

SHARPENING EU SANCTIONS POLICY

CHALLENGES AND RESPONSES IN A GEOPOLITICAL ERA

Niklas Helwig, Juha Jokela, Clara Portela (eds.)

FIIA
REPORT

MAY 2020

/ 63

**SHARPENING EU SANCTIONS POLICY
CHALLENGES AND RESPONSES
IN A GEOPOLITICAL ERA**

Niklas Helwig, Juha Jokela, Clara Portela (*eds.*)

FIIA REPORT

MAY 2020

/63

This publication builds upon policy analysis undertaken as part of a broader research project conducted by the Finnish Institute of International Affairs jointly with the ETLA Economic Research entitled “Development of EU’s Sanctions Policy: Political and economic implications for Finland”. The project was part of the implementation of the Government Plan for Analysis, Assessment and Research for 2019.

Reports can be ordered from the Finnish Institute of International Affairs.
+358 9 432 7707 / erja.kangas@fiia.fi

All FIIA reports and other publications are also available on our website at
www.fiia.fi

Language editing: Lynn Nikkanen

Printed by Punamusta Oy, 2020

Graphic design: Mainostoimisto SST Oy

Layout: Kaarina Tammisto

ISSN 1458-994X (print)

ISSN 2323-5454 (web)

ISBN 978-951-769-638-8 (print)

ISBN 978-951-769-639-5 (web)

The Finnish Institute of International Affairs is an independent research institute that produces high-level research to support political decisionmaking and public debate both nationally and internationally. All manuscripts are reviewed by at least two other experts in the field to ensure the high quality of the publications. In addition, publications undergo professional language checking and editing. The responsibility for the views expressed ultimately rests with the authors.

FIIA

FINNISH
INSTITUTE
OF INTERNATIONAL
AFFAIRS

Arkadiankatu 23 b
POB 425 / 00101 Helsinki
Telephone +358 (0)9 432 7000
Fax +358 (0)9 432 7799

www.fiia.fi

CONTENTS

List of abbreviations 9

Acknowledgements 11

Introduction 13

Juha Jokela, Niklas Helwig & Clara Portela

1. Sanctions in EU foreign policy 23

Clara Portela

KEY CHALLENGES FOR THE EU'S SANCTIONS POLICY 51

2. The United States in the Trump era 55

Ville Sinkkonen

3. Brexit and an independent UK sanctions policy 71

Juha Jokela & Ilari Aula

ADAPTATION OF THE EU'S SANCTIONS FRAMEWORK 83

4. EU decision-making on sanctions regimes 87

Niklas Helwig & Matti Pesu

5. Implementation and enforcement 107

Clara Portela

6. Secondary sanctions 121

Ilari Aula

7. Future prospects: Adapting to the geo-economic environment 131

Niklas Helwig & Juha Jokela

Conclusions and recommendations 143

Niklas Helwig, Juha Jokela & Clara Portela

References 151

Contributors 163

Previously published in the series 165

LIST OF ABBREVIATIONS

5G	fifth generation of wireless communications technologies
ACP	African Caribbean and Pacific Group of States
CAATSA	Countering America’s Adversaries Through Sanctions Act
CFSP	Common Foreign and Security Policy
CJEU	Court of Justice of the European Union
CN	Combined Nomenclature
COEST	Council Working Party on Eastern Europe and Central Asia
COLAC	Council Working Party on Latin America and the Caribbean
DASKA	Defending American Security from Kremlin Aggression Act
DG FISMA	Directorate–General for Financial Stability, Financial Services and Capital Markets Union
ECJ	European Court of Justice
EEAS	European External Action Service
EPC	European Political Cooperation
ESS	European Security Strategy
ETLA	ETLA Economic Research
EU	European Union
EU3	Germany, France and the United Kingdom
EUISS	European Union Institute for Security Studies
FCO	the United Kingdom’s Foreign and Commonwealth Office
FIIA	Finnish Institute of International Affairs
FISMA	Financial Services and Capital Markets Union
FPI	Foreign Policy Instrument
HR/VP	High Representative/Vice President
ILSA	Iran and Libya Sanctions Act
INSTEX	Instrument in Support of Trade Exchanges
JCPOA	Joint Comprehensive Plan of Action
LNG	liquefied natural gas
MaMa	Council Mashreq/Maghreb Working Party
NATO	North Atlantic Treaty Organization
NDAA	National Defence Authorization Act
NESA	National Emergency Supply Agency
NGO	Non–governmental organization
OFAC	US Office of Foreign Assets Control

P5+1	Permanent members of the United Nations Security Council (China, France, Russia, the United Kingdom and the United States) and Germany
QMV	qualified majority voting
RELEX	Council Working Party of Foreign Relations Counsellors
SDN	Specially Designated Nationals and Blocked Persons List
SPV	special purpose vehicle
SWIFT	Society for Worldwide Interbank Financial Telecommunications
TEU	Treaty on European Union
UK	the United Kingdom
UN	United Nations
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
US	United States
USD	United States dollar
WMD	Weapons of Mass Destruction

ACKNOWLEDGEMENTS

This report is the outcome of a research project funded by the Government of Finland Plan for Analysis, Assessment and Research (VN-TEAS) for 2019. The project, entitled “Development of the EU’s sanctions policy: Political and economic implications for Finland”, was planned and carried out by a group of researchers at the Finnish Institute of International Affairs (FIIA) and ETLA Economic Research (ETLA). We are most grateful to Ms Birgitta Berg-Andersson and Mr Markku Lehmus from ETLA Economic Research, with whom we jointly executed the research project. Their expertise and insights into the economic implications of sanctions was imperative for the research project and the resulting study.

The authors gratefully acknowledge the consistent support and insights provided by the Steering Group appointed for the project, including representatives from the Ministry for Foreign Affairs of Finland and the Ministry of Defence, with particular gratitude for the dedication of its chairperson, Mr Juha Rainne.

Our deepest gratitude also goes to Mr Juho Keinänen from the Ministry for Foreign Affairs in Helsinki, as well as to Ms Anna Korpijaakko and Mr Lari Peltonen from the Permanent Representation of Finland to the EU in Brussels. They facilitated the presentation of our initial findings to the Council of the EU Working Party of Foreign Relations Counsellors (RELEX) and the RELEX Sanctions formation at their respective meetings in Helsinki and Brussels in September and November 2019.

Discussions with delegates from the member-state representations, the European Commission and the European External Action Service proved instrumental in helping us to collect data for our project, in improving our understanding of the issues at hand, and in refining our research findings. We are particularly indebted to those who agreed to individual interviews, devoting their time to sharing valuable insights with us.

Special thanks go to Mr Anthonius De Vries for his useful comments on sections of this study. We also wish to acknowledge the contribution of Ms Laura Solanko and Mr Petri Vuorio during expert roundtable discussions, as well as the participants in the brainstorming session related to the background and rationale for the project.

We are also grateful to Ms Anu Ruokamo and Mr Leonard Wilhelmus for their diligent research assistance and coordination activities, to Lynn Nikkanen for providing language editing, and to graphic designer Kaarina Tammisto.

The responsibility for the content of this study, including any factual or analytical errors, rests with the authors. The views expressed in the study do not necessarily represent the views of the Government of Finland.

INTRODUCTION

Juha Jokela, Niklas Helwig & Clara Portela

BACKGROUND

During the past decade, the European Union (EU) has increasingly used sanctions (i.e. restrictive measures) within its Common Foreign and Security Policy (CFSP) in order to respond to security challenges in its neighbourhood and beyond. The restrictive measures applied have been designed to affect the behaviour of targeted regimes and actors, to position the EU in the wider security environment, and to signal disapproval as well as contain further adverse actions detrimental to both international and EU security.

During the formative years of the CFSP, much of the analytical attention centred on questions related to the nature of the EU's external actor-ness and the development of its military and civilian crisis management capabilities. The discussion largely reflected an understanding of the EU as a soft power actor in foreign policy. Yet the possibility to launch joint military operations to promote, uphold and potentially even enforce peace signified a move towards harder (military) actor-ness.

The application of restrictive measures – the EU's official term for 'sanctions' – as one of the toughest and most coercive tools available to the EU increased substantially at the same time, however. Since the 1990s, the international community has moved away from comprehensive trade embargoes towards targeted sanctions, and the EU has fully embraced this trend. The most commonly used restrictive measure was a travel ban prohibiting listed individuals from travelling to EU territory, often denying them access to European financial institutions and freezing their assets

in Europe. During this period, EU sanctions often implemented United Nations Security Council (UNSC) resolutions, and most of its autonomous measures were connected to human rights violations. In addition, the EU adopted several arms embargoes against countries that were home to civil strife and other security challenges.

Within the previous decade, the EU increasingly adopted sanctions regimes based on its own initiative, and duly emerged as one of the most prominent senders of sanctions along with the United Nations (UN) and the United States (US).

In 2010, jointly with the US, the EU adopted tough sanctions against Iran, which far exceeded the UN Security Council resolutions related to Iran's nuclear ambitions. EU measures, such as the oil embargo and a range of financial sanctions, were aimed at pressuring Iran to engage constructively in diplomatic negotiations led by the EU within the format consisting of Iran, the permanent members of the UNSC, and Germany (E3+3, or P5+1).

Since the Iran sanctions, the EU has also imposed economic sanctions against Côte d'Ivoire, Syria and Russia. Arguably, the EU's sanctions against Russia represent a qualitative shift and a turning point in the EU's sanctions policy. Russia's annexation of Crimea and participation in the military conflict in Eastern Ukraine in 2014 led to diplomatic efforts to resolve the crisis in the so-called Normandy format, including Ukraine, Russia, France and Germany. In this environment, and in close coordination with the US, the EU imposed significant sanctions against Russia that also included targeted export bans and financial restrictions. The lifting of these measures was tied to the successful implementation of the Minsk Agreement, aimed at resolving the conflict in Eastern Ukraine.

As the EU's sanctions against Russia were carefully targeted, their economic impact was also limited, yet noteworthy. Their political weight has duly been highlighted by experts and policymakers alike. For the first time since the establishment of the CFSP, the EU imposed significant sanctions against a neighbouring great power and a major trading partner. Given the divergence of views on Russia prevailing among the EU member states, the persistent consensus on these measures is considered a major display of unity by the EU in foreign and security policy. As the implementation of the Minsk Agreement is still pending, the EU sanctions have now been in place for almost six years. Accordingly, the consensus among the member states has prevailed thus far, even though these measures must be renewed unanimously every six months.

Developments during the past decade also imply that the EU is increasingly willing and able to accept the economic burden related to

sanctions. In the case of Iran, EU sanctions had a detrimental effect on European businesses across a number of sectors. In terms of the Russia sanctions, Russia's counter-actions, including import bans on certain perishables, have had a similarly detrimental impact on certain sectors and businesses in the EU.

Against this backdrop, the importance of restrictive measures for the EU's foreign and security policy has increased significantly during the past decade. Given the dramatic changes in the European security environment and beyond, the EU has resorted to sanctions as one of the hardest tools in its foreign and security policy toolbox. Yet the recent developments related to this policy field also pose some notable challenges for the EU sanctions policy.

First, as the EU's closest ally, the US has reinstated sanctions on Iran and put in place new restrictions on Russia as well. The foreign policies, including the use of sanctions, on both sides of the Atlantic are increasingly out of step, and the weakening transatlantic coordination and extra-territorial impact of the US sanctions on European businesses constitute a major puzzle for the EU. Second, because of the UK's withdrawal, the EU has lost one of the main initiators of EU sanctions, as well as important resources for the design and monitoring of sanctions regimes. Third, the EU's sanctions policy is enacted in an increasingly competitive international environment marked by great-power politics and the expanding role of geo-economic strategies. The shifts in economic and political power pose a further challenge for the EU as a sanctions sender, especially due to the current challenges related to the transatlantic coordination on sanctions.

However, the need to fill any resulting vacuum left by Brexit, to counter the US secondary sanctions, and to secure the EU's interests amid great-power politics also provides new opportunities. These developments force the EU and its member states to strengthen decision-making on sanctions, bolster the system of their implementation and enforcement, and develop sanctions expertise and resources in the EU.

OBJECTIVES AND METHODS OF THE STUDY

The key aim of this study is to analyze (i) the development of the EU's sanctions policy in general, and (ii) the impact of new dynamics on the functioning of this policy tool in particular. In doing so, it aims to examine the current state of the EU's sanctions policy by laying out its content, forms and structures as well as recent trends and drivers. These current

dynamics point to some of the key challenges the EU facing in this policy field. Against this backdrop, the study also puts forward some recommendations for the future development of the EU's sanctions policy.

The study builds largely on qualitative methods. The primary materials for the policy analysis undertaken consist of interviews with representatives of the EU and its member states, as well as publicly available policy documents and specialized literature. The research team conducted various semi-structured interviews, which served as background information rather than as a primary dataset for the analysis. Due to the sensitive nature of the research topic, officials were interviewed in confidentiality and assured complete anonymity; hence no direct references are made to these interviews in this study.

