION

The issue of the so-called international sanctions has a multifaceted nature that affects a multitude of legal, economic, political, etc. aspects. Given the limited scope of this paper, it will be limited to the main problems raised by the restrictions imposed by the European Union, which are also those that most directly affect Spanish companies. This delimitation obliges us to refrain from dealing with other aspects that are also relevant for our economic operators, such as the *Secondary Sanctions* that are sometimes imposed by the United States[1] or the Blocking Statute that the European Union has articulated against them[2] , but their treatment would go beyond the limits of this article. Nor do we address

[1] B. E. CARTER, *International Economic Sanctions. Improving the haphazard U.S. legal regime,* Cambridge, 1988. S. SZUREK, "Le recours aux sanctions", in: H. GHERARI, S. SZUREK (dirs.), *Sanctions unilatérales, mondialisation du commerce et ordre juridique international. À propos des lois Helms-Burton et d'Amato-Kennedy*, Paris, 1998, pp. 20-29. G. C. HUFBAUER, J. J. SCHOTT, K. A. ELLIOT, AND B. OEGG, *Economic Sanctions Reconsidered*, 3rd ed., Washington, 2007, pp. 13-15, 22-23, 52-58, 68-70, 146-147. R. L. MUSE, *La fragilidad ante el Derecho Internacional de la Legislación de los Estados Unidos sobre Cuba: Una Nueva Política Hacia Cuba,* Madrid, 1977. A. F. LOWENFELD, "The Cuban Liberty and Democratic Solidarity (Libertad) Act: Congress and Cuba. The Helems-Burton Act", *American Journal of International Law*, 1996, pp. 419-434. S. J. RUBIN, "Organization of American States, Inter-American Juridical Committee Opinion Examining the U.S. Helms-Burton Act. Introductory Note by ...", *International Legal Materials*, 1996, pp. 1322-1334. J. VOETELINK, "Chapter 11. Limits on the Extraterritoriality of United States Export Control and Sanctions Legislation", *Netherlans Annual Review of Military Studies*, 2021, pp. 187-217. N. ZAMBRANA-TÉVAR, "The long tentacles of the Helms-Burton Act in Europe", *Conflict of Laws. net,* 6 September 2020. http://conflictoflaws.net/2019/the-long-tentacles-of-the-helms-burton-act-in-europe/

[2] Council Regulation (EC) No 2271/96 of 22 November 1996 on protection against the effects of the extraterritorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom (*OJEC* L 309 of 29 November 1996, 1. Corrigendum in *OJEC* L 179 of 8 July 1997, 10). Updated and amended by Commission Delegated Regulation (EU) 2018/1100 of 6 June 2018 amending the Annex to Council Regulation (EC) No 2271/96 on protection against the effects of the extraterritorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom (*OJEU* L 199, 7 August 2018, 1) and Commission Implementing Regulation (EU) 2018/1101 of 3 August 2018 laying down criteria for the application of the second paragraph of Article 5 of Council Regulation (EC) No 2271/96 on

the very extensive question of the legal actions that can be taken against sanctions imposed by the European Union.

II. CONCEPT, CHARACTERISTICS AND MODALITIES OF INTERNATIONAL SANCTIONS

1. Concept of International sanctions

The first thing to note is that the term "international sanctions", although the majority and commonly used, is not unambiguous and, for example, European legislation commonly uses the modest term "restrictions".

In this paper, when we speak of international sanctions, we refer to certain legal measures adopted by the United Nations or by institutions of economic integration processes, such as the European Union or ECOWAS[3] , or by individual countries against certain states, social and political groups or foreign natural or legal persons, and which fundamentally affect economic relations, both with individuals and with public bodies. They can take many different forms and are articulated through the corresponding legal instruments to be used in each case by those who impose them. The aim of these sanctions is to achieve certain objectives, mainly political, although in some cases economic objectives cannot be ruled out[4] . In this sense, the terminology sometimes used by the American doctrine is enlightening when it calls them *"Trade Controls for Political Ends"*[5] . But the term "economic sanctions" is also used generically by authors of different origins[6] . Sometimes they are called "unilateral sanctions", although this term can tend to be confused with

protection against the effects of the extraterritorial application of legislation adopted by a third country, and against actions based thereon or resulting therefrom (*OJEU* L 199, 7 August 2018, 7). Furthermore, in the case of Spain, Law 27/1998 of 13 July 1998 on penalties applicable to infringements of the rules laid down in Council Regulation (EC) No 2271/96 of 22 November 1996 on protection against the extraterritorial application of the legislation of a third country (*BOE* of 14 July 1998) must be taken into account.
J. HUBER, "Le dispositif Législatif adopte par l'Union Européenne pour neutraliser les effets des lois américaines Helms-Burton et D'Amato-Kennedy", in: H. GHERARI, S. SZUREK (dirs.), *Sanctions unilatérales, mondialisation ....* pp. 219-237. B. LEURENT, "Les implications des législations de sanction et de blocage sur les relations juridiques privées internationales", in: H. GHERARI, S. SZUREK (dirs.), *Sanctions unilatérales, mondialisation ....* pp. 277-292. J. L. IRIARTE ÁNGEL, "La Ley Helms-Burton y la respuesta europea a sus efectos extraterritoriales", *Cuadernos Europeos de Deusto*, Nº 63/2020, pp. 81-112.

[3] We refer to the Economic Community of West African States. For example, it has recently taken action on Guinea or Mali. UK-Communiqué-Final-Sommet-16-septembre-Situation-en-Guinea_210916_215714.pdf

[4] For example, some scholars have defined them as *"Coercive measures imposed by one country, an international organisation or a coalition of countries against an anotehr country -the government or any group within the country- with the aim of bringing about a change in a specific policy or behaviour"*. A. ESCRIVA-FOLCH, "Economic sanctions and the duration of civil conflicts", *Jornal of Peace Research*, 2010, No. 47, p. 2. M. SPLINTER, J. KLOMP, "Chapter 7. Do Sanctions Cause Economic Growth Collapses?", *Netherlans Annual Review of Military Studies*, 2021, p. 118.

[5] A. F. LOWENFELD, *Trade Controls for Political Ends*, 2nd ed.

[6] L. PICCHIO FORLATI, L. A. SICILIANOS (eds.), *Les sanctions économiques en Droit International*, Leiden, 2004.

what the US *Secondary Sanctions* really are[7]. The term "economic coercive measures" has also been used[8].

