EU SANCTIONS: LAW AND POLICY ISSUES CONCERNING RESTRICTIVE MEASURES

Edited by

Iain Cameron
PREFACE

The present book grew out of a conference I organized in September 2011 at the Faculty of Law of Uppsala University. In addition to the authors, I would like to thank all the participants in this conference for helpful comments, particularly Martin Björklund, Therese Hydén, Nils Jareborg, Agneta Hilding-Quarnström, Per Saland, Magnus Ulväng, Jørn Vestergaard and Andreas von Hirsch. I am grateful to the Faculty of Law for funding the conference.

The Emil Heijnes Foundation generously provided the necessary publication funding. Lastly, I should say that the authors submitted their chapters at different times during the late spring of 2012. In general, they have tried to state the law and practice as it is on 30 June 2012. In a number of cases they have been able to take account of subsequent changes.

Iain Cameron
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## ABBREVIATIONS

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<th>Abbreviation</th>
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<tr>
<td>AC</td>
<td>Appeal Cases (United Kingdom)</td>
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<td>AML</td>
<td>Anti-Money Laundering</td>
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<td>BCBS</td>
<td>Basel Committee on Banking Supervision</td>
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<td>CDD</td>
<td>Customer Due Diligence</td>
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<td>CFI</td>
<td>Court of First Instance</td>
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<td>CFSP</td>
<td>Common Foreign and Security Policy</td>
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<td>CFT</td>
<td>Combating Financing of Terrorism</td>
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<td>CJEU</td>
<td>Court of Justice of the European Union</td>
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<td>COPRI</td>
<td>Conflict and Peace Research Institute</td>
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<td>CUP</td>
<td>Cambridge University Press</td>
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<td>EAW</td>
<td>European Arrest Warrant</td>
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<td>PEPs</td>
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<td>PMOI</td>
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TABLE OF CASES

EU COURTS

COURT OF FIRST INSTANCE/TRIBUNAL

Case T-228/02 People’s Mojahedin Organization of Iran v Council (OMPI/PMOI I) [2006] ECR II-4665.
Case T-256/07 People’s Mojahedin Organization of Iran v Council (OMPI/PMOI II) [2008] ECR II-3019.
Case T-284/08 People’s Mojahedin Organization of Iran v Council (OMPI/PMOI III) [2008] ECR II-3487.

ECJ/CJEU

Case C-266/05 P Sison v Council [2007] ECR I-1233.
Table of Cases

Case C-64/05 P Sweden v Commission [2007] ECR I-11389.
Joined Cases C-120/06 P and C-121/06 P Fabbrica italiana accumulatori motocarri Montecchio SpA (FIAMM), and Fabbrica italiana accumulatori motocarri Montecchio Technologies LLC v Council and Commission [2008] ECR I-6513.
Case C-548/09 P Bank Melli Iran v Council, 16 November 2011, Grand Chamber, nyr.
Case C-27/09 French Republic v People’s Mojahedin Organization of Iran (PMOI), Council and Commission, 21 December 2011, Grand Chamber, nyr.
Case C-360/10 SABAM v Netlog, 16 February 2012 (nyr).
Case C-376/10 Pye Phyoo Tay Za v Council, 13 March 2012, Grand Chamber, nyr.

ECtHR

Comingesoll S.A. v Portugal, No. 35382/97, 6 April 2000.
Segi and Others and Gestoras Pro-Amnistía and Others v 15 States of the EU, Nos 6422/02 and 9916/02, 23 May 2002.
Sürmeli v Germany, No. 75529/01, 31 October 2005.
Segerstedt-Wiberg and Others v Sweden, No. 62332/00, 6 June 2006.
Burden and Burden v UK, No. 13378/05, 12 December 2006.
Leroy v France No. 36109/03, 2 October 2008.
A and Others v UK, No. 3455/05, 19 February 2009.
Gül and Others v Turkey, No. 4870/02, 8 June 2010.
Sanoma Uitgevers v Netherlands, No. 38224/03, 14 September 2010.
Kılıç and Eren v Turkey, No. 43807/07, 29 November 2011.
Vejdeland and Others v Sweden, No. 1813/07, 9 February 2012.
Nada v Switzerland, No. 10593/08, 12 September 2012.
UN HUMAN RIGHTS COMMITTEE


NATIONAL COURTS

DENMARK

U 2007.1831 H
Copenhagen City Court, judgment of 27 March 2007, unpublished.
High Court, judgment of 6 February 2008, unpublished.
U 2009.1453 H
Copenhagen City Court, judgment of 15 March 2010, unpublished.

THE NETHERLANDS

Rechtbank 's-Gravenhage 13–5-2003, KG 03/514, LJN AF8506.
Rechtbank 's-Gravenhage 3–6-2003, KG 03/514, LJN AF9389.
Hoge Raad 28–10–2011, nr. 10/05147, LJN BQ9880.

SWEDEN

Hovrätten över Skåne och Blekinge (Court of Appeal), case no. B 685–09, decided 9 November 2009, unpublished.

UK

Secretary of State for the Home Department v Rehman [2001] UKHL 47.
Table of Cases

A (FC) and others (FC) (Appellants) v Secretary of State for the Home Department (Respondent), [2004] UKHL 56.
Secretary of State for the Home Department v Lord Alton of Liverpool & Others [2008] EWCA Civ 443.
Al Rawi v the Security Service [2011] UKSC 34.

USA

Bethel School District No. 403 v Fraser, 478 U.S. 675 (1986).