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Questionnaire:

1. **From your Government’s perspective, in what circumstances are the application of unilateral sanctions/measures legal under international law? What types of activity could be qualified as illegal unilateral coercive measures? Please, specify. What definition can be proposed for the identification of unilateral coercive measures?**

Portugal doesn’t have a tradition of adopting unilateral sanctions/measures on its own initiative. Despite many political debates lead small opposition parties to pursue such policy in concrete cases (Venezuela, Israel or Cuba), such have not been part of Portugal’s foreign affairs strategy. On the contrary, Portugal only applies sanctions or coercive measures under the execution of a Resolution adopted by the Security Council or of a restrictive measure adopted under the European Union’s Common Foreign and Security Policy (CFSP).

There is no official position by Portugal on the activities that could be qualified as illegal unilateral coercive measures. Portugal tends to evaluate the lawfulness of such measures on a case-by-case basis.

According to Law no. 97/2017, of 23rd August, which regulates the application and execution of restrictive measures adopted by the United Nations Organization of by the European Union, restrictive measures or sanctions are “a temporary of the exercise of a certain right through the imposition of a prohibition or of an obligation, adopted by the United Nations Organization or by the European Union, in order to: maintain or restore international peace and security; protect human rights; pursue democracy and the rule of law; preserve sovereignty and national independence and other fundamental interests of the State; prevent and repress terrorism and the proliferation of weapons of mass destruction” (article 2).

1. **What is the position of your Government on the legal status and legality (in international law) of unilateral sanctions without or beyond the authorization of the UN Security Council? What is its position on the legal status and legality of unilateral sanctions as countermeasures against another party’s unilateral sanctions? What is its position on the legal status and legality of physical means (e.g. blockades) or cyber means to enforce unilateral sanctions?**

The Portuguese Government accepts and applies unilateral sanctions beyond the authorization of the UN Security Council under the above mentioned CFSP framework. Therefore, Portugal as an EU Member State implements sanctions whether adopted by the UN Security Council or adopted as a restrictive measure by EU on its own initiative (also called autonomous sanctions).

Portugal doesn’t hold an official position on countermeasures, although in practice Lisbon prefers not to apply countermeasures unless CFSP decides in a different way. Recently, Portugal decided not to adopt countermeasures against Venezuela after the Venezuelan Government decided to act against the Portuguese public airline TAP, choosing instead to hold talks with Caracas.

Under the Portuguese legal framework, Portugal does not implement physical or cyber means to enforce unilateral sanctions. In order to execute an unilateral measure, Portugal must consider the respect for human dignity, proportionality and equality. On this, Portugal also follows the EU “Guidelines on the implementation and evaluation of restrictive measures (sanctions)” as well as both the “Best practices for the effective implementation of restrictive measures” and the “Basic principles on the use of restrictive measures (sanctions)”.

1. **What is the position of your Government on the legal status and legality of (a) unilateral sectoral sanctions and (b) unilateral sanctions against legal persons (individuals and entities)? Can the latter be qualified as criminal punishment / civil penalty / administrative penalty / collective punishment / any other qualification?**

Under the Portuguese legal framework and according to the Portuguese Ministry of Foreign Affairs, unilateral sectoral sanctions could be lawful (ex.: embargo on certain sectors whether under financial or trade restrictions).

Portugal considers lawful measures that target Governments of third countries, non-governmental bodies (organizations or groups) and both natural and legal persons.

Portugal sees sanctions as “temporary restrictions” (article 2 of Law no. 97/2017). Simultaneously, the “suspension or cessation of restrictive measures adopted by the United Nations Organization or by the European Union immediatly suspends or ends the effects of all acts” of application or implementation of any measure” (article 4). Thus, because any of the measures provided for by the law are not definitive and the Portuguese legal framework provides that the provisions enshrined on the Administrative Procedure Code applies subsidiarily to the unilateral measures legal regime (article 35), it should not be seen as a punishment or penalty but as a “temporary administrative restriction”.

1. **What measures are taken by your Government to implement sanctions of the UN Security Council? Does your government take supplemental measures beyond the Security Council’s sanctions? Please, specify.**

Measures taken by the Portuguese Government include: restrictions of diplomatic nature (affecting relations with third states); restrictions to the entry and movement of persons (visa ban an travel ban); trade restrictions (arms embargo, import/export restrictions, embargo to certain sectors, prohibition and control of provision of services and technical, financial or funding assistance, restrictions to the transportation industry); financial restrictions (freezing of funds and assets, restrictions to investment, prohibition of financial operations, prohibition of funding).

The Portuguese Government does not take supplemental measures beyond the Security Council’s sanctions unless such measures are adopted under the CFSP framework.

1. **What is the opinion of your Government on the extraterritorial application of unilateral sanctions (its existence, cases, forms, admissibility and legality)? Please, specify.**

The extraterritorial application of unilateral sanctions are lawful only when it derives from any treaty or convention to which Portugal is binded or when it derives from the European Union framework. In other cases, Portugal cooperates with third states when reciprocity is assured, the foreign entity has competencies on the procedure of aplication of international restrictive measures, there are safeguards that the result of the cooperation is used only to the goals foressen in Law no. 97/2017 and with the approval by a Portuguese court.

Regarding unilateral measures adopted by Portugal or under the CFSP framework, Portugal doesn’t have a solution in order to try to enforce such decisions in third states.

1. **Is there any legal ground from the perspective of your Government for individuals or entities that violate the rules of a unilateral sanctions regime to be targeted by sanctions (secondary sanctions)? What is the position of your Government on the legal status and legality of secondary sanctions in international law (a) when the targets are domestic citizens or entities, and (b) when the targets are extraterritorial? What rules are applied to nationals of third states as concerns the application of secondary sanctions?**

The Portuguese legal framework considers the application of criminal sanctions (up to 5 years of inprisonment) to natural or legal persons with Portuguese citizenship or resident in Portugal that violate the unilateral sanctions regime (articles 3 and 28 to 30).

Portugal doesn’t hold an official position on the legal status and legality of secondary sanctions when targets are domestic citizens or entities and when the targets are extraterritorial as well as to the rules applied to nationals of third states.

1. **What is the position of your Government towards over-compliance with sanctions resulting from extraterritorial enforcement? Please, specify. How does your Government address such “over-compliance”?**

Although Portugal cooperates with foreign authorities and international organizations on the approval, implementation and execution of restrictive measures if such duty derives from an international instrument, Portugal considers proportionality, equality and human dignity as the criteria to execute restrictive measures. Thus, such cooperation can be rejected and the third state must assure that the information will only be used in criminal proceedings if a Portuguese court authorizes such use.

1. **Who, from the perspective of your Government, can be viewed as targets of unilateral sanctions? Please, specify. What rights of targets of unilateral sanctions are affected?**

As a general rule, targets of unilateral sanctions include Governments of third states, non-governmental bodies (organizations or groups) and both natural and legal persons. The rights affected include the freedom of entry, movement and stay in Portugal, the freezing of funds and assets, the right to enter ineconomic relations with other parties and the right to trade operations.