But regardless of the different terminologies, we are going to talk about international sanctions, understood as certain legal measures that affect international transactions, fundamentally although not exclusively to contracting and investment abroad, and which are adopted with the aim of achieving certain political objectives, such as the preservation of democracy, the protection of human rights, preventing nuclear proliferation, acting against terrorism, guaranteeing the territorial integrity of a certain State, operating against autocratic regimes, etc.[9] For example, if we look at UN practice we see that Article 39 of the UN Charter states that the Security Council shall determine the existence of any threat to the peace, breach of the peace or act of aggression and decide what measures shall be taken in accordance with Articles 41 and 42 of the same text to maintain or restore international peace and security. On the basis of these very generic terms, the Security Council has adopted sanctions to support peaceful political transitions, support democratic regimes in the face of unconstitutional change, combat terrorism, protect human rights, promote peaceful conflict resolution and promote the non-proliferation of nuclear weapons.

2. Characteristics and Modalities of International Sanctions

In the legal regime of international sanctions, there are certain common characteristics that we will now refer to, to subsequently deal with them in a specialised manner from the perspective of the legal system and practice of the European Union and the case law of its Court of Justice and its General Court.

Although international sanctions have some antecedents dating back to the Greece of Pericles[10] , their practice has become particularly important after the Second World War. Phenomena such as, among others, the Cold War, decolonisation and revolutionary processes with the consequent consequences of nationalisations, the growing concern for the protection of human rights or nuclear proliferation have led to a decisive growth in their use in recent decades. For example, the UN Security Council first used its sanctioning power in 1966 against what was then Southern Rhodesia, now Zimbabwe. Even more recent is the practice of the European Union, which is only a few decades old, although it has been expanding and intensifying. As regards individual states and their particular international sanctions programmes, more and more states are establishing a legal regime in this regard, and it is significant that the United Kingdom has instituted its own sanctions system as soon as it left the European Union[11] .

This is a matter that is subject to a very dynamic and rapidly changing legal regulation in parallel to political and economic vicissitudes. In this regard, it should be borne in mind

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[7] H. GHERARI, S. SZUREK (dirs.), *Sanctions unilatérales, mondialisation du commerce .....*

[8] F. J. GARCIMARTÍN ALFÉREZ, *Contratación internacional y medidas de coerción económica*, Madrid, 1993.

[9] A. ESCRIBÁ-FOLCH, J. G. WRIGHT, "Dealing with Tyranny: International Sanctions and Autocrats' Duration", *IBEI Working Papers*, 2008/16, Barcelona, 2008.

[10] G. C. HUFBAUER, J. J. SCHOTT, K. A. ELLIOT, B. OEGG, *Economic Sanctions Reconsidered*, ..., p. 9 et seq.

[11] https://www.gov.uk/government/publications/the-uk-sanctions-list

https://www.gov.uk/guidance/current-arms-embargoes-and-other-restrictions

that when certain sanctions are imposed, a surprise effect is usually intended, for example, when a decision is taken to freeze the assets of the sanctioned party, the aim is to ensure that he does not have time to withdraw them and therefore the measure is taken in a way that prevents him from doing so.

An important feature of international sanctions is that each sanctions regime is quite specific and particular. That is to say, the sanctions suffered by different countries or groups, even if imposed by the same entity such as the United Nations, are relatively different in terms of the subjects sanctioned, the modalities of restrictions imposed, the reasons for their imposition or the sectors that are affected. This has an important practical consequence: in each case, a detailed and individualised treatment and analysis of the sanction in question is essential, i.e., there is no room for general solutions. A Spanish businessman must be very clear when dealing with sanctioned natural or legal persons that the legal regime applicable to each of them may be significantly different.

When restrictions are imposed on a given country, this does not mean that all persons or all companies or all of its economic sectors are sanctioned; the reality is that only certain individuals and economic sectors are sanctioned, although in certain cases the number of individuals and companies sanctioned, and many economic sectors affected can be very high. Restrictions of a personal nature are normally targeted at certain natural and legal persons.

As we have already said, this is a very casuistic matter, which must be assessed on a case-by-case basis. However, as far as individuals are concerned, sanctions are usually imposed on senior members of the government and the administration, the legislature and the judiciary, military and police chiefs, people involved in repression, prominent businessmen with political or family ties to those in power or who collaborate with those in power, as well as their close relatives, professionals (journalists, academics), etc.

As far as legal persons are concerned, sanctions tend to be imposed on public companies and bodies, arms and transport companies, especially shipping companies, financial institutions and insurance companies. Also, companies related to a vital economic sector for the sanctioned state, for example in the case of sanctions against Iran, all types of entities linked to oil and gas (extractors, infrastructure builders, etc.). Restrictions have even been imposed on "companies that provide logistical support to the government", i.e., those that in some way, mainly financially, contribute to sustaining it. Also, universities and other research centres.

International sanctions take the form of a multitude of restrictions, which do not necessarily coincide in different cases. We will deal in detail with the different types of sanctions imposed by the European Union later on, but now we can briefly point out that they tend to consist mainly of the following practices:

- Trade embargoes, i.e., a ban on the export of a wide range of goods to the sanctioned country or a ban on certain imports from the country. The most frequent export restrictions usually consist of a ban on the supply of arms and their components as well as ammunition, dual-use goods, instruments of torture or repression, telecommunications or communications tapping equipment, means of transport, certain minerals (uranium and others) and metals (gold, copper, etc.) and often goods and commodities that are indispensable or very necessary for the functioning of the sanctioned country's economy, such as the means to extract oil and gas. There may even be very peculiar restrictions, for example a ban on the

export of luxury goods or timber. With regard to imports, the most frequent restrictions are usually a ban on the purchase of certain goods and commodities whose export is essential for the sanctioned country, as they provide the most significant part of its revenue, for example, a ban on the purchase of oil from an essentially oil-producing state. Restrictions can also affect the purchase of arms and defence materials. But the casuistry is very broad, for example, it can include a ban on the import of cultural goods from certain countries.

- Freezing of funds and assets of sanctioned individuals and companies. In other words, capital, goods and rights originating from the sanctioned country are blocked in the territory of the country imposing the sanction. This has a clear consequence: investors from sanctioned states see their rights frozen and cannot dispose of them. For this reason, when it is foreseeable that a country will be subject to sanctions, it is highly advisable that its investors, or at least those who may be subject to individualised sanctions, withdraw from the territory of the sanctioning country.
- Prohibition for natural persons to enter the territory of the sanctioning State or entity that has imposed the sanction. It is a very common practice that when sanctions are imposed on a country consisting, inter alia, of sanctioning certain natural persons from that country, one of the restrictions imposed on these natural persons is a prohibition on entering the territory of the sanctioning entity.
- Financial restrictions consisting of limiting access to financing[12]. A fairly common form of sanction is the prohibition that the sanctioning state imposes on its own subjects (nationals, residents, etc.) to invest in the sanctioned country or at least in some sectors of its economy. It is relatively common that when a measure of this type is adopted, it is stipulated that it does not affect investments made prior to the entry into force of the sanctions or a period of time is granted for them to be withdrawn, and in any case, a declaration of the investment is usually required before an administrative body of the sanctioning state. Another type of sanction that can affect foreign investments is the prohibition that the sanctioning state imposes on its own subjects to finance in any way certain activities or certain companies in the sanctioned country.
- Finally, we may encounter a variety of restrictions of the most varied nature (prohibition of certain ships to dock in certain ports, limitations on the use of airports, restrictions on the provision of certain training and education, etc.).