The study also benefited from a brainstorming session organized during the initial stages of the project, which consisted of key Finnish stakeholders. In addition, salient topics were discussed in the informal meeting of the Working Party of Foreign Relations Counsellors (RELEX) of the Council of the EU in the presence of the project research team. Furthermore, one of the chapters was presented to the Working Party in RELEX/Sanctions formation for discussion.

STRUCTURE OF THE REPORT

Following this introductory chapter, the first chapter provides an overview of sanctions (i.e. restrictive measures) in the EU's Common Foreign and Security Policy. It defines the notion of targeted sanctions, classifies EU sanctions regimes according to their relationship with UN measures, and provides an overview of their evolution over time. The chapter then reviews the decision-making process leading to the adoption of sanctions in the CFSP, and discusses the evaluation of the efficacy of the sanctions. Finally, the chapter introduces some of the key challenges facing EU sanctions today, which are the subject of further elaboration in the remainder of the study.

The second section of the study focuses on the key challenges in the EU's sanctions policy. Chapter 2 analyzes the development of the US sanctions policy under President Donald Trump's administration and related challenges for the EU, while Chapter 3 focuses on the implications of Brexit and the emerging independent UK sanctions policy for the EU.

The analysis of the US sanctions policy suggests that great-power competition has brought geo-economics to the forefront of strategic thinking in Washington D.C., and that the US is in a strong position in the global

economic and financial system to use coercive economic tools. Under the current US administration, this has led to clashes with the EU over the extraterritorial application of American sanctions and has constituted a challenge for transatlantic policy coordination.

The chapter on the implications of Brexit for the EU's sanctions policy argues that the UK has played an instrumental role in the formulation of EU sanctions and that Brexit calls for the EU to replace the UK's political and technical input. It is suggested that even if the UK has taken measures to maintain the sanctions regimes agreed as an EU member, divergence remains a risk of an independent UK sanctions policy. Coordination mechanisms between the EU and UK sanctions policies could mitigate some of the negative implications of Brexit.

The third section of the study analyzes the adaptation of the EU's sanctions policy to these and other developments. Chapter 4 discusses the decision-making system of the EU's sanctions policy, analyzing proposed reforms to the EU's sanctions machinery. The chapter also focuses on the role of national preferences and strategic cultures, as well as the politics between EU member states in the formation of sanctions regimes. It argues that despite extensive deliberations between member states and input from EU services, individual or small groups of member states repeatedly slow down or veto final decisions on sanctions regimes. While a derogation from the unanimity rule could speed up decision-making, it risks making member states more cautious of proactively using the policy instrument given the looming prospect of being outvoted.

Chapter 5 examines the largely decentralized system of implementation and enforcement of the EU's restrictive measures. It suggests that the current set-up does not guarantee the uniform implementation of EU sanctions, as it leaves individual member states with ample room for manoeuvre. While this runs the risk of discrepancies among member states in terms of implementation and enforcement, any attempt to tighten the supervision of member-state compliance might affect the readiness of member states to agree to CFSP sanctions in the first place.

Chapter 6 looks into the impact of secondary sanctions on the EU. It argues that the EU's ability to respond to the US measures is limited due to the importance of the US market for EU businesses, as well as the pivotal position of US financial institutions and efficient US sanctions implementation and enforcement, and calls for the EU to tackle the macro-level and partly structural power imbalances.

Chapter 7 discusses the future prospects of the EU's sanctions policy in an increasingly competitive global milieu. It suggests that given the EU-level competences in the field of trade and single market regulation,

the EU is at first sight well-positioned to be a powerful actor in the geo-economic competition. However, other actors, such as China, Russia and the US, can use the decentralized system of the EU by actively undermining the EU's internal cohesion.

The concluding chapter summarizes the major findings of the study, and formulates a number of recommendations for the EU and its member states. In particular, the EU should strive for a cohesive sanctions policy in an increasingly competitive international environment and undertake limited reforms of the EU's sanctions machinery. It should leverage diplomacy, seek a joint diplomatic line in Washington, and ensure that sanctions are part of a broader diplomatic approach in response to international crises and major norm violation. Sanctions require Brussels and EU capitals to foster expertise by upgrading capacities at the EU level for the preparation of sanctions, and by ensuring the dissemination of expert knowledge at the national level.

The study concludes that both the withdrawal of the UK and disquieting developments in the US sanctions policy underline the need for a broader strategic discussion among member states on the future prospects of sanctions as an EU foreign policy instrument. We hope that this study will help to inform this debate.

/ 1

1. SANCTIONS IN EU FOREIGN POLICY

Clara Portela

Summary

- The EU has been making use of sanctions to respond to the most pressing security challenges in its neighbourhood in recent years – from the Syrian civil war to the crisis in Eastern Ukraine, and it has resorted to sanctions to address challenges further afield, such as Nicaragua or Myanmar.
- The sanctions landscape witnessed a profound transformation with the development of the concept of targeted sanctions in the mid-nineties. They are designed to put pressure on those deemed responsible for the objectionable act.
- From 2010 onwards, EU sanctions policy experienced a turning point. Their frequency of sanctions imposition remained stable, but a qualitative leap took place. The EU started imposing economic sanctions, incorporated new goals, and targeted major economic partners, most notably Russia.
- Sanctions are not exclusively intended to compel a change in the political behaviour of leaders. Other functions include the desire to demonstrate the sender's willingness and capacity to act, anticipating or deflecting criticism, maintaining certain patterns of behaviour in international affairs, deterring further engagement in the objectionable actions by the target and third parties, or promoting subversion in the target.
- Three challenges merit particular attention: court cases resulting from lack of due process for designees, contestation of the legality of EU measures, the impending Brexit, and the divergence between EU and US sanctions policies.

1.1. INTRODUCTION

Sanctions currently constitute one of the principal instruments through which the EU addresses security challenges in the context of its Common Foreign and Security Policy (CFSP). Legal scholar Paul Cardwell recently noted that “the extent to which sanctions have been imposed, or at the very least discussed in the Council, means that it is little exaggeration to say that the CFSP has become oriented towards sanctions as an appropriate response to global or regional problems”.¹ By way of illustration, the latest EUISS Yearbook of European Security features the term “sanctions” no less than 38 times.²

The EU has been making use of sanctions to respond to the most pressing security challenges in its neighbourhood in recent years – from the Syrian civil war to the crisis in Eastern Ukraine, and it has resorted to sanctions to address challenges further afield, such as Nicaragua or Myanmar. It has also been employing sanctions against non-traditional security threats, such as cyberattacks. Moreover, it has recently diversified its sanctions practice, which used to be country-based, to encompass horizontal sanctions regimes as well, such as the blacklist on the employment of chemical weapons. A sanctions regime designed to blacklist individuals responsible for human rights violations worldwide is currently under consideration.³ Brussels is applying sanctions to address challenges of a novel nature, such as the hydrocarbon drilling off the coast of Cyprus, or the misappropriation of state assets in third countries.⁴ Most importantly, the EU has been wielding sanctions in order to oppose policies by global powers. These include China – upon which it imposed an arms embargo in response to state repression of the Tiananmen Square protests and, most recently, upon its mighty Eastern neighbour, Russia.

The list would be even longer if one were to consider the employment of sanctions outside the realm of the CFSP. The EU also imposes sanctions in connection with its elaborate conditionality policies in the fields of

1 Cardwell, P., ‘The legalisation of EU foreign policy and the use of sanctions’, *Cambridge Yearbook of European Legal Studies*, vol. 17, no. 1, 2015, pp. 287-310; see also Portela, C., ‘How the EU learned to love sanctions’, in M. Leonard ed., *Connectivity Wars*, European Council on Foreign Relations, London, 2016, pp. 36-42.

2 This count includes references in the main text only, not in graphs and footnotes, and refers to both EU measures implementing UN sanctions or agreed autonomously. European Union Institute for Security Studies, *Yearbook of European Security*, EUISS, Paris, 2019.

3 Rettman, A., ‘Human rights abusers to face future EU blacklists’, *EUobserver*, 9 December 2019, <https://euobserver.com/foreign/146865>, accessed 12 March 2020.

4 Council of the European Union, *Turkey’s illegal drilling activities in the Eastern Mediterranean: Council adopts framework for sanctions* [media release], 11 November 2019, <https://www.consilium.europa.eu/en/press/press-releases/2019/11/11/turkey-s-illegal-drilling-activities-in-the-eastern-mediterranean-council-adopts-framework-for-sanctions/>, accessed 12 March 2020.

development and trade.⁵ This includes the suspension of development aid under the ACP–EU Partnerships Agreement, or the withdrawal of trade preferences under the Generalized System of Preferences.⁶ However, the present study is restricted to the CFSP sanctions practice, considered the main EU sanctions practice inside EU circles and beyond.

One of the reasons why this phenomenon has received so little attention relates to its relatively low visibility. While sanctions have increased their presence in EU policy documents since it adopted its first European Security Strategy in 2003, their centrality as a tool in the EU’s management of external challenges is not yet reflected in EU strategy. The European Security Strategy (ESS) refers to sanctions tangentially: It claims that countries which “have placed themselves outside the bounds of international society”, have “sought isolation” or “persistently violate international norms” “should understand that there is a price to be paid, including in their relationship with the European Union”.⁷ The ESS asserts that “proliferation may be...attacked through political, economic and other pressures”, and that “conditionality and targeted trade measures remains an important feature in our policy that we should further reinforce”.⁸ It can be presumed that sanctions are implied in terms of “economic pressures” or “targeted trade measures”.

The “Strategy against the Proliferation of Weapons of Mass Destruction (WMD)” from the same year states that when political dialogue and diplomatic pressure have failed, “coercive measures under Chapter VII of the UN Charter and international law (sanctions, selective or global, interceptions of shipments and, as appropriate, the use of force) could be envisioned”.⁹ Similarly, the Global Strategy of June 2016 claims: “A stronger Union requires investing in all dimensions of foreign policy... from trade and sanctions to diplomacy and development”. It adds that “long-term work on pre-emptive peace, resilience and human rights must be tied to crisis response through...sanctions and diplomacy”.¹⁰

The Global Strategy portrays sanctions as instruments in the service of peace, obviating any hint of coercive employment: “Restrictive measures,

5 Bartels, L., *Human Rights Conditionality in the EU’s International Agreements*, OUP, Oxford, 2005.

6 FÜRUTTER, M., ‘The transnationalised reality of EU sanctioning: a new research agenda beyond the study of effective economic sanctions’, *Journal of European Public Policy* [online], 17 October 2019, <https://www.tandfonline.com/doi/full/10.1080/13501763.2019.1678661>, accessed 6 May 2020, pp. 1–13; Koch, S., ‘A Typology of Political Conditionality Beyond Aid: Conceptual Horizons Based on Lessons from the European Union’, *World Development*, vol. 75, 2015, pp. 97–108.

7 Council of the European Union, *A secure Europe in a better world: European Security Strategy*, Brussels, 12 December 2003, p. 10, https://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/en/reports/78367.pdf, accessed 12 March 2020.

8 *ibid.*, p. 7, p. 10.

9 *ibid.*, p. 5.

10 *ibid.*, p. 47, p. 51.

coupled with diplomacy, are key tools to bring about peaceful change”.¹¹ The Global Strategy never refers explicitly to sanctions in connection with nuclear proliferation: “We will use every means at our disposal to assist in resolving proliferation crises, as we successfully did on the Iranian nuclear programme”.¹² No mention is made of the key role of sanctions in promoting the Iran nuclear deal, thanks to which the EU is now recognized as a non-proliferation actor.¹³

Documents dealing with EU sanctions show an interest in optimizing implementation: “Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU”,¹⁴ as well as “Best Practices on Effective Implementation of Financial Restrictive Measures”.¹⁵ Yet owing to their focus on implementation, they do not reveal much about the place that sanctions occupy in the EU’s broader strategy. The key policy document is the two-page “Basic Principles on the Use of Restrictive Measures” of 2004, where the Council announces that it “will impose autonomous EU sanctions in support of efforts to fight terrorism and the proliferation of weapons of mass destruction and...to uphold respect for human rights, democracy, the rule of law and good governance”.¹⁶

The present chapter provides an overview of the use made by the EU of sanctions in its foreign policy. It is organized as follows: The first section defines the notion of targeted sanctions and classifies EU sanctions regimes according to their relationship with UN measures, while the second section provides an overview of their evolution over time. The third section reviews the decision-making process leading to the adoption of sanctions in the Common Foreign and Security Policy (CFSP). This is followed by a fourth section that looks at the evaluation of sanctions,

11 *ibid.*, p. 32.

12 *ibid.*, pp. 41–42.

