

Economic and Political Measures in EU Law under the Treaty Establishing the European Community (TEC) and the Treaty on European Union (TEU)

I. General Principle of European Community Law:

“The European Community shall respect international law in the exercise of its powers”.

Apart from this general principle of Community law, set out by the European Court of Justice, two provisions of the Treaty Establishing the European Community offer the only mention of political responsibilities assigned to the Community vis a vis third countries.

Article 181a TEC (on Economic, Financial And Technical Cooperation Measures With Third Countries) states that:

Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to the objective of respecting human rights and fundamental freedoms.

Article 177a TEC (on Development Cooperation) states:

1. Community policy in the sphere of development cooperation, which shall be complementary to the policies pursued by the Member States, shall foster:
 - the sustainable economic and social development of the developing countries, and more particularly the most disadvantaged among them,
 - the smooth and gradual integration of the developing countries into the world economy,
 - the campaign against poverty in the developing countries.
2. Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms.
3. The Community and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations.

The EU’s Common Foreign and Security Policy machinery is assigned responsibility under the TEU for determining the substance and objectives of the EU’s political dialogue with third countries, the diplomacy it conducts and positions it takes in international institutions, the economic and political measures it takes to influence the political behaviour of third states and non-state actors, and the strategies it develops.

II Objectives of the EU’s Common Foreign and Security Policy (CFSP) - the EU’s ‘Second Pillar’

Article 11(1) TEU

[...]

- *to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter,*

- *to strengthen the security of the Union in all ways,*
- *to preserve peace and strengthen international security [...]*
- *to promote international cooperation,*
- *to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.*

In pursuit of these objectives, the general goals and ‘common strategies’ adopted under CFSP include:

- ❖ Promoting Respect for Human Rights and Democratic Principles in Third Countries
- ❖ Promoting Compliance with International Humanitarian Law - by Third States and by Non-State actors Operating in Third States
- ❖ Conflict Prevention and Crisis management

Deciding What to Do and How to Do It Under CFSP

Article 12 TEU

The Union shall pursue the objectives set out in Article 11 by:

- *defining the principles of and general guidelines for the common foreign and security policy,*
- *deciding on common strategies,*
- *adopting joint actions,*
- *adopting common positions,*
- *strengthening systematic cooperation between Member States in the conduct of policy.*

Article 15 TEU

*The Council shall adopt **common positions**. Common positions shall define the approach of the Union to a particular matter of a geographical or thematic nature. Member States shall ensure that their national policies conform to the common positions.*

Kinds of Economic Measures that can be adopted under CFSP to influence third state policies and behavior in support of these goals

Economic ‘Carrots’

Conditioning offers to conclude agreements conferring economic benefits sought by a third state’s government or body politic - e.g. financial aid, technical assistance, preferential trade, lending.

The new **European Neighbourhood Policy** multiplies the ‘carrots’ that the EU can decide offer the ‘Neighbourhood’ countries, opening the door to participation in the EU’s services and public procurement markets, as well as in virtually all Community programmes and agencies. Owing to Israel’s highly developed economic, military, scientific and security capabilities, it is positioned to benefit more extensively than any other Neighbourhood country from these opportunities.

Economic ‘Sticks’

Suspension of economic agreements with third states.

Article 2 of the Association Agreements concluded by the EU with the Mediterranean countries, including Israel, establishes the parties’ ‘respect for human rights and democratic principles’ as an ‘essential element’ of each agreement – a condition on which the entire agreement rests. Each party therefore has the right to suspend an agreement on the grounds that the other has violated its ‘essential element’.

Article 2 of the EU-Israel Association Agreement :

Relations between the Parties, as well as all the provisions of the Agreement itself shall be based on respect for human rights and democratic principles which guide their domestic and international policies and constitute an essential element of the Agreement.

More Economic ‘Sticks’

Sanctions (‘restrictive measures’) targeting individuals, entities, or third states.

The range of restrictive measures set out in Council Guidelines includes:

- diplomatic sanctions (expulsion of diplomats, severing of diplomatic ties, suspension of official visits);
- suspension of cooperation with a third country;
- boycotts of sport or cultural events;
- trade sanctions (general or specific trade sanctions, arms embargoes);
- financial sanctions (freezing of funds or economic resources, prohibition on financial transactions, restrictions on export credits or investment);
- flight bans;
- restrictions on admission into EU territory.

Legal principles governing the EU’s use of sanctions

- The EU can only impose sanctions to contribute to further a CFSP objective, unless the sanctions have been mandated by the UNSC under Chapter VII of the UN Charter).
- The Council must unanimously adopt a ‘common position’ under Article 15 of the TEU mandating particular restrictive measures.
- The measures must be proportionate to their objective and should target as closely as possible the individuals and entities responsible for the undesirable policies and actions, minimising adverse effects on others.
- Their introduction and implementation must be in accordance with applicable laws, including international law.
- They must respect human rights and fundamental freedoms, in particular due process and the right to an effective remedy.

Legal Basis for Launching Economic Sanctions

Article 301 TEC

Where it is provided, in a common position or in a joint action adopted according to the provisions of the Treaty on European Union relating to the common foreign and security policy, for an action by the Community to interrupt or to reduce, in part or completely,

economic relations with one or more third countries, the Council shall take the necessary urgent measures.

Authority to Conclude and Suspend Agreements

Article 300 TEC

- 1. Where this Treaty provides for the conclusion of agreements between the Community and one or more States or international organizations [...]*
- 2. [...] the conclusion of the agreements shall be decided on by the Council.
[...] the same procedures shall apply for a decision to suspend the application of an agreement. [...]*

Authority to Impose a Partial or Complete Freeze on State-to-State and Commercial Transactions Targeting a Third Country

Article 60 TEC

- 1. [...] the Council may, in accordance with the procedure provided for in Article 301, take the necessary urgent measures on the movement of capital and on payments as regards the third countries concerned.*
- 2. [...] as long as the Council has not taken measures pursuant to paragraph 1, a Member State may, for serious political reasons and on grounds of urgency, take unilateral measures against a third country with regard to capital movements and payments.*