It is important to bear in mind that international sanctions can sometimes indirectly but strongly affect economic sectors that are not directly targeted. Difficulties, inter alia, in obtaining financing, transferring funds, obtaining certain spare parts and components may have the consequence of making it extremely difficult to make or maintain an investment or any economic activity in the sanctioned State even if it has fallen on a sector that is not directly sanctioned.

It is very important to bear in mind that the rules imposing international sanctions must be interpreted and applied restrictively; this follows from their sanctioning nature and the fact that they are provisions that restrict rights (right to property, freedom of movement,

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[12] M. D. JAEGER, "Sanctions and the financial system: Steering away from de-risking?", S. LOHMANN, J. VORRATH (eds.), *International Sanctions: Improving Implementation through Better Interface Management*, SWP Working Paper, 1 August 2021, pp. 83-91. https://www.swp-berlin.org/publications/products/arbeitspapiere/WP_International_Sanctions.pdf

freedom of enterprise, etc.). In practice, however, they are subject to expansive application, particularly by private individuals. Indeed, private parties, unaware of the legal reality of international sanctions, tend to apply them in an expansive manner, going far beyond the provisions of the sanctions. Thus, it is common for banking institutions to refuse to carry out transactions with nationals of sanctioned countries, even though such persons are not the direct object of the restrictions and can therefore be operated with freely, or in other cases, banks and other companies also tend not to operate with sanctioned natural and legal persons even though the specific transaction that is sought is outside the provisions of the sanctioning provisions and can therefore be carried out with complete legality. These practices are technically incorrect but unfortunately frequent in reality. And all this without taking into account the enormously frightening effect of the US Secondary Sanctions.

Finally, to conclude this section, we must refer briefly to the fundamental problem of the effects and possible effectiveness of international sanctions[13]. These have a multitude of consequences that go much further than what would in principle be derived from a simplistic reading of their mandates[14]. Thus, among other effects, they not only harm the economy of the sanctioned country but are often also a serious hindrance to the economic operators of the state or entity that imposes them, who find themselves losing markets and clients, leaving companies from third countries in a better competitive situation, etc. In other words, if, for example, the European Union bans the export of machinery for the extraction of oil in deep waters to a certain country, this means that European companies working in this sector are prevented from accessing the market of the country sanctioned in this sector, which means that they will possibly be replaced by manufacturers from other States, who, although producing with lower quality standards, will easily gain the clientele of the country subject to these restrictions. We must therefore conclude that those who impose international sanctions often also harm their own economy.

In addition, the doctrine has pointed out that international sanctions not only stigmatise the targeted countries, but above all such measures go against the principle of sovereign equality of states and the horizontal structure of the international system[15] . Sometimes a country can also find itself sandwiched between sanctions regimes imposed by different states, even if one of these regimes does not affect it directly but is aimed at one of its neighbours, which is significant for its economy[16] . In a rather similar situation, many companies from EU member states are in a similar situation when they deal with Iranian or Cuban individuals and companies and are caught between the secondary sanctions of the US and the mandates of the European blockade statute[17] .

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[13] L. JONES, C. PORTELA, "La evaluación del éxito de las sanciones internacionales: una nueva agenda investigadora", *Revista CIDOB d'Afers Internacionals*, no. 125 (September 2020), pp. 39-60.

[14] C. PORTELA, M. C. VLASKAMP, "Introducción: los otros efectos de las sanciones internacionales", *Revista CIDOB d'Afers Internacionals*, no. 125 (September 2020), pp. 7-12.

[15] A. HOFER, "Creation and contestation of hierarchy: punitive effect of sanctions in a horizontal system", *CIDOB Journal of Afers Internacionals*, No. 125 (September 2020), pp. 15-37.

[16] R. NIZHNIKAU, "Playing Enemies: Belarus between the EU and Russian Sanctions Regimes", *CIDOB Journal of Afers Internacionals*, no. 125 (September 2020), pp. 113-137.

[17] We have previously stated that this paper was not going to deal with the treatment of secondary sanctions of the United States or the European Blocking Statute, but due to its clear exemplary nature of the problem we point out we cannot resist making a reference to what is currently happening in Case C-124/20 (Bank Melli Iran v. Telekom Deutschland). On 12 May 2021, the Advocate General delivered his Opinion (ECLI:EU:C:2021:386). The facts of the case are as follows: the applicant is Bank Melli Iran, an Iranian bank, primarily engaged in the management of Iran's foreign trade, which has a branch in Germany with 36 employees, and is therefore not a very large establishment. The Defendant is one of Germany's largest

companies in the provision of telecommunications services; it is a subsidiary of Deutsche Telekom AG, a large business group with more than 50 000 employees in the United States, where it has a turnover of approximately 50 % of its total turnover. It therefore has many interests in North America, which is a key market for it. The parties agreed on a contractual framework whereby the applicant bundled all connections at different locations in Germany into one contract. All of the applicant's telecommunications in Germany, both external and internal, were based on that contract, so that without the services to be provided by the defendant, it was impossible for the applicant to engage, through its German branch, in commercial transactions. The monthly turnover between the parties was just over EUR 2 000, i.e. a derisory amount for the German branch. The plaintiff always fulfilled its payment obligations.

In 2018, when the United States withdrew from the Joint Comprehensive Plan of Action (JCPA) of 14 July 2015, US sanctions against Iran were reactivated and the applicant was placed on the Office of Foreign Assets Control's (OFAC) list of sanctioned persons (SDN). On the basis of the so-called *Secondary Sanctions*, the United States prohibits *non-US persons* from doing business with Iranian natural and legal persons on the SDN list. Contravention of this prohibition can result in severe sanctions, such as the inability to do business in the United States. By letter of 16 November 2018, the defendant terminated with immediate effect all of its contracts with the applicant. On that day and the following days, it did the same with up to 10 other customers related to Iran, which were included on the SDN list. The applicant brought interim relief proceedings and the Landgericht Hamburg, by its judgment of 28 November 2018, provisionally imposed an obligation on the defendant to perform the existing contracts until the expiry of the notice period for termination.

By letter of 11 December 2018, the defendant again terminated the contracts, making it clear that the notice periods would be respected. Bank Melli requested that the defendant be ordered to maintain all contracted services. The Landgericht ordered the latter to perform the contracts until the expiry of the relevant notice period, but held that the defendant's ordinary termination of the contracts at issue was valid, as it was not contrary to Article 5 of Regulation (EC) 2271/96 (EU blocking statute. See bibliography cited in footnotes 1 and 2). The applicant appealed against the part of the judgment in which its claims had been dismissed, arguing that the ordinary termination by Telekom Deutschland was contrary to Article 5 and therefore ineffective.

