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36. Instructs its President to forward this resolution to the President of the European Council, the President of the Commission, the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy, the Council, the Polish Presidency of the Council of the European Union, the Commission, and the US State Department.

Consistent policy towards regimes against which the EU applies restrictive measures

P7_TA(2012)0018

European Parliament recommendation to the Council of 2 February 2012 on a consistent policy towards regimes against which the EU applies restrictive measures, when their leaders exercise their personal and commercial interests within EU borders (2011/2187(INI))

(2013/C 239 E/02)

The European Parliament,

- having regard to the proposal for a recommendation to the Council by Graham Watson on behalf of the ALDE Group, on a consistent policy towards authoritarian regimes, against whom the EU applies restrictive measures, when they exercise their personal and commercial interests within EU borders (B7-0235/2011),
- having regard to the UN Charter and specifically Articles 1 and 25 and, in Chapter VII, Articles 39 and 41 thereof,
- having regard to the United Nations human rights conventions and the optional protocols,
- having regard to the International Covenant on Civil and Political Rights and the two optional protocols,
- having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights),
- having regard to UNSC Resolution 1674 of 28 April 2006 which reaffirms the provisions of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity,
- having regard to the Charter of Fundamental Rights of the European Union,
- having regard to the European Security Strategy (ESS) entitled 'A secure Europe in a better world', adopted by the European Council on 12 December 2003,
- having regard to Resolutions 1267 (1999) on the situation in Afghanistan and 1371 (2001) on the situation in the Former Yugoslav Republic of Macedonia of the United Nations Security Council (UNSC),
- having regard to Articles 21(2), 22 and 36 of the Treaty on European Union (TEU),

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- having regard Article 215 of the Treaty on the Functioning of the European Union,
- having regard to Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence ⁽¹⁾,
- having regard to the Council document entitled 'Establishment of a Sanctions formation of the Foreign Relations Counsellors Working Party (RELEX/Sanctions)' of 22 January 2004 (5603/2004),
- having regard to the Council document entitled 'Basic Principles on the Use of Restrictive Measures (Sanctions)' of 7 June 2004 (10198/1/2004),
- having regard to the European Court of Justice judgment in Yusuf and Al Barakaat International Foundation v Council and Commission (ECR 11-3533 (2005)),
- having regard to Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders ⁽²⁾,
- having regard to the Council document entitled 'EU Best Practices for the effective implementation of restrictive measures' of 9 July 2007 (11679/2007),
- having regard to the Council document entitled 'Implementation of Common Position 2001/931/CFSP' of 21 July 2007 (10826/1/2007),
- having regard to the Council document entitled 'Update of the EU Best Practices for the effective implementation of restrictive measures' of 24 April 2008 (08666/1/2008),
- having regard to Council Common Position 2009/67/CFSP of 26 January 2009 updating Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Common Position 2008/586/CFSP ⁽³⁾,
- having regard to the Council document entitled 'Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy', last reviewed on 15 December 2009 (17464/2009),
- having regard to its resolution of 4 September 2008 on the evaluation of EU sanctions as part of the EU's actions and policies in the area of human rights ⁽⁴⁾,
- having regard to Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing ⁽⁵⁾,
- having regard to the foreign policy resources of the Member States,
- having regard to Rule 121(3) of the Rules of Procedure,
- having regard to the report of the Committee on Foreign Affairs (A7-0007/2012),

General observations on the EU approach towards authoritarian leaders

- A. whereas the new Article 21 of the TEU, as introduced by Article 1(24) of the Treaty of Lisbon, recognises that the Union's actions shall be guided by 'democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity and respect for the principles of the United Nations Charter and international law';

⁽¹⁾ OJ L 196, 2.8.2003, p. 45.

⁽²⁾ OJ L 328, 24.11.2006, p. 59.

⁽³⁾ OJ L 23, 27.1.2009, p. 37.

⁽⁴⁾ OJ C 295 E, 4.12.2009, p. 49.

⁽⁵⁾ OJ L 309, 25.11.2005, p. 15.

