The Confederation's role in the application of economic sanctions

Summary of the report by the Parliamentary Control of the Administration for the attention of the Council of States Control Committee

of 9 November 2017

Summary

The Federal Administration plays an important role in preparing and applying ordinances on sanctions. Its role in preparing such ordinances is satisfactory; however, there are a number of shortcomings when it comes to application. There are also deficiencies in the overall governance and monitoring of sanctions policy, even though sanctions are largely respected by the private sector.

Economic sanctions are sovereign measures that are used to enforce international law. They restrict or prevent the trade in goods, services or capital in order to coerce a subject (usually a country) into acting in accordance with international law. When it joined the UN in 2002, Switzerland committed itself to participating in mandatory sanctions imposed by the UN. In the case of EU sanctions, the Federal Council weighs up the various issues involved then decides whether to adopt the sanctions. In order to participate in international sanctions, it issues sanctions ordinances based on the Embargo Act. The Federal Administration plays a key role in preparing and applying these ordinances.

The parliamentary control committees (CCs) therefore commissioned the Parliamentary Control of the Administration (PCA) on 28 January 2016 to evaluate the Confederation's role in the application of economic sanctions. In August of the same year the CC-S FDF/EAER sub-committee defined what form the evaluation should take. In particular, it chose to look at sanction policy strategy and how sanction ordinances are prepared and applied. In the case of Ukraine/Russia, the committees requested to investigate whether sanctions are being respected by businesses and if there is any indication that EU sanctions against Russia are being circumvented via Switzerland.

The evaluation is based on an analysis of government documents and case studies on selected sanctions ordinances. By looking at customs data, the PCA also analysed the trade in goods in individual cases of sanctions (North Korea, Syria, Iran and Russia/Ukraine). Between November 2016 and May 2017 the PCA also interviewed members of the Federal Administration and the private sector. Furthermore, the PCA commissioned the Swiss Institute for International Economics and Applied Economic Research (SIAW) at the University of St Gallen to analyse the trade in goods in the case of Ukraine/Russia.

Foreign policy objectives prevail in decisions to join in EU sanctions

Sanctions policy strategy is clear: it is based on Switzerland's foreign policy and foreign economic policy principles such as universality and a free market-oriented economy. The obligation to participate in UN sanctions is binding, but in the case of EU sanctions, the Federal Council has the discretion to decide if Switzerland will participate. In deciding whether or not to do so, the government must weigh up a range of policy objectives. An analysis of the proposals made to the government regarding sanctions decisions until now shows that in some cases foreign policy objectives spoke against Switzerland adopting EU sanctions either partially or fully.

This discretionary decision may lead to some uncertainty for those affected by sanctions. A situation of legal uncertainty may arise if it is not clear whether, when

and to what degree Switzerland will participate in EU sanctions. Preparing and applying a sanctions ordinance which differs from the EU decision generates extra work and therefore costs for the Federal Administration.

Preparation of sanctions ordinances generally satisfactory

Sanctions ordinances are prepared in a satisfactory manner in most cases. Despite tight deadlines and the need to coordinate with many different federal offices and agencies, the process is an efficient one. However, PCA analyses of the office consultations show that the same questions are often raised yet no universal answers applicable to all cases are provided. The proposals the Federal Administration makes to the Federal Council provide largely appropriate information on foreign policy, foreign economic policy and legal aspects as a basis for decision-making.

Application shortcomings

A number of shortcomings were identified in the application of sanctions. The State Secretariat for Economic Affairs (SECO) does not fully exploit the control instruments available, despite generally good information provision to the private sector. The few checks that were carried out in companies were announced by SECO to the company concerned in advance. Unannounced checks in accordance with Article 4 of the Embargo Act were not conducted, however. It appears that at the Federal Customs Administration (FCA) it is difficult to monitor export bans as the customs authorities have little time in which to check exports and it is very difficult to conduct physical controls after the fact. Moreover, any bans on the trade in goods at sub-state level (as in the case of the Crimea) cannot be monitored, as the recorded information does not reliably contain the exact place of origin or destination. It is also difficult to say how sanctions on luxury goods can be observed at customs points. Applying financial sanctions also seems to be very complex. Finally, the visa system is inadequate for the application of travel bans.

Sanctions on goods generally observed

The analysis conducted by the SIAW suggests that sanctions on the trade in goods are observed. Data from the Swiss customs authorities does not suggest that there are any systematic breaches of the sanctions imposed on the Crimea. Nor is there any indication that sanctions against Russia imposed by the EU but not supported by Switzerland have been circumvented via Switzerland.

Furthermore, an analysis by the PCA identified very few problematic individual goods consignments. However, the authorities were unable to explain all of those identified.

These results must be interpreted with caution, as the customs data analysed is not always of the highest quality.

Shortcomings in monitoring and overall governance

There are various shortcomings in the monitoring and governance of sanctions policy. Firstly, there is no adequate data collection to ensure sanctions are observed. SECO does not systematically gather information for monitoring purposes, either as part of its own measures or on behalf of other federal

authorities. For example, it is mandatory to notify SECO of certain financial and goods transactions, yet SECO records neither the type of transaction nor trends in transactions, although the whole purpose of mandatory notification is to make monitoring in the various areas possible.

Secondly, there is a lack of adequate governance: despite recurring and familiar problems, very few measures are introduced to combat them. Rather than attempting to get to the root of a problem, difficulties are addressed on a case-by-case basis. As a consequence, there are still great challenges in implementing controls at customs points, enforcing travel bans and identifying luxury goods. Responsibilities are shared between various authorities, and so SECO is unable to act alone. Moreover, it should be stressed that there is no effective overall governance in sanctions policy.

The full report is available in German and French; the Italian version should be ready around January 2019 (www.parliament.ch).