In this situation, the Hanseatisches Oberlandesdericht of Hamburg, aware that the outcome of the case depended on the interpretation of the first paragraph of Article 5 of the European Blocking Statute, which provides that no European operator shall comply with the *Secondary Sanctions* of the United States, referred four questions to the Court of Justice for a preliminary ruling.

The first is to interpret whether Article 5(1) of the European Blocking Statute applies only where EU operators have been given administrative or judicial orders, directly or indirectly, by the United States authorities or whether it is sufficient for its application that the action of those operators is intended to comply with secondary sanctions, even where they have not received such orders. In that regard, the Advocate General submits that the first paragraph of Article 5 of the European Blocking Statute must be interpreted as meaning that it *'does not apply only where an administrative or judicial authority of a country whose laws and regulations are listed in the annex to that statute has given direct or indirect orders to a person referred to in Article 11 thereof* [EU operators such as Telekom Deutschland]*, the prohibition contained in that provision applies even if an operator complies with those rules without having first been ordered to do so by a foreign administrative or judicial body'*. Consequently, the first paragraph of Article 5 of the blocking statute means that EU operators cannot cease to do business because of the existence of the US secondary sanctions. The Advocate General reaches this first conclusion essentially for the following reasons: first, because of the wording of the provision itself, which supports the interpretation that the provision is applicable even in the absence of orders or notifications from an American authority, since the wording is very broad; secondly, account must be taken of the objectives pursued by the European blocking statute, which was adopted to act against the effects produced by the legal texts containing the *Secondary Sanctions* and not only the actions based on them or deriving from them; thirdly, because the blocking statute would not have autonomous and real scope if its application were conditional on EU operators receiving an order or notification from the US authorities; and finally, because co-contractors with the parties subject to primary sanctions can be sanctioned on the basis of secondary sanctions without a prior request from the US administration or the US courts. In conclusion: the only way to counteract the effects of *Secondary Sanctions* is to understand that Article 5, first paragraph of the European blocking statute applies in any situation within its scope of application.

The second question referred to the Court of Justice was whether an interpretation of national law according to which the party terminating the contract may terminate it, where the contract has been concluded with a co-contractor included in the BDS, without a cause for termination of the contract being required for that purpose and without that party having to prove in civil proceedings that the cause of termination of the

contract is not compliance with the American sanctions, is contrary to the first paragraph of Article 5 of Regulation (EC) No 2271/96. The Advocate General takes the view that the answer to this question is that the first paragraph of Article 5 of the Blocking Statute must be interpreted as precluding an interpretation of national law according to which an EU operator may terminate any successive contract concluded with a co-contractor which has been placed by OFAC on the SDN List without having to justify such a termination decision. In other words, in order to act properly, the EU operator must prove that the termination of the contract is due to objective reasons other than a desire to comply with US secondary sanctions. In reaching this conclusion, the Advocate General raises two questions; the first is whether Article 5(1) of the Blocking Statute confers on an entity the right to invoke it to prevent an EU operator from infringing its provisions, i.e. whether Bank Melli can invoke it to challenge Telekom Deutschland's intended termination of the contracts. While acknowledging that the blocking statute must be interpreted restrictively in so far as it seriously affects the freedom to conduct a business, the Advocate General considers that the first paragraph of Article 5 confers such a right on natural and legal persons in Bank Melli's situation. In that regard, the Advocate General puts forward the following reasons: the wording of that provision, which is clearly mandatory; the fact that the US extraterritorial legislation infringes international law; the fact that the Court of Justice must give real effect to the provisions of the blocking statute and, above all, the fact that if the right of Bank Melli, or of any other subject in its situation, to take legal action is not recognised, compliance with the objectives pursued by the European legislature would depend exclusively on the attitude of the States in applying the blocking statute, with the result that undertakings in the position of Telekom Deutschland could decide to comply actively with the American sanctions regime. Furthermore, the Advocate General questions whether the first paragraph of Article 5 can be interpreted as imposing an obligation on EU operators to state the reasons for which they intend to terminate a contractual relationship with an entity subject to primary US sanctions. He replies that such an obligation must necessarily be inferred from the objectives pursued by the blocking statute and refers in this respect to what has already been said in justifying the existence of the right to take legal action to enforce Article 5(1) of the European blocking statute. The Advocate General states that if the contrary position were held *"an entity could decide to apply US sanctions law with discretion and, by maintaining an ambiguous silence, impenetrable as to its motives and (effectively) unyielding as to its methods, the main public policy objectives set out in the recitals and Article 5(1) of the EU blocking statute would be jeopardised and reduced to nothing"*. The Advocate General admits that many natural and legal persons have ethical misgivings and reservations about doing business with countries such as the Islamic Republic of Iran and with large Iranian entities controlled by the Iranian government. But in order to demonstrate that the reasons for the decision to terminate a contract were sincere, an EU operator would have to prove that, *'as a result of its active implementation of a consistent and systematic corporate social responsibility policy, it does not do business with any company with links to the Iranian regime'*. At the very least, he must prove, and the burden of proof is on him, that the termination of the contract is not motivated by his desire to comply with the US *Secondary Sanctions.* In conclusion: an EU operator seeking to terminate its business relations with an Iranian company subject to primary sanctions is not only obliged to give reasons for its decision but also to justify it by providing evidence of the existence of a reason other than the fact that its Iranian co-contractor is sanctioned by the United States.

The third question referred for a preliminary ruling was whether an ordinary termination of a contract contrary to the first paragraph of Article 5 of the Blocking Regulation must be regarded as necessarily ineffective or whether other sanctions, such as a fine, are sufficient to achieve the purpose of the Blocking Regulation. The fourth question was whether, in the light of Articles 16 and 52 of the Charter of Fundamental Rights of the European Union and taking into account the possibility of exceptionally granting authorisations under the second paragraph of Article 5 of the blocking statute, the ordinary termination of the contract must be regarded as ineffective even if the EU operator who chooses to maintain the contract faces the threat of heavy economic losses on the US market. The Advocate General addresses these two issues together. He begins by recalling that Article 9 of the Blocking Statute provides that EU Member States must regulate the penalty regime applicable to breaches of the provisions of the Blocking Statute. Penalties must be effective, proportionate and dissuasive. Therefore, in line with what has been argued in the previous pages, the Advocate General concludes that the term "sanction" in this area must be understood in a broad sense, including both criminal or administrative sanctions and civil sanctions, which may have a purpose that is not repressive, but aimed at ensuring the useful effect of the provisions in question. The national courts will also be obliged to re-establish the situation that would have existed if the illegality had not been committed. He thus concludes that *"... in the event of infringement of a provision laying down a permanent rule of conduct (as in the present case), the national courts are obliged to order the infringer to put an end to the infringement, on pain of a periodic penalty payment or other appropriate sanctions, since only then can the continuing effects of the illegality committed be brought to an end and compliance with*