13 Alcaro, R. & Bassiri Tabrizi, A., ‘European and Iran’s nuclear issue: The labours and sorrows of a supporting actor’, *International Spectator*, vol. 49, no. 3, 2014, pp. 14–20; Portela, C., ‘The EU’s evolving responses to nuclear proliferation crises’, *SIPRI Non-Proliferation Papers*, no. 46, July 2015, <https://www.sipri.org/publications/2015/eu-non-proliferation-papers/eus-evolving-responses-nuclear-proliferation-crises-incentives-sanctions>, accessed 18 March 2020.

14 Council of the European Union, *Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy*, (15579/03), Brussels, 3 December 2003, <https://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2015579%202003%20INIT>, accessed 12 March 2020; Council of the European Union, *Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy*, (5664/18), Brussels, 4 May 2018, <https://data.consilium.europa.eu/doc/document/ST-5664-2018-INIT/en/pdf>, accessed 12 March 2020.

15 Council of the European Union, *Restrictive measures (Sanctions): Update of the EU Best Practices for the effective implementation of restrictive measures*, (10254/15), Brussels, 24 June 2015, <http://data.consilium.europa.eu/doc/document/ST-10254-2015-INIT/en/pdf>, accessed 17 March 2020.

16 Council of the European Union, *Basic principles on the use of restrictive measures (Sanctions)*, (10198/1/04), Brussels, 7 June 2004, p. 2, <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2010198%202004%20REV%201>, accessed 12 March 2020.

including an overview of their operation, elucidating the mechanisms through which sanctions are expected to achieve their objectives. A concluding part introduces some of the key challenges facing EU sanctions today, which are the subject of further elaboration in the remainder of the study.

1.2. INTRODUCING EU TARGETED SANCTIONS

The EU has traditionally referred to the sanctions it adopts in the framework of its CFSP as “restrictive measures”. The term “sanctions” does not have any commonly agreed definition under public international law. The United Nations Charter does not offer a definition either: the term sanctions does not appear in its text. UN sanctions are adopted under Article 41, which refers to “measures not involving the use of armed force”.¹⁷ In the specialized literature, it is sometimes defined as the “deliberate, government-inspired withdrawal, or threat of withdrawal, of customary trade or financial relations”.¹⁸ However, sanctions are not limited to the interruption of economic relations, but encompass measures deprived of economic significance, such as diplomatic sanctions.¹⁹ Thus, sanctions can be broadly defined as the politically-motivated withdrawal of a benefit that would otherwise be granted, and whose restoration is made dependent on the fulfilment of a series of conditions defined by the sender.²⁰

The EU sanctions practice features three distinct strands:

Firstly, it implements sanctions regimes decided by the UNSC, which are mandatory for all states in the world. Here, the EU acts virtually as an “implementing agency” of the UNSC.²¹ The competence of the EU to implement sanctions mandated by the UNSC derives from the duty, which rests upon EU member states as members of the UN, and is justified on the basis of a preference for uniform implementation.

Secondly, the EU determines and implements its own sanctions in the absence of a mandate. This is referred to as “autonomous practice”. The EU has agreed a number of sanctions regimes in the absence of a pre-existing

17 Charron, A., *United Nations Sanctions and Conflict*, Routledge, Abingdon, 2011.

18 Hufbauer, G. et al., *Economic Sanctions Reconsidered*, 3rd edn, Peterson Institute for International Economics, Washington D.C., 2007, p. 3.

19 Doxey, M., ‘Reflections on the sanctions decade and beyond’, *International Journal*, vol. 64, no. 2, 2009, pp. 539–549.

20 Portela, C., *European Union Sanctions and Foreign Policy*, Routledge, Abingdon, 2010.

21 Portela, C., ‘National implementation of United Nations Security Council sanctions: Towards fragmentation’, *International Journal*, vol. 65, no. 1, 2009, pp. 13–30.

UNSC Resolution, thus developing a rich autonomous sanctions practice which has gained in sophistication over the years.

Thirdly, the EU often supplements UNSC regimes with additional sanctions that go beyond the letter of the UNSC resolutions, a phenomenon sometimes labelled “gold-plating”²² that has almost gone unnoticed. In the case of Iran and North Korea, UN sanctions resolutions provided a basis for more extensive unilateral sanctions.²³

The EU has embraced the notion of targeted sanctions, adopting a policy to enact measures that fall under this term only.²⁴ The sanctions landscape witnessed a profound transformation with the development of the concept of targeted sanctions in the mid-nineties. Targeted sanctions emerged in the 1990s in reaction to the severe humanitarian impact of the UN embargo on Iraq. They are designed to put pressure on those deemed responsible for the objectionable act. Thus, targeted sanctions purport to canalize harm towards specific leaders and elites, while the population at large should be spared. Targeted sanctions are conceived to affect certain individuals, elites or economic sectors, rather than an economy as a whole.

The notion of targeted sanctions therefore excludes comprehensive trade embargoes due to their indiscriminate effects. Under “targeted sanctions” we understand every measure that falls short of a blanket economic embargo. The catalogue of “targeted sanctions” is open-ended, with measures often tailored to specific situations or target groups. New forms of targeted sanctions keep being devised, as documented in the well-known case of Iran.²⁵ Nevertheless, the types of measures considered targeted actually feature different degrees of discrimination, with oil embargoes affecting the population far more than arms embargoes, for example. Understood as measures that can be located in a continuum, visa bans constitute the most discriminating measures, while sanctions affecting transportation or the financial sector would be at the least discriminating end.²⁶

22 Taylor, B., *Sanctions as Grand Strategy*, IIS, London, 2010.

23 Biersteker, T. & Portela, C., ‘EU sanctions in context: three types’, *EUISS Brief*, no. 26, 2015, https://www.iss.europa.eu/sites/default/files/EUISSFiles/Brief_26_EU_sanctions.pdf, accessed 3 April 2020.

24 Council of the European Union, 2004, loc. cit.

25 Nephew, R., *The Art of Sanctions: A view from the field*, Columbia University Press, New York, 2018.

26 Biersteker, T., Eckert, S. & Tourinho, M., *Targeted Sanctions. The effectiveness of UN Action*, Cambridge University Press, Cambridge, 2016.

1.3. EVOLUTION OF EU SANCTIONS

When the UNSC mandated sanctions against Rhodesia in the 1960s, the member states of the then EC implemented them via national legislation rather than through a Community instrument. However, national acts implementing the UNSC Resolution differed in coverage. A preference for uniform implementation compelled member states to switch to the implementation of sanctions through the Community. They first agreed on the imposition of measures within the intergovernmental framework of European Political Cooperation (EPC), and subsequently adopted a Community Regulation for their implementation. Initial examples of sanctions regimes implemented according to this method included those against the USSR in 1980 in response to the Soviet invasion of Afghanistan, and against Argentina in 1982 following the invasion of the Falkland Islands. This autonomous EU practice was facilitated by the progressive enhancement of foreign policy co-ordination in the EPC, which evolved into the CFSP.²⁷ The CFSP sanctions practice witnessed increased coordination with the sanctions practice of other actors, particularly the US.²⁸

The 1980s were a formative period in which the sanctions practice under the EPC was characterized by weak compliance and, occasionally, instances of member states that withdrew from the sanctions effort (Falklands crisis) or excluded themselves from the sanctions when they were agreed. During the 1990s, and due to the end of the Cold War, sanctions activity increased sharply, transforming them into one of the principal EU foreign policy tools. The CFSP, launched at that time, saw their formalization as the legally binding instruments we know today. Sanctions usually responded to democratic backsliding, human rights breaches, and sometimes armed conflicts such as the Yugoslav wars. Most measures did not affect the economy as a whole – neither that of the EU nor those of the target countries. They mainly consisted of arms embargoes, visa bans and asset freezes on a few individuals, a combination of measures that replicates UN sanctions habits. Economic bans, such as the flight ban on the former Yugoslavia or the gems embargo on Myanmar, remained rarities.²⁹ EU sanctions have traditionally been targeted measures, although the EU did not officially commit to this notion until 2004, with the publication of the Basic Principles on the Use of Restrictive Measures.³⁰

27 Portela, 2010, loc. cit.

28 Borzyskowski, I. v. & Portela, C., 'Sanctions cooperation and regional organisations', in S. Aris et al. eds., *Inter-organisational Relations in International Security: Cooperation and Competition*, Routledge, Abingdon, 2018, pp. 240–261.

29 Portela, 2010, loc. cit.

30 Council of the European Union, 2004, loc. cit.

From 2010 onwards, EU sanctions policy experienced a turning point. Their frequency of sanctions imposition remained stable, but a qualitative leap took place. Firstly, the EU started imposing economic sanctions. The EU agreed sanctions on Iran that supplemented UN Security Council measures, including an oil embargo and far-reaching financial restrictions replicating US sanctions. This constituted a novelty in that, for the first time, they adversely affected European enterprises, hitting some sectors badly. This was followed by sanctions against Côte d'Ivoire, in a bid to overcome the political impasse that followed the presidential elections of November 2010. Unprecedented measures such as a ban on the import of cocoa and a prohibition for European companies to trade through the harbours of Abidjan and San Pedro were enacted.³¹ In Libya, the EU supplemented UNSC measures with additional designations as well as an autonomous ban on equipment for internal repression. Subsequently, it prohibited dealings with Libyan financial entities, the Libyan National Oil Corporation and five of its subsidiaries as well as energy firms, and eventually blacklisted six Libyan harbours.³² In Syria, the EU imposed its entire sanctions toolbox in just a few months, including a ban on the import of Syrian oil and gas.³³ In 2014, the EU responded to the annexation of Crimea with the complete isolation of the peninsula, and to Russian military support for the destabilization activities of the separatist forces in Eastern Ukraine with a varied sanctions package, representing the first serious instance of economic restrictions against its powerful Eastern neighbour since the end of the Cold War. Short, economic sanctions are becoming the usual practice. Whereas the EU initially interpreted the concept of sanctions rather narrowly during the 1990s, it is increasingly enacting sanctions with “bite”. This implies an acceptance that groups not directly targeted may suffer collateral damage, both in the target and sender societies.³⁴

In addition, EU sanctions policy has also seen the incorporation of new goals. In the 2000s, the measures it imposed on Iran and North Korea constitute the first instances of EU sanctions addressing the proliferation of WMD. In the present decade, the asset freezes imposed on Egypt, Tunisia and Ukraine after their revolutionary transitions are the first EU

31 Vines, A., ‘The effectiveness of UN and EU sanctions: Lessons for the twenty-first century’, *International Affairs*, vol. 88, no. 4, 2012, pp. 867-877.

32 Koening, N., ‘The EU and the Libyan crisis: In quest of coherence?’, *International Spectator*, vol. 46, no. 4, 2011, pp. 11-30.

33 Portela, C., ‘The EU Sanctions Operation against Syria: Conflict management by other means?’, *Egmont Security Brief* 36, 4 September 2012, <http://www.egmontinstitute.be/the-eus-sanctions-against-syria-conflict-management-by-other-means/>, accessed 18 March 2020.

34 Portela, C., ‘Are EU sanctions “targeted”?’, *Cambridge Review of International Affairs*, vol. 29, no. 3, 2016, pp. 912-929.

blacklists to address the misappropriation of state assets, and the only sanctions imposed upon deposed leaders after they left office. In addition, it has made increased use of supplementary sanctions complementing measures by the UNSC. Most recently, the EU has adopted a new sanctions method: horizontal sanctions regimes. Partly modelled on US sanctions practice, thematic sanctions regimes allow for the listing of entities and individuals even in the absence of an international crisis or a specific dispute with the country to which it is linked. While horizontal sanctions regimes coexist with, rather than substitute for, country regimes, they allow for the blacklisting of private entities disconnected from state authorities. So far, horizontal sanctions regimes have been enacted to respond to cyber-attacks and the use of chemical weapons, while a regime on human rights violations is currently under discussion.³⁵

BOX 1: EVOLUTION OF EU SANCTIONS PRACTICE

1980s: Formative period under ECP

1990s: Surge and consolidation

- Goals: Adoption of sanctions in response to democratic backsliding, sometimes to armed conflict
- Tools: Routine employment of arms embargoes, visa bans and asset freezes

2000: The "Iran-sanctions decade"

- New goals: Adoption of sanctions against nuclear proliferation
- New tools: Increase in sanctions supplementing UNSC bans

2010: Economic "turning point"

- New goals: Misappropriation, cyberattacks
- New tools: commodity and energy bans, blacklisting of harbours, financial sanctions
- New targets: Targeting of a major economic partner and global power, Russia, as well as some targets in Latin America, previously untouched by CFSP sanctions

1.4. DECISION-MAKING, IMPLEMENTATION AND ENFORCEMENT

Decision-making

The decision-making process leading to the enactment of sanctions features two stages, constituting a cross-pillar mechanism unique in the EU machinery. This "two-step procedure" consists of the adoption of a political decision in the intergovernmental framework of the CFSP. It has its origins in an early phase of EU sanction practice, in which EC

³⁵ Portela, C., 'A blacklist is born: Building a resilient EU human rights sanctions regime', *EUISS Brief*, no. 5, March 2020, <https://www.iss.europa.eu/sites/default/files/EUISSFiles/Brief%205%20HRS.pdf>, accessed 15 April 2020.

member states were confronted with the choice between implementing UN sanctions via EC legislation or national legislation. While they initially attempted the latter, they subsequently switched to joint EC implementation in the interest of uniformity.³⁶

Currently, proposals for sanctions enactment are tabled by the High Representative, although member states may also put them forward. Normally, the impulse originates from the Council Working Group dealing with the geographical area where the crisis unfolds (COLAC for Latin America, MaMa for Middle East, COEST for the post-Soviet space, COAFR for Sub-Saharan Africa etc.). Once the geographical Working Group has decided that sanctions are to be imposed, the file is transferred to the Council Working Party on External Relations, or RELEX working group, which is in charge of agreeing the relevant legislation. In some cases, the impulse has emanated from the European Council, especially after the entry into force of the Treaty of Lisbon.³⁷ This was notably the case with the sanctions imposed on Russia, but also with the horizontal regime against cyberattacks and against the employment of chemical weapons.

