BUSINESSEUROPE

Ref:
Contact:

Mr. Jean-Luc Demarty
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Directorate General on Trade,
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17 February 2015

Dear Director General,
Dear Mr. Demarty,

As a follow-up to the correspondence between BUSINESSEUROPE and the European Commission regarding the implementation of EU sanctions Regulations, I would like to take the opportunity and provide you with more concrete examples of problems that European companies face in this process. This letter also seeks to offer recommendations on ways to improve the implementation of EU sanctions regimes in general.

I would like to reiterate BUSINESSEUROPE's unquestionable support to the decisions of the Heads of State of the EU and the efforts of the European Institutions to achieve an effective and harmonised implementation of the sanctions regimes. Without prejudice to the limitations presented by the particular nature of the sanctions instruments, European businesses would like to highlight the following areas for improvement:

A clear legal framework

It is important that the sanctions Regulations are drafted in clear legal language that can be easily interpreted by competent authorities and companies. Drawing from recent experience with EU sanctions against Iran and Russia, clarifications on general concepts may be required in order to avoid confusion, for instance on which undertakings fall under the coverage of the Regulation. To offer a concrete example, in the case of economic sanctions, the definition of services – 'related' or 'necessary', or the definitions of the 'control' and 'ownership' of companies should be more precise and – to the extent possible – harmonised at the level of Member States.

Although we understand the challenge of drafting legal texts that need to encompass different realities and simultaneously be sufficiently clear and precise to avoid misinterpretations, we should at least prevent discrepancies between the actual text of the Regulation and the respective Annexes. For instance, Article 3 of the Council Regulation (EU) No 833/2014 of 31 July 2014 on sanctions against Russia uses the term 'technologies'. However, Annex II lists 'goods'. Even if the latter term was later amended to 'items', it is not expressly stated that associated 'technology' is captured by the sanctions. Confusion remains around whether all items under the relevant CN codes are caught by the Regulation even where not described expressly in Annex II.

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This may lead to confusion as competent authorities may interpret the Regulation in a broader or narrower manner. If the aim of the legislator is not clear, then companies may unintentionally violate the sanctions regime and face consequences, including penal prosecution.

To offer another example, Article 12 of the Council Regulation (EU) No 36/2012 of 18 January 2012 concerning sanctions against Syria, prohibits the sale, supply, transfer or export of equipment used in the construction or installation of new power plants for electricity production in Syria. However, there is no definition of the term 'new power plants'. It is not clear therefore whether the prohibition is applicable only for new projects or it also concerns power plants already under construction before the entering into force of the Regulation, or power plants under upgrading and modernisation processes.

We appreciate the efforts of the European Commission to assess the implementation of sanctions Regulations and address problems that we cannot foresee at the time of the adoption of the sanctions. However, this process may take several months leading to uncertainty and costs for companies. We would like to see a review process that is structured, takes place in a timely manner and follows consultations with all relevant stakeholders, including business.

Harmonised and coordinated implementation

As sanctions Regulations are implemented by Member States, achieving uniformity amongst the 28 different competent authorities is a task that requires particular attention. The 'Guidelines' that are drafted by the European Commission on specific Regulations as well as the continuous training and exchange of information and best practices amongst Member States authorities help achieving this. Nevertheless, experience shows that in practice, implementation is not always harmonised, for instance with regards to the administrative process and legal requirements that companies need to follow in order to obtain export licences for items affected by sanctions.

Increased guidance would be helpful. For example, the guidance issued in respect of indirect dealings with designated parties and scope of 'ownership' and 'control' was of significant assistance to business. Information of legal defences and appropriate compliance steps is an area where indeed more guidance is required, in particular regarding the terms 'reasonable cause to suspect' or 'no reasonable grounds to determine' as found in the Council Regulation (EU) No 1290/2014 on Crimea that amended the Council Regulation (EU) No 692/2012.

Moreover, the international dimension of sanctions should not be forgotten. The EU and the Member States should coordinate their efforts with third partners, especially the US. The problem of extraterritoriality is a prominent example. Although EU sanctions apply only within the EU, US sanctions have a global coverage. For instance, the US sanctions regime against Iran targeted, among other areas, deals between

Iranian financial institutions and all other financial institutions, not only US ones. This situation not only deprived EU financial institutions and companies to pursue legitimate business, but also resulted in penalties.

Another issue that we would like to mention is the lack of clarity and coordination in the waivers' system applied by the EU and its international trading partners. In the case of the financial sanctions against Iran, the EU prohibited companies in Member States from insuring tankers transporting Iranian crude oil, without protection and indemnity insurance coverage. However, even after the implementation of the Joint Plan of Action agreed between Iran and the E3+3 (China, France, Germany, Russia, the United Kingdom and the United States), which allowed EU companies to insure and provide some transportation services for Iranian crude oil, it remained extremely difficult for EU insurers to deal with Iran, as most EU banks refused to facilitate transactions with Iran, even if they were legal under the sanctions regime.

Another example is the following: the US decided to impose sanctions on urea imports from Iran. Since the EU did not follow this approach, imports from Iran have increased significantly in the EU market creating increased competition in our market. Therefore, alignment between the EU and the US sanctions regimes would have prevented this type of problems.

Transparency in information

Access to information and increased transparency on the implementation of the EU sanctions Regulations are crucial for business operators. On many occasions they are obliged to adapt their production and management systems in order to comply with the Regulations. European business recognises and appreciates the creation of the online directory on sanctions, as it is a tool that can be used by companies to assess whether a business partner is subject to sanctions. However, the tool could become more interactive. Communication with business and financial institutions could be further facilitated through access to 'Guidelines' prepared by the European Commission. Moreover, a Help Desk could be created that would serve as a central contact point regarding the implementation of EU sanctions.

I would like to thank you for your attention to the points raised above. BUSINESSEUROPE remains at your and at European Commission's services disposal.

Sincerely Yours,

Luisa Santos
International Relations Director