EU law be fully ensured". This leads him to conclude that *'... national courts must order an EU operator to continue the contractual relationship in question, on pain of a periodic penalty payment or other appropriate sanction'*. In this context, the Advocate General questions the compatibility of Article 5 of the Blocking Statute with Article 16 of the Charter of Fundamental Rights of the European Union, which enshrines the freedom to conduct a business. In this regard, he refers to Article 52(1) of the Charter, which permits the restriction of any of the freedoms recognised by that text if it is laid down by law, respects the essential content of those rights and freedoms and is proportionate, in the sense that only limitations which are necessary and which meet objectives of general interest recognised by the EU are permissible. There is no doubt that the restriction on their freedom to conduct a business suffered by EU operators as a result of the blocking status is established by law. As regards the respect of the essential content of the right, it must be borne in mind that freedom of contract is not an absolute prerogative and *"... the Court of Justice has already accepted that EU law may impose an obligation on an operator to contract, in particular on grounds relating to competition law"*. Consequently, the right not to contract, which is part of the freedom to conduct a business, may legitimately be limited. Finally, the Advocate General considers that this is a proportionate measure, since Article 5(1) of the Blocking Regulation seeks to protect the Union, its Member States and natural and legal persons operating in the EU against the extraterritorial application of rules contrary to international law and in this respect the provision appears to be appropriate to achieve those objectives and also necessary in order to attain them. All of the above leads the Advocate General to conclude that Article 5(1) of the blocking statute is not contrary to Article 16 of the Charter of Fundamental Rights of the European Union.

The CJEU has decided the case by its judgment of 21 December 2021 (ECLI:EU:C:2021:1035). On the first question, it answers that: "*the first paragraph of Article 5 of Regulation No 2271/96 must be interpreted as prohibiting the persons referred to in Article 11 of that regulation from complying with the conditions or prohibitions laid down in the laws in the Annex, even in the absence of instructions to that effect from the administrative or judicial authorities of the third countries which have adopted those laws*". The CJEU reaches this conclusion for four reasons: the first is the wording of the provision, which, by using the expression "*requirements or prohibitions [...] based on*" and the term "*including*", is formulated in a broad sense and applies even in the absence of a requirement from a foreign administrative or judicial authority. In the same vein, the Court holds that the same interpretation of those terms follows from the context of the first paragraph of Article 5, read in conjunction with Articles 4 and 7(d) of the Regulation. Third, there are the objectives of the Blocking Regulation, which could not be attained if the prohibition in the first paragraph of Article 5 were conditional upon the communication of instructions by the administrative authorities of the third States which have adopted the rules having extraterritorial effect, in this case the United States of America. Finally, the Court points out that such an interpretation of the first paragraph of Article 5 is not incompatible with the objective of the Blocking Statute of protecting the interests of EU operators, including their freedom to conduct a business, which implies the freedom to pursue an economic or commercial activity, freedom of contract and free competition.

As regards the second question, the Court states that the question is whether an EU operator may, without giving reasons, terminate contracts concluded with a person included on the SDN list. The CJEU responds by stating that "*the first paragraph of Article 5 of Regulation 2271/96 ... must be interpreted as not precluding a person referred to in Article 11 ... from being able, without giving reasons, to terminate contracts concluded with a person on the ... Specially Designated Nationals and Blocked Persons List. However, the first paragraph of Article 5 of that regulation ... requires that where, in civil proceedings relating to an alleged infringement of the prohibition laid down in that provision, all the evidence before the court ... tends to show prima facie that a person referred to in Article 11 ... has complied with the laws listed in the Annex to that regulation ... without having been authorised to do so, it is for that person to prove to the requisite legal standard that his conduct was not intended to comply with those laws*'. In this respect, the CJEU understands that it shares the preliminary view that Article 5, first paragraph, can be invoked in civil proceedings. The answer is affirmative. It reaches this conclusion on the basis of the wording of the provision, which formulates the prohibition to comply with *Secondary Sanctions* in clear, precise and unconditional terms; to which must be added the general scope and direct application that characterises the European Regulations and the obligation of the courts of the EU Member States to ensure the full effectiveness of the European rules. In the light of the foregoing, the CJEU holds that it does not follow from the Blocking Statute, and in particular the first paragraph of Article 5 thereof, that an EU operator must give reasons for terminating a commercial contract with a person included on the BDS list. Therefore, it can terminate it without having to give any reason justifying such behaviour. However, in order to ensure the full effectiveness of the first paragraph of Article 5, and having regard to the evidential difficulties for the other contracting party in proving the reasons which led the EU operator to terminate the contract, the Court concludes that, where in civil proceedings the evidence as a whole tends to indicate

As for the possible effectiveness of international sanctions in achieving the political objectives they are supposed to pursue, it should be borne in mind that their harshest and most direct consequences (lack of supplies, difficulties in accessing the most basic goods, etc.) mainly affect the most disadvantaged sectors of society and much less so the ruling classes, who are basically under much less pressure. The study of various situations of the imposition of international restrictions shows that they clearly and rapidly harm the economic growth of the sanctioned countries[18] , although each case is very particular and needs to be analysed on a case-by-case basis. But it is also observed that in terms of their policy objectives sanctions are limited in their effectiveness and, although much depends

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prima facie that, by terminating the contract, an EU operator seeks to comply with the US sanctions, it is for that operator to prove to the requisite legal standard that its conduct was not intended to comply with those sanctions. In conclusion, an EU operator may terminate a contract with a person included on the SDN list without having to state any reason, but if it appears *prima facie* from the evidence that it is doing so in order to comply with US extraterritorial sanctions, it is incumbent on the EU operator to prove that it is not doing so in order to comply with those sanctions.