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- B. whereas sanctions are applied in pursuit of CFSP objectives as set out in Article 21 of the TEU which include promoting international peace and security, respect for human rights, fundamental freedoms, rule of law and consolidating democracy and good governance;
- C. whereas, within the framework of the CFSP, sanctions or restrictive measures are regarded as coercive measures short of force, such as arms embargoes, trade sanctions, financial and economic sanctions, freezing of assets, flight bans, restrictions on admission, diplomatic sanctions, boycotts of sports and cultural events and suspension of cooperation with a third country;
- D. whereas the application of sanctions and restrictive measures is effective only if this forms part of a cohesive overarching EU and Member State strategy on human rights;
- E. whereas 'targeted sanctions' exist in the form of personal sanctions, selective economic measures and diplomatic measures, such as visa bans, asset freezes, embargos on the export or import of specific commodities, flight bans, investment bans or the limitation of official contacts;
- F. whereas disagreement among Member States often leads to inconsistent application of restrictive measures which damages the EU's credibility and has a detrimental impact on the efficiency of those measures;
- G. whereas the EU has often applied its sanctions policy inconsistently by treating third countries with similar human rights and democratic records differently, and as such has prompted criticism for applying double standards;
- H. whereas progress in information technology makes national borders increasingly irrelevant and, in a globalised world, thus reduces the capacity to isolate a country or its elite;
- I. whereas most of the countries subjected to sanctions are those that have remained most isolated from the international system and whose societies would most benefit from enhanced international exposure for the sake of change; whereas in certain cases restrictive measures, notably against certain individuals, can nevertheless have dissuasive and psychological effects;
- J. whereas decisions on sanctions by the EU should be taken only after thorough evaluation of the most efficient way to achieve democratic change in the country; whereas each decision should be accompanied by a corresponding justification;
- K. whereas the European Union represents to many authoritarian leaders, and persons associated with them, a source of attraction for investment, property and banking, and healthcare services, and an area in which they enjoy freedom to travel and freedom to spend their often dubiously acquired wealth;
- L. whereas the opportunity for authoritarian leaders to convert power into personal wealth, often including through the misappropriation of, or personal control over, state assets, offers them the incentive and boosts their capacity to usurp and continue in power; whereas further studies are required in order to minimise any relation between foreign aid for development or other purposes and the enrichment of authoritarian leaders and their inner circles;
- M. whereas, without concerted action, accurate information on the assets of authoritarian leaders held within the EU is difficult to obtain and the EU must persevere in seeking to obtain it;

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- N. whereas sanctioned leaders will be affected if they are personally subject to pressure in the form of restrictions on their ability to move money, invest and access their financial assets, restrictions on prospects for travel, and restrictions on access to particular goods and services or diplomatic representation;
 - O. whereas the multiplicity of international and regional actors necessitates dialogue and formal and informal mechanisms for consultation between those actors;
 - P. whereas an essential aspect of an effective policy towards authoritarian regimes must balance coercive diplomacy, including restrictive measures with clear communication and constructive options not involving the use of force, with EU and Member State foreign policy resources preferring a critical and progressive dialogue over isolation;
 - Q. whereas the review procedure, in which sanctions can be expanded, eased or lifted in response to changes in the actions of targeted leaders, is crucial for restrictive measures to be effective, and must be conducted in a rigorous and strategic manner;
 - R. whereas all restrictive measures must comply with human rights, international humanitarian law, due process, proportionality and the right to effective redress, and must on no account penalise the most vulnerable population groups in countries affected by these measures;
1. Addresses the following recommendations to the Council:

Develop clearer definitions

- (a) to develop clear criteria for when restrictive measures are to be applied, the objectives for such measures, the form of sanctions to be applied, guidelines for their periodic evaluation and the review procedure to be followed in consultation with the European Parliament; to establish the criteria in a way that enhances the consistency and credibility of EU sanctions, but leaves sufficient flexibility at the operational level, enabling the Union to leverage the instrument as an effective tool in its external action;
- (b) to define clearly and explicitly who is to be sanctioned in the case of failed states or non-state actors, knowing well that the structures are often obscure;
- (c) to inscribe the sanctions in a comprehensive policy context, establishing specific short-term and long-term objectives for a sustainable democratisation process;
- (d) to acknowledge that sanctions are not an end in themselves and to accompany their application with clear and achievable benchmarks for the lifting of sanctions;
- (e) to systematically support the work of the International Criminal Court by ensuring that the procedures and the judgments of the court are duly regarded in EU sanctions policy;
- (f) to urge the EU Member States to apply the principle of universal jurisdiction in tackling impunity and crimes against humanity, in order to improve the international criminal justice system;

Build an efficient sanctions policy

- (g) to commit to maximizing collaboration and synergy amongst the 27 EU Member States, urging them to speak with a unified and consistent voice on the matter of condemning authoritarian regimes through a single integrated EU approach;

