

The EU Delegation to the UN Office and other international organisations in Geneva presents its compliments to the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights and to the Independent expert on the promotion of a democratic and equitable international order and has the honor to refer to the Joint Communication from Special Procedures of 24 February 2025.

The EU Delegation hereby wishes to transmit in attachment the response of the competent EU services to the Joint Communication from Special Procedures of 24 February 2025.

Enclosure:

Dear Ms Douhan, dear Mr Katrougalos,

The European External Action Service (EEAS) has the honor to refer to the Joint Communication from Special Procedures of 24 February 2025, in which you request clarification regarding information that you have received concerning the reported use of the rebuttable presumption of wrongdoing or presumption of guilt, the de facto reversal of the burden of proof, and the low evidentiary threshold as a recurrent practice in sanctions designation cases, as well as in sanctions review and de-listing procedures.

The Communication has been shared with the Council of the European Union ('the Council').

We wish to underline that restrictive measures are an essential tool for the promotion of EU's Common Foreign and Security Policy (CFSP) objectives, in line with the principles of the UN Charter. These objectives include support for the democracy and the rule of law, respect for human right and principles of international law, preservation of peace, prevention of conflicts and strengthening of international security, as outlined in Article 21 of the Treaty on the European Union ('the TEU'). When adopting restrictive measures, the EU is bound to respect and fully comply with obligations under international law, including those pertaining to humanitarian aid, human rights and fundamental freedoms.

EU restrictive measures are a foreign policy tool for the EU to respond to global challenges and crisis, such as human rights violations, other breaches of international law, or threats to peace and security. The primary objective of restrictive measures is to exert economic and diplomatic pressure on those accountable for such harmful policies or actions, with the aim of encouraging a change in their policy or conduct. EU restrictive measures do not target entire countries or population; rather they are specifically directed at particular members of governments of non-EU countries, non-state entities, groups, and individuals responsible for harmful policies or actions. The proportionality of restrictive measures is ensured through, inter alia, a system of derogations and exceptions, such as those related to humanitarian aid. They are designed so as to align with the fundamental principles underpinning the EU legal order, such as proportionality, the rule of law and fundamental rights.

EU restrictive measures are kept under periodical review by the Council. Such measures are of a precautionary and, by definition, temporary nature. They remain in force only as long as the factual and legal circumstances that led to their adoption continue to exist and only for the duration necessary to achieve their objectives. Through the periodic review of those restrictive measures, the Council conducts an assessment of whether the goals for imposing restrictive measures were achieved and whether the designated individuals and entities still fulfil the listing criteria. Any designated natural or legal person (or their legal representatives) may submit a request to the Council for reconsideration of their designation.

EU restrictive measures are therefore targeted, proportionate, temporary, and they are not punitive. They are administrative in nature and do not constitute criminal sanctions, nor, likewise, do they imply any accusation of a criminal nature¹. Listed individuals and entities are entitled to procedural safeguards that ensure their rights of defence, the right to effective judicial protection and due process. All individual designations are accompanied by an explanation - statement of reasons - to enable the individual or entity concerned to understand the grounds for their listing. They are based on specific listing criteria and evidence that is made available to the listed individual or entity, upon request. Listed individuals and entities are also notified about changes to the reasons for their designation and given an opportunity to provide observations, submit requests for access to their file and make de-listing requests, which are examined by the Council (or, in some cases, by the European Commission).

The judicial review of restrictive measures is ensured by the Court of Justice of the European Union (CJEU). The EU legal framework, including the Charter of Fundamental Rights of the European Union, ensures that individuals and entities subject to EU restrictive measures have access to legal remedies, including the ability to challenge restrictive measures on procedural and substantive grounds. The CJEU has consistently ruled that the Council bears the burden of proof in cases involving the imposition of restrictive measures. It is the task of the Council to establish, in the event of challenge, that the reasons relied on against the individual or entity are well founded, and not the task of that individual or entity to adduce evidence of the negative, that those reasons are not well founded. The Council must provide clear, concrete and specific evidence to justify restrictive measures. The evidence must demonstrate that the listing of individuals and entities corresponds to the listing criteria and must be sufficiently solid so as to withstand judicial scrutiny.

Yours sincerely,

¹ See eg. Case T-390/08, *Bank Melli Iran v Council of the European Union* [2009] ('Bank Melli'). ECR 2009 II-03967, ECLI:EU:T:2009:401, para 111.