Once adopted, the text becomes a Council Decision under the CFSP. In cases where the measures agreed are economic or financial in nature, this act must be followed by a Regulation. The draft regulation, which is tabled by the High Representative jointly with the Commission,³⁸ must be agreed by qualified majority. Absent economic or financial implications, the CFSP decision suffices. Both acts are agreed by the Council RELEX working group. The addition or deletion of designations generally requires the adoption of new legislation via the activation of the exact same process, albeit in some cases blacklists have been modified employing qualified majority voting.

The two-step procedure was put in place in order to bridge the division between the competence for external trade of the Community and the member states' prerogative in the foreign policy realm. This peculiar procedure may generate an anomalous time gap between both pieces of legislation, with the implementing regulation sometimes being adopted several weeks after the CFSP decision. In the past, some member states reportedly took advantage of the separate negotiation of the regulation to

36 Koutrakos, P., *Trade, Foreign Policy and Defence in EU Constitutional Law*, Hart, Oxford, 2001.

37 Szép, V., 'New intergovernmentalism meets EU sanctions policy: The European Council orchestrates the restrictive measures imposed against Russia', *Journal of European Integration* [online], 6 November 2019, <https://www.tandfonline.com/doi/abs/10.1080/07036337.2019.1688316>, accessed 6 May 2020, pp. 1-17.

38 Gestri, M., 'Sanctions imposed by the European Union: Legal and institutional aspects', in N. Ronzitti ed., *Coercive Diplomacy, Sanctions and International Law*, Brill Nijhoff, Leiden, 2016, pp. 70-102.

weaken the measures agreed in the previous CFSP decision.³⁹ Nowadays there is little evidence that the negotiation of the regulation is used to undermine measures agreed during the CFSP stage. By contrast, member states devoted their efforts to specifying the measures as much as possible in the CFSP document rather than waiting for the negotiation of the regulation.⁴⁰ This approach speeded up the process, but it also had the effect of reducing the leeway of the Commission, which remains in charge of drafting the regulation, and in concretising the coverage of the restrictions.

Nowadays, in line with the recommendation of the Guidelines,⁴¹ both legal acts are adopted simultaneously. This approach has effectively transformed the original two-step procedure into a single step encompassing two parallel adoption processes. As a result, the potentially problematic time gap between the releases of the two acts has disappeared. At the same time, it also has implications for the decision-making process of the regulation: member states may not agree to the Decision until the text of the Regulation is settled. In sum, a modification in adoption practice has corrected the deficits of the unusual sanctions decision-making process, and at the same time rendered the adoption of the regulation an exercise requiring unanimity.

Implementation

While sanctions legislation is adopted in Brussels, the system for granting exemptions is de-centralized. Every piece of sanctions legislation contains provisions for exemptions and features a list of national agencies entitled to grant authorizations to conduct transfers forbidden under the sanctions for humanitarian purposes. Thus, even if the provisions are common to all EU states, every member state enjoys discretion in clearing requests for exemptions. Due to the unilateral granting of exemptions to travel bans that were not well received by certain member states, a system was instituted whereby the Council must be notified in writing when any member state wishes to grant an exemption. The exemption shall be deemed to be granted unless another member raises an objection within 48 hours of receiving notification of the proposed exemption – the so-called “no-objection procedure”. The exemption shall not be granted if objections are raised. Only when a member state wishes to grant it on

39 Buchet de Neuilly, Y., ‘European Union’s external relations fields: the multipillar issue of economic sanctions against Serbia’, in M. Knodt & S. Princen eds., *Understanding the European Union’s external relations*, Routledge, Abingdon, 2003, pp. 92–106.

40 Poeschke, O., ‘Maastrichts langer Schatten: Das auswärtige Handeln der EU – Verschiebungen im institutionellen Gefüge?’ [‘Long shadow of Maastricht: EU external action – shifts in the institutional structure?’], *Hamburg Review of Social Sciences*, vol. 3, no. 1, 2008, pp. 37–69.

41 Council of the European Union, loc. cit. 2018.

urgent and imperative humanitarian grounds may the Council decide to grant the proposed exemption acting by qualified majority. Other than that mechanism, national authorities are required to report to the Commission on their activities.⁴²

Concerns exist regarding possible inconsistencies in the management of exemptions by the authorities of different member states.⁴³ Such inconsistencies could arise from different levels of administrative capacity in the member states, but also from different political approaches. NGOs operating in Syria report that separate national authorities offer diverging messages as to what sort of requests would be approved. A major European NGO complained that “there appears to be no internal procedures within government as to what criteria should be applied when considering a licence application. The result is that each department pursues its own ... interest and they often run counter to each other”.⁴⁴ Similarly, another NGO claims that due to a shortage of staff within government licencing teams, processing times can take weeks.⁴⁵

While proposals for a centralized licensing agency modelled on the US Office of Foreign Assets Control (OFAC) have been floated,⁴⁶ they are hardly compatible with member states’ reluctance to renounce their competence in the field.⁴⁷ To some extent, the situation is replicated with the adoption of implementing legislation at the national level, where discrepancies have also been detected.⁴⁸ However, if a member state fails to adopt the necessary implementing legislation laying down penalties for sanctions violations, the Commission could initiate an infringement procedure.⁴⁹ Be that as it may, the problem does not seem to lie with European firms’ failure to comply with EU sanctions legislation. Instead, their readiness to comply often exceeds the requirements of EU legislation, which is due to the phenomenon of overcompliance discussed next.

42 Gestri op. cit., p. 92.

43 Golumbic, C. & Ruff, R., ‘Who do I call for an EU sanctions exception? Why the EU economic sanctions regime should centralize licensing’, *Georgetown Journal of International Law*, vol. 44, 2013, pp. 1007-1053.

44 Cited in Walker, J., *Study on humanitarian impact of Syria-related unilateral coercive measures*, UNESCWA, Beirut, 2016, p. 14.

45 ibid.

46 France24, ‘France urges Europe to push back against “unacceptable” US sanctions on Iran’, *France24*, 11 May 2018, <https://www.france24.com/en/20180511-iran-france-usa-europe-business-push-back-against-unacceptable-sanctions-nuclear-trump>, accessed 17 March 2020.

47 Gestri, op. cit. p. 93.

48 Drulakova, R. & Prikryl, P., ‘The implementation of sanctions imposed by the European Union’, *Central European Journal of International and Security Studies*, vol. 10, no. 1, 2016, pp. 134-160.

49 Gestri op. cit., p. 94.

Over-compliance

“Over-compliance” refers to a situation in which private firms refrain from conducting commercial operations permitted under the sanctions regime. This behaviour comes about for various reasons. Firstly, sanctions legislation obliges financial institutions and commercial firms to apply due diligence and expend resources finding out which transactions are allowed and with whom. Not all firms are sufficiently staffed to investigate the nature of a client or beneficiary in the target country. Secondly, even exhaustive scrutiny might be unable to uncover a connection to one of the blacklisted persons or entities, the targeted government or its supporters. Firms and banks often hold back because they cannot be certain that the client is neither linked to designated bodies or persons, nor that it will not be blacklisted in the near future.

Secondly, the terms under which the prohibitions are formulated in the relevant legislation are not always unequivocal. Clarification from the Court of Justice of the EU has been sought on the interpretation of the bans on Iran.⁵⁰ The Commission briefed the private sector and published non-binding “information notes” on the measures adopted at the EU level to meet commitments contained in the Joint Comprehensive Plan of Action (JCPOA) providing for sanctions relief for Iran. The first version of the restrictions on extraction equipment and financial sanctions imposed on Russia in 2014 in response to the destabilization of Eastern Ukraine did not prove sufficiently precise to provide guidance to the industries affected. Recognising the need for further specification, the Council promulgated revised legislation to provide clarity for the private sector. However, the lack of specificity sometimes found in sanctions legislation incentivizes overly extensive interpretations of the prohibitions by the private sector, particularly given that, if found in breach of the restrictions, important penalties may ensue.

In sum, the EU devotes much effort to designing sanctions in order to affect exclusively specified individuals, the elites that constitute their power base and the entities and/or sectors that supply them with funds. However, implementation through a private sector weary of fines compromises the targeted nature of the measures, broadening their impact. Instances of over-compliance hindering the procurement of items required by NGOs operating in Syria have been amply documented.⁵¹ This circumstance mirrors a trend that has also been identified in UN targeted sanctions.⁵²

50 Blockmans, S., ‘Curbing the circumvention of sanctions against Iran over its nuclear programme: Afrasiabi’, *Common Market Law Review*, vol. 50, no. 2, 2013, pp. 23-40.

51 Walker loc. cit.

52 Biersteker et al. 2016.

Extraterritoriality

Extraterritoriality describes a situation where a state seeks to control elements that are situated outside its territory through its domestic legal order. In other words, the sender seeks to impose an obligation on third states and their nationals to abide by its unilateral sanctions.⁵³ The European private sector's tendency to "over-comply" with sanction measures is exacerbated by the role of US restrictions, which are applied extraterritorially. As Washington devotes considerable effort to monitoring compliance, European firms often ensure adherence to US measures in addition to EU bans. This situation encourages firms to interpret the restrictions broadly for fear of getting fined for unknowingly breaking the law, or to forego businesses in targeted countries altogether. Faced with a choice, very few firms (and virtually no bank) are prepared to lose access to the US market in favour of that of the target state. Thus, the extraterritorial effects of US sanctions contribute to the broadening of initially targeted measures.

European measures do not display extraterritorial effects on third countries as EU bans only bind European and Europe-based operators.⁵⁴ By contrast, the EU has a record of vocal opposition to the extraterritorial effects of US bans, both during the Cold War and in its aftermath.⁵⁵ European resistance peaked with the passing of new US legislation tightening sanctions on Cuba in 1992, and subsequently on Iran and Libya in 1996, which led the European Commission to threaten with a complaint under the Dispute Settlement Mechanism of the World Trade Organization against US legislation containing secondary sanctions. The EU went so far as to adopt a "Blocking Statute" to protect EU persons and companies from the application of US law, making compliance with US secondary sanctions illegal. In the event, the crisis was resolved thanks to an agreement reached in 1997 whereby the US administration promised to grant waivers to European companies and to oppose future extraterritorial congressional legislation.⁵⁶

The EU maintained its stance on the issue. EU guidelines stipulate that the EU "will refrain from adopting legislative instruments having extra-territorial application in breach of international law".⁵⁷ Speaking

53 Beaucillon, C., 'Unilateral state sanctions and the extraterritorial effects of national legislation', in N. Ronzitti ed., *Coercive Diplomacy, Sanctions and International Law*, Brill Nijhoff, Leiden, 2016, pp. 103-126.

54 Gestri loc. cit.

55 Falke, A., 'Confronting the Hegemon. The EU-US Dispute over Sanctions Policy', *European Foreign Affairs Review*, vol. 5, no. 2, 2000, pp. 139-163.

56 Lohmann, S., 'The convergence of transatlantic sanctions policy against Iran', *Cambridge Review of International Affairs*, vol. 29, no. 3, 2016, pp. 930-951.