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- (h) to acknowledge that sanctions which are not internationally coordinated can be inefficient and counter-productive to their stated aims, can undermine the transparency, credibility and coherence of the European sanctions policy, and can reinforce the targeted regime or reduce the relative negotiation leeway and credibility of the EU and its Member States with the state in question; to ensure better coordination and exchange of information among Member States by clear procedures;
- (i) to implement existing sanctions regimes with rigour and consistency, striving to avoid the application of double standards and extending their scope to include cases of violation of fundamental freedoms, and especially of religious freedom and freedom of expression; to ensure that countries belonging to the European Economic Area and applicant countries for accession to the European Union also apply the restrictive measures and exchange relevant information with the Union;
- (j) to deploy sanctions or restrictive measures which are targeted at and proportionate to the objective pursued, aimed at influencing only the accountable elites of repressive or criminal regimes and the responsible non-state actors of failed states minimising, as far as possible, the adverse impact on civil populations, especially the most vulnerable;
- (k) to ensure that foreign aid for development or other purposes does not end up being an incentive for the enrichment of authoritarian leaders and their inner circles;
- (l) to ensure, wherever possible, that the sanctions policy is coupled with support for civil society in the country concerned; to improve the quality and transparency of the reporting stage, so that assistance granted can be quantified precisely and its actual contribution to meeting the needs of civil society accurately assessed;
- (m) to ensure that there are no double standards when deciding on restrictive measures or sanctions and that these are applied regardless of political, economic and security interests;
- (n) to ensure that restrictive measures which limit the market activities of European companies in sanctioned countries will not be beneficial to third-country competitors;
- (o) to ensure that the Member States, as well as EU Heads of Mission and Delegation are closely involved in the process of designing, implementing, monitoring and evaluating restrictive measures and their consequences on the ground by providing input for impact assessment, which makes EU presence on the ground essential; to ensure that the relevant information is forwarded promptly to the European Parliament;
- (p) to ensure that, in countries on which restrictive measures are imposed, the main actors championing democracy and human rights are closely involved in the process of designing, implementing and evaluating restrictive measures;
- (q) to commit the existing structures within the EEAS and Commission to conduct an in-depth situation analysis of the economic and societal structure of the country in question, prior to and after the adoption of sanctions, thus examining the direct and indirect effects of all specific measures on the political and socioeconomic realms of the society in question, as well as taking into account their impact on business elites, civil society groups, the political opposition and even reform-oriented elements within the government;
- (r) to commit RELEX Sanctions to fulfil its mandate to conduct research on adopting sanctions, evaluate existing sanctions and develop best practices with regard to the application and implementation of restrictive measures, and to report regularly to the Council and European Parliament on its findings;

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- (s) to commit the EU legal and other relevant services to advise the Council on the precautions required to prevent the circumvention of sanctions by listed individuals;
- (t) to commit the EEAS and the Commission to a more integrated approach that shares expertise and knowledge in the drawing up, implementation and review of sanctions;
- (u) to commit the Council and the Commission to allocate sufficient time and resources and employ knowledgeable country experts and staff specialising in human rights for the analyses preceding the design of sanctions and for the evaluation of the effectiveness of sanctions;
- (v) to commit the Commission and Member States to coordinate the implementation of arms embargoes which are a Member State competence;
- (w) to commit the Commission and Member States to report annually on the implementation of sanctions efforts and their effectiveness;
- (x) to call on France and Britain and any non-permanent EU member of the UNSC to use sufficient suasion to ensure that UNSC resolutions are implemented rigorously and thoroughly;
- (y) to consider, where appropriate, activating 'essential elements' clauses in bilateral trade that permit the EU to impose sanctions for breach of human rights and democratic principles and engage in a coherent European foreign policy in order to support measures against authoritarian regimes;

Commit to a coherent policy within EU borders

- (z) to commit EU Member States to declare when persons on the sanction list have physical and financial assets held within their borders, and the approximate value and location of the assets; to call on EU Member States to collaborate in exchanging relevant information, for example through the existing Asset Recovery Offices and the Camden Asset Recovery Inter-Agency Network (CARIN); to enhance cooperation between EU Member States in the identification and confiscation of those assets;
- (aa) to commit all EU Member States to ensure the rigorous application of targeted financial sanctions or restrictive measures such as:
 - extending Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing to apply in a mandatory way to all attempts to open accounts or deposit money by sanctioned dictators and natural and legal person or entities associated with them, this money being the proceeds of crime, theft and embezzlement; and exploring options for other preventive mechanisms to curb the inflow of misappropriated state funds or assets into EU financial institutions;
 - the refusal of loans, the tightening of measures aimed at repayment of loans and the freezing of deposits, in order to ensure that, in practice, the measures deny designated persons and entities all access to all financial services within the EU's jurisdiction;
- (ab) to ensure that restrictive economic and financial measures, including targeted financial sanctions, are applied by all persons and entities operating within the Union, including nationals of third countries, as well as by Union citizens or economic entities operating outside the Union's borders but registered or established under the legislation of a Member State of the Union;