The CJEU answers the third and fourth questions together. It holds that the Blocking Regulation, and in particular the provisions of Articles 5 and 9 thereof, '*must be interpreted, in the light of Articles 16 and 52(1) of the Charter ... as not precluding the annulment of a contractual termination effected by a person referred to in Article 11 of Regulation ...in order to comply with the requirements or prohibitions based on the laws set out in the annex to that regulation, ... despite the fact that he does not have the authorisation referred to in the second paragraph of Article 5 of that regulation ..., provided that such annulment does not have disproportionate effects for that person in the light of the objectives of Regulation No 2271/96 ....which are to protect the established legal order and the interests of the European Union in general. In that proportionality test, the achievement of those objectives, pursued by the annulment of a contractual termination contrary to the prohibition laid down in the first paragraph of Article 5 of that regulation ..., must be weighed against the likelihood that the person concerned would be exposed to financial loss, and the extent of that financial loss, if he were unable to terminate his business relations with a person on the list of persons subject to the secondary sanctions in question under the laws set out in the annex to that regulation, as amended,*". The CJEU reaches this conclusion on the basis that EU rules must be interpreted in the light of the rights enshrined in the Charter. Subsequently, it recalls that Article 9 of Regulation 2271/96 establishes that the States shall determine the sanctions to be imposed for breach of the Blocking Statute, but that these sanctions must be effective, proportionate and dissuasive, and that it is the national courts, which alone have jurisdiction to interpret and apply national law, which, having regard to the circumstances of the specific case, shall determine whether those requirements of effectiveness, proportionality and dissuasiveness are met. However, the CJEU may provide clarification to guide the assessment of the national courts. If the ordinary termination of the contracts had been carried out in breach of the provisions of the first paragraph of Article 5, and Telekom Deutschland had not requested the authorisation provided for in the second paragraph of Article 5, it would be void. However, the CJEU points out that such a declaration of invalidity could entail a restriction of the freedom to conduct a business as enshrined in Article 16 of the Charter. In this regard, it recalls that the freedom to conduct a business includes, inter alia, the free choice of customers and suppliers. However, the freedom to conduct a business is not an absolute prerogative, since it may lawfully be subject to a wide range of interventions by the public authorities which establish limitations on its exercise in the general interest. These limitations must be assessed from the perspective of the principle of proportionality. In that regard, the CJEU recalls that the first paragraph of Article 5 prohibits compliance with the *Secondary Sanctions* of the United States, but its second paragraph provides that an EU operator may be authorised to comply with all or part of those sanctions to the extent that non-compliance would seriously harm its interests, for example because it would entail serious economic loss for it, or those of the EU. Thus, the Court concludes that, on the ground of proportionality, given that Telekom outside the EU is exposed to the US *Secondary Sanctions*, the national court must assess whether those sanctions are likely to produce disproportionate effects for Telekom. In that proportionality test, the national court must weigh the objectives of the Blocking Statute, pursued by the annulment of a contractual termination contrary to the prohibition in the first paragraph of Article 5 thereof, against the likelihood that Telekom would be exposed to financial loss and the extent of that financial loss if it were unable to terminate its business relations with an entity on the SDN list. In the proportionality test, it will also have to be assessed that Telekom has not submitted to the Commission the request for the exemption provided for in the second paragraph of the same Article.

[18] M. SPLINTER, J. KLOMP, "Chapter 7. Do Sanctions Cause ...", p. 128.

on the magnitude of their intentions, they tend to achieve their intended results in only about 30% of the cases[19] .

III. EUROPEAN UNION SANCTIONS

1. Grounds for the Imposition of International Sanctions by the European Union. Sanctions Procedures and Implementation.

Article 21 of the Treaty on European Union lists the principles and objectives of the Union in the field of international relations and security. It is a long and vaguely formulated provision, but it is clear from its provisions and also from what is stated in the specific sanctioning provisions issued by the Union in each case that the reasons for imposing international sanctions are as follows: to protect human rights[20], to guarantee the values, fundamental interests and security of the EU itself, to preserve peace, to consolidate and support democracy, the rule of law and the principles of international law, to preserve the borders and territorial integrity even of non-member states, to prevent conflicts and strengthen international security, and to strengthen the action of the United Nations.

In the case of sanctions imposed by the United Nations, they are often reiterated and reproduced by the European Union and also individually by non-European states. For example, the EU sometimes simply transposes the sanctions measures adopted by the UN, in other cases it complements them by extending them (mixed sanctions regime), and there are also cases in which it approves autonomous restrictions adopted independently by its own decision and completely outside the UN.

It is important to bear in mind that when the EU imposes restrictions they are often reproduced almost verbatim by non-member states such as the Swiss Confederation or various countries in the Balkans or other parts of the world; therefore, the adoption of restrictions by the Union has an important multiplier effect.

An EU sanction is established by a Council Decision in the area of Common Foreign and Security Policy, i.e., a CFSP Decision (Articles 29 and 31 of the Treaty on European Union). The process for its adoption is as follows: the EU High Representative for Foreign Affairs and Security Policy makes a proposal, which is examined and discussed by several preparatory bodies: The Group responsible for the geographical region to which the country that is eventually to be sanctioned belongs, the Group of Foreign Relations Counsellors (RELEX), if necessary the Political and Security Committee (PSC) and the Permanent Representatives Committee (Coreper II). Finally, the Council adopts the CFSP Decision unanimously.

While there are restrictions that are only laid down in the CFSP Decision, such as arms embargoes or restrictions on access to the territory, most sanctioning measures, in particular those involving the freezing of assets or other economic or financial sanctions, must be implemented by means of a Council Regulation (Article 215 of the Treaty on the Functioning of the European Union), which is adopted by the following procedure: on the basis of the CFSP Decision, the High Representative and the Commission present a joint

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[19] G. C. HUFBAUER, J. J. SCHOTT, K. A. ELLIOT, B. OEGG, *Economic Sanctions* ..., pp. 158-160.

[20] C. SANTAOLALLA MONTOYA, "The European Magnistky Act: what about corruption?"*Millenium DiPr*, No. 14, pp. 1-16. http://www.millenniumdipr.com/archivos/1633359705.pdf

proposal for a Regulation, which is analysed by RELEX and sent to Coreper and the Council, which informs the European Parliament. The regulation is adopted by a qualified majority. Its purpose is to specify and detail the measures. The Regulation is a legal act of general application and is therefore binding on any natural or legal person or entity in the EU. The CFSP Decision and the Regulation are published in the Official Journal of the European Union and enter into force.

Both instruments usually contain a list of natural and legal persons and entities on whom certain sanctions have been imposed, mainly freezing of assets or travel restrictions. These subjects are notified of the sanctions imposed on them by means of a letter, if their address is known, or by means of a notice, which is published by the Council and appears in the C series of the Official Journal of the European Union.

The EU is constantly reviewing the restrictions it imposes and can at any time modify, extend, expand, temporarily suspend or lift them. But this idea requires some qualification. In the case of sanctions transposed from Security Council resolutions, they are modified or lifted in accordance with UN decisions. In the case of mixed sanctions, the EU provisions themselves are reviewed at least once every 12 months. In the case of autonomous sanctions, i.e., those agreed by the EU outside the UN, CFSP Decisions are normally valid for 12 months, sometimes less, and are regularly extended. In order to decide on the extension, the Council reviews the sanctions and may receive reconsiderations from the parties concerned. The review may also lead the Council to modify or lift the restrictions. Logically, as we will see below, a natural person or an entity will be removed from the lists of sanctioned parties if the Council approves its request for reconsideration or its appeal for annulment is successful, or if, in the case of a natural person, it dies.

EU sanctions are enforced by the Member States' authorities, which are competent in each case, by means of corresponding national measures. Member State authorities are therefore responsible for monitoring compliance with the restrictions, establishing domestic criminal or administrative sanctions in case of violation of such restrictions, granting authorisations and exemptions where possible, reporting to the Commission on the implementation of EU law, and liaising with the UN Security Council.