57 Council of the European Union, loc. cit. 2018.

on behalf of the EU in the explanation of the vote on the UNGA Resolution on the US unilateral embargo on Cuba in 2013, the Lithuanian representative condemned US extraterritorial measures as “contrary to commonly accepted rules of international trade”, claiming that the EU “could not accept that unilaterally imposed measures impeded its economic and commercial relations with Cuba”.⁵⁸

Initially, the extraterritorial effects of US sanctions on Iran did not give rise to similar tensions. On the contrary, transatlantic sanctions policy against Iran converged after 2006, with the EU gradually enacting legislation mirroring many US measures.⁵⁹ The fact that the EU muted its resistance during the Iran sanctions is due to the commonality of goals that characterizes this episode, which contrasts with the transatlantic partners’ diverging policies vis-à-vis Cuba.⁶⁰ Tensions surfaced occasionally as certain European banks have sometimes been found in breach of US sanctions and been fined by US authorities. This was notably the case with the bank BNP Paribas, which received a US\$8.9 billion fine in 2014, which constitutes a record amount. BNP Paribas admitted having transferred large sums on behalf of Sudanese and Iranian clients blacklisted by the US while hiding their names when sending transactions through the American financial system.⁶¹ The extraterritorial application of US sanctions sparked protests by the French government.⁶² The persistence of certain US sanctions after the Iran deal limited business opportunities with Iran for European firms, particularly on account of their extraterritorial reach.⁶³

The US withdrawal from the Iran deal under the Trump administration put an end to collaboration, prompting the EU to revive the Blocking Statute.⁶⁴ This legislation attempts to nullify the effects of US sanctions by allowing EU operators to recover damages arising from US extraterritorial sanctions. This was accompanied by the establishment by France, Germany and the UK, the same countries that had negotiated the nuclear

58 United Nations General Assembly, *Sixty-eighth session: 38th plenary meeting*, (UNGA/68/PV.38), New York, 29 October 2013, <https://undocs.org/en/A/68/PV.38>, accessed 12 March 2020, p. 24.

59 Lohmann, 2016, loc. cit.

60 Geranmayeh, E., ‘Secondary reach of US sanctions in Europe: how far is too far?’, *European Council on Foreign Relations*, 12 June 2014, https://www.ecfr.eu/blog/entry/secondary_reach_of_us_sanctions_in_europe_how_far_is_too_far, accessed 12 March 2020.

61 Protes, B. & Silver-Greenberg, J., ‘BNP Paribas Admits Guilt and Agrees to Pay \$8.9 Billion Fine to U.S.’, *The New York Times*, Deal Book, 30 June 2014, <https://dealbook.nytimes.com/2014/06/30/bnp-paribas-pleads-guilty-in-sanctions-case/?mtrref>, accessed 16 March 2020.

62 Geranmayeh loc. cit.

63 Alessi, C., ‘German Businesses blame US for Iran trade disappointment’, *The Wall Street Journal*, 31 August 2016, <https://www.wsj.com/articles/german-business-blames-u-s-for-iran-trade-disappointment-1472646058>, accessed 12 March 2020.

64 Lohmann, S., ‘Extraterritorial U.S. Sanctions’, *SWP Comment* 5, 2019, https://www.swp-berlin.org/fileadmin/contents/products/comments/2019C05_lom.pdf, accessed 12 March 2020.

deal with Iran in the P5+1 context, of the Instrument in Support of Trade Exchanges (INSTEX). INSTEX works as a euro-denominated “clearing house” facilitating transactions between European firms and Iranian actors, for the time being covering only humanitarian goods, which are permitted under US sanctions.⁶⁵ Although it is not an EU initiative, it is open to the participation of EU members and even non-EU member states. Since it became operational in summer 2019, several EU member states including Finland have announced their intention to join this vehicle and avail themselves of it.⁶⁶ While observers anticipate meagre prospects of success for INSTEX,⁶⁷ its establishment constitutes the first time that key members of the EU have taken measures in open contradiction to Washington’s policy since the late 1990s, when the US Congress passed the Helms-Burton Act, legislation threatening to penalize EU companies conducting business with Cuba, which met with resolute opposition from Brussels.

1.5. EVALUATING THE EFFECTIVENESS OF SANCTIONS

A discussion on the evaluation of the effectiveness of sanctions must be preceded by an overview of the expected operation of sanctions (or sanctions theory), as well as a determination of the functions they fulfil in international relations.

Theory of sanctions and their functions

The standard mechanism for the operation of sanctions was formulated by peace scholar Johan Galtung in a seminal study on sanctions against Southern Rhodesia in the 1960s. Galtung delineated the expected operation of sanctions, which implied that the economic harm produced by sanctions generates popular discontent, which pressures the rulers to conform to the sender’s demands in order to revert to the previous level of wealth. Thus, the leadership faces a choice between giving in to the sender and being unseated. According to Galtung, the theory foresees that

65 Dikov, I., ‘EU defied US over Iran’s nuclear programme with INSTEX’, *European Views*, 14 August 2019, <https://www.european-views.com/2019/08/eu-defied-us-over-irans-nuclear-program-with-instex-was-it-worth-it/>, accessed 12 March 2020.

66 Ministry of Foreign Affairs of Denmark, *Joint statement on joining INSTEX by Belgium, Denmark, Finland, the Netherlands, Norway and Sweden*, 29 November 2019, <https://um.dk/en/news/newsdisplaypage/?newsid=a9fea648-6b78-45be-9386-eebe30c7c61f>, accessed 16 March 2020.

67 Airault, P., ‘Instex, le mécanisme européen mort-né de transaction commerciale avec l’Iran’ [‘Instex, the stillborn European mechanism of trade exchange with Iran’], *L’Opinion*, 26 June 2019, <https://www.lopinion.fr/edition/international/instex-mecanisme-europeen-mort-ne-transaction-commerciale-l-iran-190883>, accessed 12 March 2020; Rosenberg, E., ‘The EU can’t avoid U.S. sanctions on Iran’, *Foreign Affairs*, 10 October 2018, <https://www.foreignaffairs.com/articles/europe/2018-10-10/eu-cant-avoid-us-sanctions-iran>, accessed 12 March 2020.

“there is a limit to how much value deprivation the system can stand, and that once this limit is reached (resulting in a split in leadership or between leadership and people), then political disintegration will proceed very rapidly and will lead to surrender or willingness to negotiate”.⁶⁸ Galtung criticized the “naive theory” of sanctions on account of its flawed assumptions, in view of the frequent failure of sanctions to compel leaderships to change course. Sanctions have not always led to economic downfall as the economy of the targeted country often adapted to new circumstances by finding alternative sources of income or resorting to the black market. Popular discontent with sanctions sometimes translates into animosity towards the sender rather than the domestic leadership, producing the so-called “rally-around-the-flag effect”.⁶⁹ Comprehensive sanctions can also display counterproductive or “perverse” effects.⁷⁰ Examples of perverse effects include an increase in corruption in societies under sanctions as they promote public tolerance for lawbreaking, as witnessed in the former Yugoslavia. Another effect can be the tightening of governmental control over essential supplies in the form of rationing, as documented in the Iraqi case.⁷¹

While scholars have attempted to spell out the expected mode of operation of sanctions, decision-makers have never validated or disconfirmed their claims.⁷² Nevertheless, the advent of targeted sanctions hardly heralds a departure from the causal logic explained above. The harm produced by sanctions focuses on the leaderships or the elites that support them, but the method remains identical. Targeted sanctions transpose the logic of the naive theory to the individual or elite level.⁷³ The naive theory is not the only possible way in which sanctions can bring about compliance by the target. Sanctions can accomplish their aims, or contribute to bringing about the target’s compliance, in ways which have not yet been fully catalogued. As Baldwin observes, “there are many causal logics that could be used to construct a variety of theories” of sanctions.⁷⁴

68 Galtung, J., ‘On the Effects of International Economic Sanctions, with examples from the case of Rhodesia’, *World Politics*, vol. 19, no. 3, 1967, pp. 378–416, p. 388.

69 *ibid.*

70 Peksen, D., ‘When do imposed economic sanctions work? A critical review of the sanctions effectiveness literature’, *Defence and Peace Economics*, vol. 30, no. 6, 2019, pp. 635–647.

71 See respectively, Andreas, P., ‘Criminalising consequences of sanctions: Embargo busting and its legacy’, *International Studies Quarterly*, vol. 49, no. 2, 2005, pp. 335–360; Cortright, D. & Lopez, G., *The Sanctions Decade. Assessing UN Strategies in the 1990s*, Lynne Rienner Publishers, Boulder, Co., 2000.

72 Baldwin, D. & Pape, R., ‘Evaluating Economic Sanctions’, *International Security*, vol. 23, no. 2, 1998, pp. 189–198.

73 Brzoska, M., ‘From dumb to smart? Recent reforms of UN sanctions’, *Global Governance*, vol. 9, no. 4, 2003, pp. 519–535; Portela, 2010, *loc. cit.*

74 Baldwin & Pape *op. cit.*, p. 193.

The mode of operation of sanctions is closely linked to the question of the purpose or functions of sanctions. Sanctions are not exclusively intended to compel a change in the political behaviour of leaders. Scholarship has long established that compliance is not the only, and not even the primary aim of sanctions, but that they fulfil other functions. These include the desire to demonstrate the sender's willingness and capacity to act, anticipating or deflecting criticism, maintaining certain patterns of behaviour in international affairs, deterring further engagement in the objectionable actions by the target and third parties, or promoting subversion in the target.⁷⁵ They can serve to weaken the economic and military potential of the targeted state – along the lines of the notion of containment in strategic studies. Sanctions have a strong stigmatising value in that they express maximum disapproval of the target's policies.⁷⁶ They also serve to assuage domestic audiences.⁷⁷ Their imposition is often driven by a desire to demonstrate “a willingness and capacity to act”.⁷⁸ At the same time, they serve to uphold international norms and to support international structures like the UN.⁷⁹ They also serve the purpose of positioning actors in strategic terms with regard to a dispute,⁸⁰ and that of strengthening the international profile of an international actor.⁸¹

75 Barber, J., 'Economic Sanctions as a Policy Instrument', *International Affairs*, vol. 55, 1979, pp. 367-384; Lindsay, J., 'Trade Sanctions as Policy Instruments: A Re-Examination', *International Studies Quarterly*, vol. 30, no. 2, 1986, pp. 153-173.

76 Elliott, K., 'Assessing UN sanctions after the cold war: New and evolving standards of measurement', *International Journal*, vol. 65, no. 1, 2010, pp. 85-97.

77 Barber, loc. cit.; Lindsay loc. cit.

78 Barber op. cit., p. 380.

79 Hoffmann, F., 'The Functions of Economic Sanctions: A Comparative Analysis', *Journal of Peace Research*, vol. 4, no. 2, 1967, pp. 140-160.

80 Krause, J., 'Western economic and political sanctions as instruments of strategic competition with Russia', in N. Ronzitti ed., *Coercive Diplomacy, Sanctions and International Law*, Brill Nijhoff, Leiden, 2016, pp. 270-286; Taylor 2010.

81 Blavoukos, S. & Bourantonis, D., 'Do Sanctions Strengthen the International Presence of the EU?', *European Foreign Affairs Review*, vol. 19, no. 3, 2014, pp. 393-410.

BOX 2: ROLES OF SANCTIONS

Vis-à-vis targets:

- promoting compliance
- weakening military/economic potential
- deterring further violations
- strengthening opposition/ protecting civil society actors

Vis-à-vis domestic audiences:

- demonstrate willingness to act
- assuage domestic audiences
- deflect criticism
- profiling sender's international identity

Vis-à-vis third countries and external observers:

- uphold international norms
- deter similar actions by third states
- endorse international structures
- stigmatize objectionable behaviour
- support allies
- strengthen international presence

While there is increasing scholarly recognition of the multiplicity of sanction purposes,⁸² most of the specialized literature continues to evaluate sanctions on the basis of their ability to coerce targets only. At the risk of painting an incomplete picture, most studies continue to adopt the conventional “standard of success” as it constitutes standard practice. Nevertheless, the ability of sanctions to bring about compliance continues to be a highly contentious matter, both in the scholarly and the policy debate.

Evaluating the success of sanctions

Standard analyses of sanctions distinguish between “economic” and “political” effectiveness. The former refers to the effectiveness in inflicting disutility on the target while the latter refers to efficacy in compelling policy changes. There is no unified terminology: Bergeijk distinguishes “effectiveness” from “success”,⁸³ whereas Cortright and Lopez speak of “economic” and “political” success.⁸⁴ Sanctions “success” is routinely assessed on the basis of whether or not sanctions contribute to the achievement of stated policy objectives. The yardstick of a successful

82 Giumelli, F., ‘The purposes of targeted sanctions’, in T. Biersteker, S. Eckert & M. Tourinho eds., *Targeted Sanctions. The effectiveness of UN Action*, Cambridge University Press, Cambridge, 2016, pp. 38–59; Gould-Davies, N., ‘Russia, the West and sanctions’, *Survival*, vol. 62, no. 1, 2020, pp. 7–28.

83 Bergeijk, P. van, *Economic Diplomacy, Trade and Commercial Policy. Positive and Negative Sanctions in a New World Order*, Edward Elgar, Aldershot, 1994, p. 23.

84 Cortright & Lopez op. cit. p. 3.

sanctions regime is an “observable change in behaviour”. Policy outcomes are judged “against the stated policy goal of the sender country”.⁸⁵

The measurement of changes in behaviour against stated policy goals is fraught with difficulties, and is subject to a lively debate among experts. Sender countries do not always announce their goals in a clear manner.⁸⁶ Until the late 1990s, EU sanctions were imposed without spelling out the policy goals pursued. Instead, documents typically included a description of the situation giving rise to the imposition of sanctions, while remaining silent on the policy changes that are expected from the target. Arguably, the condemnation of certain policies can also be interpreted as the demand to reverse such policies. If sanctions were triggered by the imprisonment of political opponents, it can be presumed that the policy goal pursued by the sender is their release. However, it is often unclear exactly what the sender expects of the target. EU sanctions against the Transnistrian leadership were imposed due to its “obstructionism of the peace process”.⁸⁷ From this formulation, we can infer that the sender’s intention is to compel the target to cooperate in the peace process; however, no concrete output is specified. Since the goals of sanctions regimes are often vague, it is presumed that they are imposed with a view to re-establishing the status quo that prevailed prior to the act that brought the sanctions about.