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- (ac) to ensure that sanctioned leaders, and natural and legal persons and entities clearly associated with them, are strictly prohibited from owning assets and property within the EU;
- (ad) to commit EU Member States to prohibit schools and universities, think tanks and other academic institutions from accepting funding, grants, or donations from sanctioned leaders and their natural and legal associates and to establish transparency in their private financing;
- (ae) to commit EU Member States to prohibit sports associations (including football clubs) and charity organisations from accepting funding, grants or donations from sanctioned leaders and their natural and legal associates;
- (af) to commit the EU and its Member States to strict adherence to travel bans prohibiting sanctioned persons, from travelling within the EU for any purpose other than on humanitarian grounds;
- (ag) to commit EU Member States to actively investigate and, where appropriate, prosecute persons or legal entities in Europe that have assisted sanctioned leaders and persons associated with them to evade or avoid the sanctions legally imposed against them;

Outreach

- (ah) to commit the EU to build international support and coalitions for its policies, especially with influential actors in the region in question and international organisations, and to associate the European Parliament fully in the process;
- (ai) to commit the EU to strengthen legitimacy and build broad public and political support for its policies, including restrictive measures and sanctions, at the EU and international levels, especially in the countries of the sanctioned regimes, and to associate the European Parliament fully in the process;
- (aj) to urge the EU to cooperate, where the UN Security Council has not applied sanctions or restrictive measures, with states that are applying sanctions, to share information and to coordinate measures in order to guarantee the greatest possible impact at international level and maximise the effectiveness of the application of Community sanctions;
- (ak) to commit the HR/VP, the Heads of Mission and the EEAS to communicate explicitly to sanctioned leaders what is required of them, and to set precise and achievable targets in order to incentivise positive change and to offer appropriate technical assistance;
- (al) to commit Member States to sharing information on listed individuals, as far as legally possible, with other states, relevant EU bodies and international organisations;
- (am) to commit Member States to ensure a reasonable degree of public access to information on national measures with regard to restrictive measures applied;
- (an) to commit the Council to consult the European Parliament fully in the sanctions review process and to seek input from the European Parliament into the political guidelines and framing of wider EU sanctions policy;
- (ao) to recall that coercive diplomacy must also be matched with positive measures such as development aid, sustainable economic cooperation and support for civil society;

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- (ap) to accompany sanctions and their evaluation with measures based on cooperation and dialogue with civil society organisations and the peoples of targeted countries, with the aim of developing or strengthening a culture of respect for democracy and human rights in the country in question;
- (aq) to endeavour to mobilise frozen and confiscated assets in order to repatriate them, as soon as possible to their respective countries to the benefit of the population;

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2. Instructs its President to forward this recommendation to the Council and, for information, to the Commission and the EEAS.

Cross-border transfer of company seats

P7_TA(2012)0019

European Parliament resolution of 2 February 2012 with recommendations to the Commission on a 14th company law directive on the cross-border transfer of company seats (2011/2046(INI))

(2013/C 239 E/03)

The European Parliament,

- having regard to Article 225 of the Treaty on the Functioning of the European Union,
- having regard to Articles 50 and 54 of the Treaty on the Functioning of the European Union,
- having regard to Commission communication of 21 May 2003 entitled ‘Modernising Company Law and Enhancing Corporate Governance in the European Union – A Plan to Move Forward’ (COM(2003)0284),
- having regard to the Commission communication of 3 March 2010 entitled ‘Europe 2020 – A strategy for smart, sustainable and inclusive growth’ (COM(2010)2020),
- having regard to the Commission communication of 27 October 2010 entitled ‘Towards a Single Market Act – For a highly competitive social market economy – 50 proposals for improving our work, business and exchanges with one another’ (COM(2010)0608),
- having regard to the Commission communication of 13 April 2011 entitled ‘Single Market Act – Twelve levers to boost growth and strengthen confidence – Working together to create new growth’ (COM(2011)0206),
- having regard to Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) ⁽¹⁾,

⁽¹⁾ OJ L 294, 10.11.2001, p. 1.