2. Sanctioned Countries and Actions

At the time of writing (October 2021) the EU has restrictions in place with respect to Afghanistan, Belarus, Bosnia and Herzegovina, Burundi, Central African Republic, China, Democratic Republic of Congo, Guinea, Guinea-Bissau, Haiti, Iran, Iraq, Lebanon, Libya, Mali, Moldova, Montenegro, Myanmar (Burma), Nicaragua, North Korea, Russia, Serbia, Somalia, South Sudan, Sudan, Syria, Tunisia, Turkey, Ukraine, Venezuela, Yemen and Zimbabwe.

In addition, the EU has sanctions in place against individuals and entities around the world related to terrorism, the development and use of chemical weapons, cyber-attacks and human rights abuses.

The EU has also "counter-sanctioned" the United States of America, in the sense that it has issued a Blocking Statute to try to act against US *Secondary Sanctions.*

It is very important to note that when we say that the EU has issued sanctions against a country it does not mean that all natural and legal persons and all activities in that country are sanctioned; sanctions are usually imposed only on certain persons and entities and on certain economic activities. For example, sanctions in relation to Afghanistan relate only to the Taliban or those in relation to Moldova relate only to the leadership of Transnistria.

Scope of European Union sanctions

The European Regulations articulating the sanctions generally determine that they shall be applied: (a) within the territory of the Union, including its airspace; (b) on board any aircraft or any vessel under the jurisdiction of a Member State; (c) to any person, whether within or outside the territory of the Union, who is a national of a Member State; (d) to any legal person, entity or body, whether within or outside the territory of the Union, which is incorporated or constituted under the law of a Member State; (e) to any legal person, entity or body in connection with any business done in whole or in part within the Union.

4. Description of the Types of Sanctions Imposed by the European Union

4.1. Preliminary Remarks.

It is very important to retain one basic fact: not all of the sanctions described in the following pages are imposed by the EU on all of the countries it sanctions. In some cases, it limits itself to imposing just a few of them - in this sense, a ban on arms exports, the freezing of assets and a ban on entering the territory of member states are almost common - but there are cases in which the country subject to the restrictions suffers from almost all of the sanctions that we will now list. Moreover, each type of sanction can be very specific in its imposition.

On the other hand, voluntary and deliberate participation in activities whose purpose or effect, directly or indirectly, is to circumvent the sanctions imposed is of course also prohibited.

4.2. Restrictions related to trade in arms, dual-use goods and equipment for internal repression.

The European Union frequently prohibits the export of goods and technology listed in the Common Military List[21] to the sanctioned country or for use in or by certain persons in or associated with the sanctioned country. When this restriction is imposed, as well as those discussed later in this section, it is usually also prohibited to provide directly or indirectly technical assistance related to such goods and technology or related to the supply, manufacture, maintenance and use of such goods and technology; likewise, the

[21] Common Military List of the European Union adopted by the Council on 17 February 2020 (equipment covered by Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment) (OJEU C 85 of 13 March 2020).

financing of operations as well as the provision of any services in this regard is also prohibited.

In a few cases (Russia and Syria), a ban has been imposed on the import into the Union of arms from the sanctioned country.

More frequent are restrictions on dual-use goods[22]. For certain sanctioned states, the export of dual-use items and technologies is prohibited; thus, sales that in most cases would only require authorisation in the cases we are referring to are completely prohibited. Furthermore, Article 4(2) of Regulation (EC) 428/2009 states: *"An authorisation shall also be required for the export of dual-use items not listed in Annex I when the purchasing country or country of destination is subject to an arms embargo decided by the Council, by a decision of the OSCE or by an arms embargo imposed by a binding resolution of the Security Council of the United Nations, and when the exporter has been informed by the authorities referred to in paragraph 1 that the items in question are or may be intended, in their entirety or in part, for a military end-use. (b) the use of production, test or analytical equipment or components thereof for the development, production or maintenance of defence material listed in the said list; (c) the use, in a facility intended for the production of defence material listed in the said list, of any type of unfinished products*."

Equipment that may be used for internal repression is also often subject to an export ban to certain sanctioned countries. When establishing this restriction, given that there is no legal definition of such equipment, the European Union in the corresponding regulation introduces an annexe in which it lists the goods that for the purposes of the regulation are considered to be equipment that can be used for internal repression. Along the same lines is the prohibition on exporting certain equipment used for the interception of communications.

The prohibition of military training and military cooperation actions are restrictions that the EU has used against some states.

4.3. Restrictions Related to Trade in Goods in General.

Restrictions on the import and export of goods are one of the sanctions most frequently used by the EU. They are usually highly specific to the country on which they are imposed and to the policy objectives pursued. For example, it is forbidden to trade potassium chloride with Belarus and Myanmar (Burma), or to export timber to North Korea or luxury goods, as listed in the relevant annexes to EU regulations, to Myanmar, North Korea and Syria, or to trade in cultural and historical goods from Iraq and Syria.

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[22] Council Regulation (EC) 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (OJEU L 134 of 29 May 2009). Amended by Regulation (EU) 1232/2011 of the Parliament and of the Council of 16 November 2011 (OJEU L 326 of 8 December 2011), by Commission Delegated Regulation (EU) 2019/2199 of 17 October 2019 (OJEU L 338, 30 December 2019), as corrected by OJEU L 51 of 25 February 2020 and OJEU L 72 of 9 March 2020 and by Commission Delegated Regulation (EU) 2020/1749 of 7 October 2020 (OJEU L 421 of 14 December 2020).
Royal Decree 494/2020, of 28 April, amending Royal Decree 679/2014, of 1 August, approving the Regulation on the control of foreign trade in defence material, other material and dual-use products and technologies (BOE of 29 April 2020).

Restrictions of this nature also extend to aviation fuel, crude oil, food and agricultural products, gold, precious metals and diamonds, machinery and electronic equipment, coal, iron, steel and other metals, petroleum and refined petroleum products, telecommunications equipment, items used in the manufacture of tobacco products, ships, industrial machinery and transport vehicles in respect of certain countries. The meaning and scope of each of these restrictions are normally specified in the annexes to the sanctioning rules by means of an enumeration technique.

When restrictions of this nature are imposed, they are non-retroactive, i.e., contracts concluded before the date on which the export ban was imposed, or the recipient of the goods was included in the list of sanctioned natural and legal persons are allowed to be performed. The execution of ancillary contracts necessary for the realisation of the main contract is also allowed.

4.4. Prohibition of Access to the Territory of the European Union.

A very common restriction is that sanctioned persons are prohibited from entering or transiting the territory of the Member States of the Union. To this effect, the sanctioning provisions include an annexe naming and identifying such persons and also briefly setting out the grounds on which the restrictions are imposed.