A further distinction is drawn between the attainment of the policy goal and the contribution that sanctions made towards it, captured in the notions of “policy outcome” and “sanctions contribution”.⁸⁸ The determination as to whether a policy change is related to the imposition of sanctions is made based on public statements by officials from the sender country, supplemented by the assessment of country analysts.⁸⁹ Statements by decision-makers cannot be considered completely reliable sources, as both sides may have an interest in delivering a politically convenient version of events or even in distorting data. Nevertheless, they are often taken into account in the absence of any further evidence.

A final methodological challenge concerns the possibility of controlling for concurrent policy tools. Some experts have voiced reservations about the feasibility of determining that sanctions were responsible for a specific

85 Hufbauer, G., Schott, J., Elliott, K. A., *Economic Sanctions Reconsidered*, Peterson Institute for International Economics, Washington D.C., 1985, p. 32.

86 Hufbauer et al. op. cit., p. 31.

87 EUR-Lex, *Council Common Position 2003/139/CFSP of 27 February 2003 concerning restrictive measures against the leadership of the Transnistrian region of the Moldovan Republic (2003/139/CFSP)*, 28 February 2003, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32003E0139>, accessed 15 April 2020.

88 Hufbauer et al. loc. cit.

89 *ibid.*, p. 2.

outcome given that they are often used in conjunction with diplomacy and military threats. Robert Pape therefore suggests three criteria for crediting sanctions with success even in the presence of concurrent policy tools: the target state concedes to a significant proportion of the coercer's demands; sanctions are threatened or applied before the target changes its behaviour; and no explanation with greater credibility exists for the target's change of behaviour.⁹⁰

Evaluating EU sanctions

Despite the formidable challenges involved in measuring the effectiveness of sanctions, attempts have been made at assessing their success. Various analyses found success rates are comparable to those of other senders, which are generally low and oscillate between 10 and 30% of the total number of attempts.⁹¹ A comparative evaluation concluded that CFSP sanctions tend to be less successful than aid suspensions in the context of the EU's development policy.⁹² Recent analyses have attempted to evaluate two functions of sanctions in addition to their coercive intent, suggesting that their containment and signalling capacity displays a higher level of effectiveness.⁹³ Preliminary assessments of EU sanctions do not suggest that they are more than moderately successful.⁹⁴ However, existing assessments are still preliminary, and their diverging outcomes largely result from the different methodologies they follow.

Routinely, EU institutions do not have a mandate to monitor the effects of EU sanctions beyond the duties of the relevant desk officers and the geographical working groups.⁹⁵ No agreed metrics exist for such monitoring, and evaluations have been conducted on an ad-hoc basis.⁹⁶ Illustratively, when asked about the impact of the sanctions on Myanmar during a hearing at the UK House of Lords, a high-ranking EU official conceded that while "there may be some unintended and incidental...collateral impact

90 Pape, R., 'Why Economic Sanctions Still Do Not Work', *International Security*, vol. 23, no.1, 1998, pp. 66-77.

91 Brzoska, M., 'Research on the effectiveness of international sanctions', in H. Hegemann, R. Heller & M. Kahl eds., *Studying 'effectiveness' in International Relations*, Budrich, Opladen, 2013, pp. 143-160.

92 Portela 2010, loc. cit.

93 Biersteker et al. loc. cit.; Giumelli, F., 'The purposes of targeted sanctions', in T. Biersteker, S. Eckert & M. Tourinho eds., *Targeted Sanctions: The effectiveness of UN Action*, Cambridge University Press, Cambridge, 2016, pp. 38-59; Moret, E. et al., *The New Deterrent? International Sanctions against Russia over the Ukraine Crisis: Impact, Costs and Further Action*, The Graduate Institute Geneva, Geneva, 2016.

94 Christie, E., 'The design and impact of Western economic sanctions against Russia', *RUSI Journal*, vol. 161, no. 3, 2016, pp. 52-64; Connolly, R., 'The Empire strikes back. Economic Statecraft and the Securitisation of Political Economy in Russia', *Europe-Asia Studies*, vol. 68, no. 4, 2016, pp. 750-773; Gould-Davies loc. cit.; Moret et al. loc. cit.

95 Vries, A. de, Portela, C. & Guijarro, B., 'Improving the effectiveness of sanctions: A checklist for the EU', *CEPS special report*, no 95, Centre for European Policy Studies, Brussels, 2014.

96 Interview 2010.

on ordinary people”, “[they were] not aware of this being a significant problem”.⁹⁷

The sanctions against Russia marked a departure from regular practice: Following the enactment of the measures, the Commission started to evaluate their impact on the Russian economy and their effects on the economies of its own member states. At this stage, it is unknown whether the case of Russia has introduced a trend or whether it will remain a one-off exception. In addition, monitoring efforts are limited to the economic effects and do not cover other sorts of impacts or the extent to which the bans are helping the EU to achieve its policy goals. Importantly, no monitoring of possible unintended consequences, including humanitarian effects is conducted. Nevertheless, the monitoring exercise taking place under the Russia sanctions regime is conceived as an additional task to be added to the general duties of the desk officers rather than as the core mission of dedicated staff. The sanctions units at the European External Action Service (EEAS) and the Commission lack a mandate to monitor impacts.

1.6. CHALLENGES AHEAD

The challenges currently confronting EU sanctions do not end here. Three issues merit particular attention: court cases resulting from lack of due process for designees, contestation of the legality of EU measures, and the impending Brexit.

Due process

The principal vulnerability of sanctions against individuals is the lack of due process guarantees. Saudi citizen Kadi challenged its designation in the EU terrorism blacklist at the Court of Justice of the EU. The court found Council listings to be in violation of the right to effective judicial remedy and ruled in favour of the claimant. With this ruling, the Court established that the EU must provide due process guarantees to designees, even if their designations originate from the UNSC.⁹⁸ After the landmark “Kadi” judgement in 2008, numerous individuals challenged their

97 UK House of Lords, Select Committee on Economic Affairs, *reply by Deputy Director of DG External Relations, European Commission, Mr Karel Kovanda, to Q268*, 17 October 2006, <https://publications.parliament.uk/pa/ld200607/ldselect/ldeconaf/96/6101705.htm>, accessed 15 April 2020.

98 Heupel, M., ‘Multilateral sanctions against terror suspects and the violation of due process standards’, *International Affairs*, vol. 85, no. 2, pp. 307-321.

designations in front of the ECJ, which often annulled their listings.⁹⁹ The lack of evidential bases is attributable to the (often foreign) intelligence services’ reluctance to disclose confidential information unless they are assured that it will not be made public. However, this is incompatible with the requirement for the classified material to be made available to the claimant. As a result, the ECJ has often considered that designations have been adopted on insufficient evidence. Litigation revealed that EU institutions had often failed to request supporting documentation before the designations were challenged.¹⁰⁰

Interestingly, Kadi was not originally an EU listing, but a UN designation implemented by the EU. As a consequence, the due process crisis has affected the UN level, causing a crisis of confidence whose magnitude has been equated with that caused by the 1990 Iraqi embargo.¹⁰¹ In the period from 2010 to 2014, sanctions cases became the third most recurrent issue area among the cases heard by EU Courts, with only intellectual property rights and competition disputes being more prevalent. By 2017, cases regarding restrictive measures had displaced competition cases, becoming the second most frequent issue heard by the Court.¹⁰²

By 2014, as many as 110 challenges to listings concerning 290 individuals or entities had been brought before the Court of Justice of the EU.¹⁰³ In the decade that elapsed between 2005 and 2015, a researcher counted 132 judgements on sanctions contestation. A significant increase was recorded around 2012, and a peak was reached in 2014 with 33 cases, largely related to the Iran sanctions.¹⁰⁴ Interestingly, the same author found that the ECJ had ruled in favour of the claimants in 65% of the cases, while the success rate of the Council was only 35%.¹⁰⁵ According to Michael Bishop (whose calculations followed a slightly different method), an official from the Council legal service, in the years that followed the Kadi case, the Council lost around two-thirds of the cases, for which the Courts ruled in favour of claimants. This trend changed in 2015: “In 2012, 2013 and 2014

99 Ali, A., ‘The challenges of a Sanctions Machine: Some reflections on the legal issues of EU restrictive measures in the field of common foreign security policy’, in L. Antonioli, L. Bonatti & C. Ruzza eds., *Highs and Lows of European Integration: Sixty Years After the Treaty of Rome*, Springer, Cham, 2019, pp. 49–62.

100 Pursiainen, A., *Targeted EU Sanctions and Fundamental Rights*, Solid Plan Consulting, Helsinki, 2017, https://um.fi/documents/35732/48132/eu_targeted_sanctions_and_fundamental_rights/14ce3228-19c3-a1ca-e66f-192cad8be8de?t=1525645980751, accessed 29 November 2019.

101 United Nations General Assembly Security Council, *Sixty-ninth session: Agenda item 115: Follow-up to the outcome of the Millennium Summit*, (A/69/941-S/2015/432), 12 June 2015, <https://undocs.org/A/69/941>, accessed 12 March 2020, p. 68.

102 Court of Justice of the European Union, *Annual Reports 2014 & 2017*, https://curia.europa.eu/jcms/jcms/Jo2_11035/rapports-annuels, accessed 15 April 2020.

103 Lidington, D., ‘Letter addressed to Lord Tugendhat, Chairman of EU Subcommittee C’, *House of Lords*, 21 February 2014, <https://www.parliament.uk>, accessed 30 March 2020.

104 Meister, K., ‘EU Sanctions and Legal Challenges’, Master’s thesis, Graduate Institute, Geneva, 2015, pp. 14–15.

105 Meister op. cit., 18.

the Council was still losing twice as many cases as it won, while in 2015 that trend was reversed; the Council then won more than twice as many cases as it lost. The same applies for 2016”.¹⁰⁶

Two reasons account for this. One of them relates to improvements in the Council’s substantiation of listings, as well as the gathering of evidence to support individual designations. Firstly, as explained by Michael Bishop, “[i]n the early days of EU targeted sanctions individuals and companies were regularly listed on the basis of no reasons. The Council now gave reasons for sanctions listings. The General Court sometimes found those reasons to be insufficiently precise, detailed and specific”.¹⁰⁷ Secondly, a broadening in the definition of the listing criteria, which potentially accommodates a larger population of targets based on their status, makes it easier to justify designations in the event of a court challenge.¹⁰⁸ Although the EU has pledged to “respect due process and the right to an effective remedy in full conformity with the jurisprudence of the EU Courts”,¹⁰⁹ the Council’s restoration of certain designations annulled by the Court illustrates the level of controversy associated with these rulings.¹¹⁰

Legitimacy

A campaign to de-legitimize the use of unilateral sanctions is currently underway in United Nations fora. Besides the classic UN General Assembly resolution demanding an end to the Cuban blockade (UNGA), a campaign condemning unilateral sanctions as contrary to human rights has recently gathered steam at the UN Human Rights Council. This process culminated with the 2015 appointment by the Human Rights Council of a Special Rapporteur on the negative impact of the unilateral coercive measures on the enjoyment of human rights.¹¹¹ Similarly, the imposition of unilateral sanctions supplementing UNSC measures has generated some resistance. While EU members and other Western countries regard the measures imposed by the UN as the foundation upon which they can introduce more stringent measures, China and Russia see them as reflecting an

106 Bishop quoted in UK House of Lords, *The legality of EU sanctions: 11th Report of Session 201617*, 2 February 2017, <https://publications.parliament.uk/pa/ld201617/ldselect/ldcom/102/102.pdf>, accessed 13 March 2020.

107 *ibid.*

108 Portela, ‘Are EU sanctions “targeted”?’, 2016, *loc. cit.*

109 Ashton, C., *Speech by European Union High Representative on the EU’s policy on restrictive measures*, European Parliament, Brussels, 1 February 2012, https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/127812.pdf, accessed 13 March 2020.

110 Economist, ‘Who are you calling a rogue?’, *The Economist*, 18 June 2015, <https://www.economist.com/business/2015/06/18/who-are-you-calling-a-rogue>, accessed 3 April 2020; Lidington *loc. cit.*

111 Jiménez, F., ‘Medidas restrictivas en la Unión Europea: Entre las “sanciones” y el unilateralismo europeo’ [‘Restrictive measures in the European Union: Between “sanctions” and European unilateralism’], in C. Martínez & E. Martínez eds., *Nuevos Retos para la Acción Exterior Europea [New Challenges for European External Action]*, Tirant lo Blanch, Valencia, 2017, pp. 509–534.

international consensus that should not be surpassed.¹¹² The EU has remained silent on these issues thus far. However, the gradual broadening of sanctions outlined above makes the measures more vulnerable to attacks. As demonstrated by the Iraqi embargo which provoked the move to targeted measures, de-legitimation attempts can lead to a decline in the popularity of sanctions, whose sustainability requires broad support. The EU's concern with legitimacy is illustrated by its preference for action under the aegis of the UN, visible in the strategic outlook reflected in the ESS.

The UK's withdrawal from the EU

The withdrawal of the UK from the EU is expected to leave a vacuum in two respects: leadership in sanctions imposition and expertise in sanctions design. EU member states have traditionally been divided on their attitudes to sanctions.¹¹³ As reported by a member state diplomat, "Sanctions are a very sensitive issue ... some believe they are very useful, some [view their] utility [as] doubtful".¹¹⁴ The UK has traditionally been a champion of this tool, responsible for the initiation of most sanctions regimes¹¹⁵ and an active proponent of individual designations.¹¹⁶ The British origin of many EU sanctions regimes since 1991 has been documented.¹¹⁷ Illustratively, when the UK imposed restrictions on Zimbabwe in 2001, the sanctions regime was quickly adopted by the entire EU, which sustained it for over a decade. After Brexit, we are likely to witness a general decline in EU sanctions activity. After the June 2016 referendum, the prospect of the UK withdrawal already led many to believe that EU sanctions practice would lose impetus. Observing a declining cohesion behind the sanctions against Russia, another EU member state diplomat lamented that the UK's decision to leave the EU had weakened the internal push for renewal: "That leaves Poland, the Baltic states, Sweden and, to an extent, Denmark, without a major ally on Russia".¹¹⁸ The future shape of EU sanctions policy

112 Eckert, S., 'The role of sanctions' in S. v. Einsiedel, D. Malone & S. Stagno Ugarte eds., *The UN Security Council in the 21st Century*, Lynne Rienner, Boulder, Co., 2016, pp. 413-439.

113 Portela 2010, loc. cit..

114 Diplomat cited in Chelotti, N., *The Formulation of EU Foreign Policy*, Routledge, Abingdon, 2016, p. 157.

115 Moret, E., 'What would Brexit mean for EU sanctions policy?', *European Council on Foreign Relations, Commentary*, 23 March 2016, https://www.ecfr.eu/article/commentary_what_would_brexit_mean_for_eu_sanctions_policy6046, accessed 13 March 2020; Lehmkuhl, D. & Shagina, M., 'EU sanctions in the post-Soviet space' in I. Tache ed., *The European Union and the challenges of the new global context*, Cambridge Scholars Publishing, Newcastle upon Tyne, 2015, pp. 52-85.

116 UK House of Lords, European Union Committee, *Inquiry on European Union restrictive measures*, evidence session No.1, Witnesses Philip Moser and Maya Lester, 6 February 2014, <https://www.parliament.uk/documents/lords-committees/eu-sub-com-c/Restrictive%20Measures/CEUC060214ev1.pdf>, accessed 13 March 2020.

117 Jones, S., *European Security Co-operation*, Cambridge University Press, Cambridge, 2007.

118 Quoted in Rettman, A., 'EU extends Russia blacklist by six months', *EUobserver*, 8 September 2016, <https://euobserver.com/foreign/128900>, accessed 13 March 2020.

will largely depend on concertation between France and Germany, two powers with diverging foreign policy outlooks, in the absence of London's balancing role as a "third wheel".¹¹⁹ In addition, observers lament that British withdrawal deprives the EU from a privileged source of expertise in sanctions matters, leaving a gap that can hardly be filled by any other member state.¹²⁰

Divergence between EU and US sanctions policies

Finally, the increasing divergence between EU and US sanctions practices constitutes a further challenge. While Brussels' sanctions practice has traditionally been more modest than Washington's, the current administration's use of sanctions is posing unprecedented difficulties. In the past, Washington often led the way, and the EU followed many of the sanctions regimes wielded by the US. However, it refrained from replicating US sanctions regimes in specific geographic regions, particularly in Latin America. Moreover, EU sanctions were invariably more modest in scope than those of their US counterparts.¹²¹ In some respects, Brussels is still approximating its sanctions policies to a US model: it is currently targeting two leaderships in Latin America (Nicaragua and Venezuela), while it is acquiring a habit of adopting horizontal blacklists, such as that on cyberattacks.

Still, current US practices are aggravating the transatlantic divide on sanctions. Firstly, while the EU has increased the frequency of its sanctions adoption, the US administration is rolling out sanctions more aggressively than before.¹²² According to law firm Gibson, Dunn & Crutcher, in 2018 the United States added nearly 1,500 people, companies, and entities to Treasury Department-managed sanctions, nearly 50 per cent more than in the preceding year.¹²³ Alongside 2018, the preceding and following years of 2017 and 2019 recorded peaks in the number of designations.¹²⁴ Most importantly, the US is making increasing use of secondary sanctions, which target third-country companies conducting businesses with entities under US sanctions, which has major consequences for

119 Jokela, J. & Aula, I., 'EU sanctions and Brexit. Losing the hard edge of European foreign policy?', *FIIA Briefing Paper*, no. 277, 31 January 2020, p. 4, https://www.fia.fi/wp-content/uploads/2020/01/bp277_eu-sanctions-and-brexit.pdf, accessed 3 April 2020.

120 Ibid.

121 Borzyskowski & Portela loc. cit.

122 Harrell, P.E., 'Trump's Use of Sanctions Is Nothing Like Obama's', *Foreign Policy*, 5 October 2019, <https://foreignpolicy.com/2019/10/05/trump-sanctions-iran-venezuela-russia-north-korea-different-obamas/>, accessed 13 March 2020.

123 Gibson Dunn, '2017 Year-End Sanctions Update', *Gibson Dunn*, 5 February 2018, <https://www.gibsondunn.com/2017-year-end-sanctions-update/>, accessed 16 March 2020.

124 Gibson Dunn, '2019 Year-End Sanctions Update', *Gibson Dunn* 23 January 2020, <https://www.gibsondunn.com/wp-content/uploads/2020/01/2019-year-end-sanctions-update.pdf>.

European firms. In December 2019, barely a few days after US Congress passed legislation allowing for secondary sanctions on actors dealing with Russia, the Swiss engineering firm laying the North Stream pipeline immediately stopped operations.¹²⁵ Transatlantic divergence in sanctions policy towards Russia has widened since the adoption of US legislation tightening measures on Moscow, the *Countering America's Adversaries through Sanctions Act* (CAATSA) in 2017, and threatens to become increasingly acute in future.¹²⁶

¹²⁵ Rettman, A., 'US halts building of Russia-Germany pipeline', *EUobserver*, 21 December 2019, <https://euobserver.com/foreign/146996>, accessed 13 March 2020.

¹²⁶ Gould-Davies, loc. cit.

1/2

2. THE UNITED STATES IN THE TRUMP ERA

Ville Sinkkonen

Summary

- Great-power competition has brought geoeconomics to the forefront of strategic thinking in Washington D.C. The United States is well positioned to use coercive economic tools – particularly unilateral sanctions – in this power play because of its structural advantages in the global economy and financial system.
- President Donald Trump and his administration have signalled a preference for the unilateral use of sanctions to excel in the competitive international geostrategic environment, creating clashes with the EU over the extraterritorial application of American sanctions and policy coordination.
- Wrangling between Congress and the White House over sanctions policy has also intensified since the 2016 presidential election, rendering American sanctions policy less predictable and cooperation with allies and partners more difficult.

Recommendations

- The EU and the member states should strive for unified positions in the face of pressure from unilateral US sanctions to guard against the adverse effects of “wedging” by the Americans. This necessitates clarity in both formulating what the common European interest is, and in laying out which values the Union ultimately wishes to uphold with its sanctions policies.
- The EU and the member states need to step up their game in engaging with US policymakers and officials on multiple levels. In

particular, added emphasis should be placed on bringing European concerns to the attention of congressional representatives and senators, whose role in US sanctions policy has been amplified in recent years.

2.1. INTRODUCTION: AMERICAN UNILATERAL SANCTIONS IN CONTEXT

The United States has been a key driver behind multilateral sanctions regimes, and traditionally the most important ally of the EU in this respect. However, the US has also become increasingly adept at utilizing sanctions in a *unilateral* manner to pursue its interests in recent years – posing challenges for its European allies and partners in the process.

As an economic behemoth, the US remains extraordinarily positioned for the use of economic coercion. This is due to the sheer size of its economy, its centrality as a hub of economic activity and global finance, as well as the predominance of the US dollar in the global financial system.¹²⁷ The Office of Foreign Assets Control (OFAC) of the US Department of the Treasury, tasked with administering, overseeing and enforcing US sanctions, also enjoys incomparable resources to carry out its tasks.¹²⁸ This confluence of structural comparative advantages and resources allows the US to employ secondary sanctions “to inhibit *non-US* citizens and companies abroad from doing business with a target of primary US sanctions”.¹²⁹ Although such measures do not (always) enjoy widespread backing within the broader international community, they can still have tangible effects on third countries, their businesses and nationals.

The extraterritorial application of US secondary sanctions has placed it at loggerheads with its allies and partners from time to time. Even in the early 1980s, US sanctions against the Soviet Union left European companies involved in a gas pipeline project in a precarious situation, but the Reagan administration backed down after an outcry and countermeasures

127 See e.g. Norrlof, C., *America's Global Advantage: US Hegemony and International Cooperation*, Cambridge University Press, Cambridge, 2010; Zoffer, J.P., 'The Dollar and the United States' Exorbitant Power to Sanction', *AJIL Unbound*, vol. 113, 2019, pp. 152–156.

128 US Department of the Treasury, *Office of Foreign Assets Control (OFAC)*, 2019, <https://www.treasury.gov/about/organizational-structure/offices/pages/office-of-foreign-assets-control.aspx>, accessed 13 March 2020; Geranmayeh, E. & Rapnouil, M.L., 'Meeting the Challenge of Secondary Sanctions', in M. Leonard & J. Shapiro eds., *Strategic Sovereignty: How Europe Can Regain the Capacity to Act*, European Council on Foreign Relations, Berlin, 2019, p. 65.

129 Meyer, J.A., 'Second Thoughts on Secondary Sanctions', *Pennsylvania Journal of International Law*, vol. 30, no. 3, 2009, p. 905.

from the Europeans.¹³⁰ In 1996 two pieces of legislation, the Helms–Burton Act dealing with Cuba and the Iran and Libya Sanctions Act (ILSA), threatened foreign individuals and companies with criminal liability and loss of access to the US market if found to be in violation of US sanctions. The EU responded with a “blocking statute”, which effectively prohibits European companies from complying with American extraterritorial sanctions, but a compromise with the Clinton administration rendered the statute redundant for two decades.¹³¹

More recently, during Barack Obama’s tenure, OFAC imposed hundreds of millions of dollars in penalties on notable foreign banks for sanctions violations. This was indicative of a shift in the agency’s strategy from imposing less prominent penalties on smaller players towards creating a demonstrable deterrent effect by going after larger ones.¹³² There was also a substantial quantitative increase in the use of sanctions, when measured in terms of individuals and entities added to the Specially Designated Nationals and Blocked Persons List (SDN).¹³³

In the early years of its tenure, the Obama administration also set new precedents by utilizing US influence over global financial institutions in its efforts to sanction Iran. This included legislation that would prohibit access to the US for any foreign banks found to have been dealing with Iranian financial institutions blacklisted by the US.¹³⁴ It also used leverage over the Belgium–based Society for Worldwide Interbank Financial Telecommunication (SWIFT) to shut out certain Iranian banks from the financial messaging service.¹³⁵ At the time, the US approach enjoyed international support, especially from America’s European and global allies. Yet by employing such tools, the Obama administration created a template

130 Nephew, R., ‘Transatlantic Sanctions Policy: From the 1982 Soviet Gas Pipeline Episode to Today’, *Columbia Center on Global Energy Policy*, 22 March 2019, <https://energypolicy.columbia.edu/research/report/transatlantic-sanctions-policy-1982-soviet-gas-pipeline-episode-today>, accessed 13 March 2020.

131 Ryngaert, C., ‘Extraterritorial Export Controls (Secondary Boycotts)’, *Chinese Journal of International Law*, vol. 7, no. 3, 2008, 625–658.

132 Gordon, J. ‘Extraterritoriality: Issues of Overbreadth and the Chilling Effect in the Cases of Cuba and Iran’, *Harvard International Law Journal* [online], vol 57, 2016, pp. 6–7, https://harvardilj.org/wp-content/uploads/sites/15/January-2016_Vol-57_Gordon.pdf, accessed 13 March 2020; Early, B.R., ‘Deterrence and Disclosure: The Dual Logics Promoting U.S. Sanctions Compliance’, *Center for a New American Security*, 10 June 2019, <https://www.cnas.org/publications/commentary/deterrence-and-disclosure-the-dual-logics-promoting-u-s-sanctions-compliance>, accessed 13 March 2020.