There are exceptions to this ban on access to Community territory. With the situation of dual nationals in mind, it is stipulated that the Member States of the Union are not obliged to refuse entry to their nationals. Obligations deriving from international public law and treaty commitments are also taken into account; thus, the Member State will not prohibit entry in cases where it is hosting an international intergovernmental organisation, an international conference convened or sponsored by the United Nations, must respect a multilateral agreement conferring privileges and immunities or the 1929 Concordat (Lateran Pact) between the Holy See (Vatican City State) and Italy. Also, when hosting the Organisation for Security and Cooperation in Europe (OSCE).

In addition, EU Member States may grant exemptions from the ban on access to EU territory in cases where travel is justified on urgent humanitarian grounds or on grounds of attending meetings of intergovernmental bodies, and those promoted by the Union or held in a Member State holding the OSCE Chairmanship-in-Office, where political dialogue is conducted which directly furthers the political objectives of the restrictive measures in question.

Where a European State wishes to grant such exemptions, it shall notify the Council in writing.

4.5. Freezing of Economic Resources and Prohibition to Make Funds Available to the Sanctioned Natural or Legal Person.

The European Union regularly imposes sanctions consisting of the freezing of all economic resources owned or controlled by the sanctioned persons, as well as a prohibition on the direct or indirect ownership or use of any funds or economic resources for the benefit of such persons.

Economic resources are assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services. Capital is financial assets or benefits of every kind (cash, payment instruments, deposits, interest, dividends and other income or capital gains, credit, letters of credit, etc.).

The freezing of economic resources consists of preventing their use to obtain funds, goods or services in any way. For its part, the Court of Justice of the European Union has stated that *"It should be noted that the prohibition on making funds or economic resources available to a person included on the list of persons to whom restrictive measures apply ... is particularly broadly worded, as is shown by the use of the expression 'directly or indirectly'. is drafted in a particularly broad manner, as is shown by the use of the expression <<directly or indirectly>> and therefore covers any act the performance of which is necessary, under the applicable national law, in order to enable that person actually to obtain the possibility of fully disposing of the funds or economic resources concerned (see, to that effect, Case C-117/06 Möllendorf and Möllendorf-Niehuus, EU: C:2007:596, paragraphs 50 and 51; of 29 June 2010, E and F, C-550/09, EU: C:2010:382, paragraphs 66 and 74; and of 21 December 2011, Afrasiabi and Others, C-72/11, EU: C:2011:874, paragraphs 39 and 40) [...] That broad and unambiguous wording thus applies to any making available of an economic resource and thus also to an act which arises from the performance of a synallagmatic contract and which has been agreed in return for payment of a financial consideration ..."*[23]. But it then qualifies that *"However, for funds to be considered as having been placed indirectly at the disposal of a person ... it is necessary either that they can be transferred to that person or that the latter has the power to dispose of them, in particular given the existence of legal or economic links between the beneficiary of the funds and that person"*[24].

The competent authorities of the Member States[25] may authorise the release of certain frozen funds or economic resources or the making available of certain funds or economic resources, under such conditions as they deem appropriate, if they are satisfied that the funds or economic resources are necessary for basic needs (foodstuffs, rent, mortgages, medicines, taxes, etc.) of the person or his dependants, or intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services, or intended exclusively for payment of fees and service charges for routine holding or maintenance of frozen funds or economic resources.

The same authorities may authorise the release of funds and resources, under such conditions as they deem appropriate, after having determined that the funds and resources are necessary for extraordinary expenses, provided that the Member State concerned has notified the other States and the Commission, at least two weeks in advance, of the grounds on which it considers that the specific authorisation should be granted. The said competent authorities may also authorise the release of funds and resources for

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[23] Judgment of 17 January 2019, SH v TG and UF, C-168/17, ECLI:EU:C:2019:36, paragraphs 51 and 52. At paragraph 53 it also states: *"... it is clear from the case-law of the Court of Justice that the concept of <<capital or economic resources>> is attributed a broad meaning, encompassing assets of whatever nature acquired by whatever means ..."*.

[24] Paragraph 62.

[25] The (EU) Regulations imposing the sanctions contain an annex containing the websites of these authorities in each Member State. In the case of Spain: http://www.exteriores.gob.es/Portal/en/PoliticaExteriorCooperacion/GlobalizacionOportunidadesRiesgos/Paginas/SancionesInternacionales.aspx

expenditure necessary for the official purposes of diplomatic and consular missions enjoying immunity in accordance with international law.

As regards the temporal effects of such sanctions, it should be borne in mind that payments due under contracts, agreements and obligations which were concluded or arose prior to the date on which the account was frozen may be credited to frozen accounts. In addition, natural and legal persons subject to sanctions, where the payment is due under a contract or agreement concluded before the imposition of the restriction may apply to the competent authorities of the Member States for the release of certain frozen funds or economic resources in order to meet such payments. The authority shall grant the authorisation under such conditions as it considers appropriate and provided that it is satisfied that the payment is not made directly or indirectly to a sanctioned person; it shall notify the Commission and the other Member States.

4.6. Prohibition to Satisfy Claims

European rules often contain the sanction of a prohibition on the assertion of claims. This means that no claim (compensation, damages, etc.) relating to a contract or transaction whose performance has been affected, directly or indirectly, in whole or in part, by the sanctioning provisions will be honoured if it is brought by or on behalf of persons on the sanctioned lists or any natural or legal person in their country. The burden of proof that his or her particular claim is not affected by this restriction shall be on the person making the claim. This is without prejudice to the right of sanctioned natural and legal persons to have the legality of the breach of contractual obligations examined in judicial proceedings under the sanctioning rules.

4.7. Financial penalties

The prohibition on receiving financing from those subject to European law is another sanction that the European Union sometimes resorts to. The restriction consists, in most cases, in prohibiting direct or indirect transactions of purchase or sale, provision of investment services or assistance in the issuance or any other form of negotiation, in relation to negotiable securities and money market instruments with a certain maturity - frequently more than 90 days - issued by the sanctioned entity and by legal persons controlled by it. Sometimes this sanction is also imposed in respect of certain states, their governments, their agencies and their public undertakings or agents. The granting of new credits to sanctioned entities is also often prohibited.

4.8. Other European sanctions

In addition to those described so far, there are also other EU restrictions that are less frequent or have less impact, such as, for example, bans on the use of ports and airports, the export of certain software, and the obligation to submit ships to inspections, etc.

IV. CONCLUSIONS

Despite the criticism they may deserve and their undoubtedly detrimental effects, even for those who impose them, international sanctions are a phenomenon that is clearly on the rise. The latter is clearly seen in the case of European restrictions.

If we focus on those imposed by the European Union, but this can be said of any system of international sanctions, we see that they are very varied in their modalities, as well as in the sectors they affect and also that, in practice, they must be approached in a particularised manner and very focused on the analysis of the specific case in question.

Today, anyone operating in the international arena, contracting, investing abroad, etc. has to be very aware of the possible impact of international sanctions.

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