133 US Department of the Treasury, *Specially Designated Nationals And Blocked Persons List (SDN)*, 2019, <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>, accessed 13 March 2020; Gibson Dunn, ‘2018 Year–End Sanctions Update’, *Gibson Dunn*, 11 February 2019, <https://www.gibsondunn.com/2018-year-end-sanctions-update/>, accessed 13 March 2020; Harrell, P., ‘Is the U.S. Using Sanctions Too Aggressively? The Steps Washington Can Take to Guard Against Overuse’, *Foreign Affairs*, 11 September 2018, <https://www.foreignaffairs.com/articles/2018-09-11/us-using-sanctions-too-aggressively?cid=int-fls&pgtype=hpg>, accessed 13 March 2020.

134 Nephew, R., *The Art of Sanctions: A View from the Field*, Columbia University Press, New York, 2017, p. 77.

135 Caytas, J.D., ‘Weaponizing Finance: U.S. and European Options, Tools, and Policies’, *Columbia Journal of European Law*, vol. 23, no. 2, 2017, pp. 441–476; Geranmayeh & Rapnouil, op. cit. pp. 65, 75.

that could be utilized by a future US administration in a situation where international backing for US-imposed sanctions was not forthcoming.

2.2. SYSTEMIC DRIVERS: ECONOMIC COERCION IN A WORLD OF COMPETITION

Of course, the recent uptick in the use of sanctions by the US should not be dissociated from the broader shift in the dynamics of the international order. It has become commonplace to argue that after a post-Cold War interregnum, the world is witnessing a “return of geopolitics” and an era of “great-power competition”.¹³⁶ On the one hand, Russia’s annexation of Crimea, subsequent actions in Eastern Ukraine, and meddling in the 2016 US presidential election have ushered in a new era of geostrategic wrangling between Moscow and the West. Concurrently, a hardening bipartisan consensus on confronting China as a rising near-peer competitor has emerged in Washington, as a result of Beijing’s perceived increase of influence in its near abroad, trade-distorting practices as well as a deteriorating human rights situation.

This newfound focus on great-power competition has brought “the geostrategic use of economic power”,¹³⁷ or geoeconomics, to the forefront of strategic thinking in Washington. It is broadly viewed as a less risky way of conducting power politics, without having to resort to military instruments. America’s great-power rivals have also become more adept at using such economic tools as a means of challenging the incumbent hegemon. Examples abound, whether one looks at Russia wielding its “energy weapon” against former Soviet Republics, or China acquiring strategic ports as debt payment in its neighbourhood.

For the duration of its tenure, the Trump administration has thus maintained that the international arena should not be viewed as a global community defined by positive-sum interactions, but as a realm of intensifying interstate competition. The pursuit of America’s national interests in such an environment necessitates excelling in the face of different competitive scenarios. For the Trump administration, this means harnessing America’s military and especially *economic* capabilities to check

136 Mead, W.R., ‘The Return of Geopolitics: The Revenge of the Revisionist Powers’, *Foreign Affairs*, vol. 93, no. 3, 2014, pp. 69–79; Friedman, U., ‘The New Concept Everyone in Washington Is Talking About’, *The Atlantic*, Politics, 6 August 2019, <https://www.theatlantic.com/politics/archive/2019/08/what-genesis-great-power-competition/595405>, accessed 13 March 2020.

137 Wigell, M., ‘Conceptualizing Regional Powers’ Geoeconomic Strategies: Neomercantilism, Hegemony and Liberal Institutionalism’, *Asia Europe Journal*, vol. 14, no. 2, 2016, pp. 135–151.

great-power challengers and so-called “rogue regimes”.¹³⁸ Sanctions are a key component of this toolbox moving forward.

2.3. THE TRUMP FACTOR: PROLIFERATION OF UNILATERAL SANCTIONS

During Donald Trump’s tenure, the proliferation of economic coercion has been on display in the trade and financial restrictions that the administration has used against great-power challengers and rogue actors, as well as in import tariffs levied against both allies and adversaries.¹³⁹ The President’s rhetoric has also revealed his staunch belief in economic strong-arming, whether in the form of sanctions or tariffs. In fact, Trump appears to adhere to such beliefs on both an instrumental and an ideological level. He regards the United States as well positioned for the successful use of economic coercion, and has no moral qualms about using such tools.¹⁴⁰ Trump also thinks about winning in profoundly zero-sum terms, while sanctions also fit remarkably well with his penchant for operating disruptively and spontaneously. As the American sanctions enterprise provides the executive with considerable freedom of manoeuvre, the President can impose such measures swiftly, without having to worry about advance notification or judicial review.¹⁴¹

Moreover – despite manifold reports of dysfunction inside the current administration – a shared approach to the use of coercive economic tools has emerged amongst other key players on Trump’s trade and foreign-policy teams. In its first year in office, the Trump administration added over 1,000 entities and individuals to the SDN list. This marks a

138 See McMaster, H.R. & Cohn, G.D., ‘America First Doesn’t Mean America Alone’, *The Wall Street Journal*, Opinion, 30 May 2017, <https://www.wsj.com/articles/america-first-doesnt-mean-america-alone-1496187426>, accessed 13 March 2020; Trump, D.J., ‘National Security Strategy of the United States of America’, *White House*, December 2017, <https://www.whitehouse.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf>, accessed 13 March 2020; US Department of Defense, *Summary of the 2018 National Defense Strategy of the United States of America*, 2018, <https://www.defense.gov/Portals/1/Documents/pubs/2018-National-Defense-Strategy-Summary.pdf>, accessed 13 March 2020.

139 See only Harrell, P.E., ‘Trump’s Use of Sanctions Is Nothing Like Obama’s’, *Foreign Policy*, 5 October 2019, <https://foreignpolicy.com/2019/10/05/trump-sanctions-iran-venezuela-russia-north-korea-different-obamas/>, accessed 13 March 2020; Mortlock D. & O’Toole B., ‘US Sanctions: Using a Coercive Economic and Financial Tool Effectively’, *Atlantic Council Issue Brief*, 8 November 2018, <https://www.atlanticcouncil.org/in-depth-research-reports/issue-brief/us-sanctions-using-a-coercive-and-economic-tool-effectively/>, accessed 13 March 2020.

140 For an extensive study on Trump’s worldview, consult Laderman C. & Simms B., *Donald Trump: The Making of a World View*, I.B. Tauris, New York, 2017; see also Sinkkonen, V., ‘Contextualizing the “Trump Doctrine”: Realism, Transactionalism and the Civilizational Agenda’, *FIIA Analysis*, no. 10, 5 November 2018, <https://www.fiaa.fi/en/publication/contextualizing-the-trump-doctrine>, accessed 13 March 2020.

141 Morello, C. ‘Trump Administration’s Use of Sanctions Draws Concern’, *The Washington Post*, 6 August 2018, https://www.washingtonpost.com/world/national-security/trump-administrations-use-of-sanctions-draws-concern/2018/08/05/36ec7dde-9402-11e8-a679-b09212fb69c2_story.html, accessed 16 March 2020; Hovell, D., ‘Unfinished Business of International Law: The Questionable Legality of Autonomous Sanctions’, *AJIL Unbound*, vol. 113, 2019, pp. 140–145.

30% increase in designations when compared with Obama's final year in office.¹⁴² There is a concomitant qualitative change afoot as well. The Trump administration has pursued forceful comprehensive sanctions when dealing with intransigent actors, the most potent example being a near economic embargo of Venezuela.¹⁴³

Perhaps nowhere has the Trump administration's willingness to utilize economic sanctions unilaterally been clearer than in the case of Iran. Since announcing the US exit from the Iran nuclear deal (Joint Comprehensive Plan of Action; JCPOA) in May 2018, the President has authorized increasingly stringent sanctions as part of a "maximum pressure" campaign to thwart the Islamic Republic's nuclear programme and destabilizing regional behaviour. The US sanctions have gone beyond the sanctions that were in place prior to the successful negotiation of the JCPOA in 2015, and include restrictions on inter alia Iran's banking and financial sectors as well as petroleum, petrochemical and metal industries. The sanctions are also designed to allow the US authorities to take a range of measures against non-US persons and financial institutions found to be in violation. Potential measures include fines, restrictions on market access, blocks on financial services, and denial of visas.¹⁴⁴

Unlike prior to the negotiation of the JCPOA, America's maximum pressure campaign lacks broad international support. The Europeans have sought to save the agreement as a lowest-common-denominator compromise with Iran, and maintain that prior to the US withdrawal the deal had been working as intended. Alongside amplified regional instability in the Gulf, of particular concern for the EU and its member states has been the threat that secondary US sanctions pose for European companies and individuals.

Beyond seeking to keep diplomatic lines of communication open to de-escalate the situation, Europe has responded to US secondary sanctions on two fronts. On the one hand, the EU has rejuvenated the 1996 Blocking Statute, prohibiting European companies from complying with US secondary sanctions and allowing them to recover damages caused by

142 Gibson Dunn, '2017 Year-End Sanctions Update', *Gibson Dunn*, 5 February 2018, <https://www.gibsondunn.com/2017-year-end-sanctions-update/>, accessed 16 March 2020.

143 Crowley M. and Kurmanaev, A., 'Trump Imposes New Sanctions on Venezuela', *The New York Times*, 6 August 2019, <https://www.nytimes.com/2019/08/06/us/politics/venezuela-embargo-sanctions.html>, accessed 16 March 2020.

144 For further information regarding US sanctions on Iran, see Gibson Dunn, 'Iran Sanctions 2.0: The Trump Administration Completes Its Abandonment of the Iran Nuclear Agreement', *Gibson Dunn*, 9 November 2018, https://www.gibsondunn.com/iran-sanctions-2-0-the-trump-administration-completes-abandonment-of-iran-nuclear-agreement/#_ftn28, accessed 16 March 2020; Cohen, D.S., Meltzer R. I. & Nikou S., 'US Reimposes First Tranche of Iran-Related Sanctions', *Wilmer Hale*, 7 August 2018, <https://www.wilmerhale.com/en/insights/client-alerts/20180807-us-reimposes-first-tranche-of-iran-related-sanctions>, accessed 16 March 2020; US Department of the Treasury, *OFAC FAQs: Iran Sanctions*, 2019, https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_iran.aspx#601, accessed 16 March 2020.

extraterritorial application.¹⁴⁵ On the other hand, the three European state parties to the nuclear agreement – France, Germany and the UK – have set up a special purpose vehicle (SPV) designed to facilitate trade with Iran. This mechanism – called the Instrument for Supporting Trade Exchanges (INSTEX) – has been declared operational,¹⁴⁶ but it has run into teething troubles and, at least initially, will be used to facilitate trade in humanitarian goods like food and medicine.

So far, the European measures have been insufficient to persuade companies to continue trade with and operations in Iran. Firms are concerned about their access to US markets and the financial system, not to mention the prospect of substantial penalties. Over the past year, many major European companies have wound down their operations, and EU-Iran trade has fallen sharply.¹⁴⁷ The climate of uncertainty created by US sanctions makes them doubly problematic for European companies. Navigating the complexity of American sanctions regulations remains a challenge, and the prospect of fluctuation in sanctions makes predicting future business prospects extremely tricky. In addition, OFAC has considerable discretion when dealing with sanctions violations, so doubt remains over exactly how it will ultimately enforce the sanctions.¹⁴⁸ However, the Trump administration has signalled that it would pursue an aggressive line in the future.¹⁴⁹ The US has therefore managed to erect a viable deterrent that dissuades firms from doing business with Iran, indicative of how the US may weaponize its financial and economic might in other cases in the future.¹⁵⁰

145 European Commission, *Updated Blocking Statute in Support of Iran Nuclear Deal Enters into Force* [media release], 6 August 2018, https://europa.eu/rapid/press-release_IP-18-4805_en.htm, accessed 16 March 2020.

146 European External Action Service, *Chair's statement following the 28 June 2019 meeting of the Joint Commission of the Joint Comprehensive Plan of Action* [media release], 28 June 2019, https://eeas.europa.eu/headquarters/headquarters-homepage/64796/chairs-statement-following-28-june-2019-meeting-joint-commission-joint-comprehensive-plan_en, accessed 16 March 2020; Foreign and Commonwealth Office, *INSTEX successfully concludes first transaction*, 31 March 2020, <https://www.gov.uk/government/news/instex-successfully-concludes-first-transaction>, accessed 7 April 2020.

147 Mazumdaru, S., 'How Trump's Sanctions Are Crippling Iran's Economy', *Deutsche Welle*, 24 June 2019, <https://www.dw.com/en/how-trumps-sanctions-are-crippling-irans-economy/a-49335908>, accessed 16 March 2020; Graupner, H., 'German-Iranian Trade Dwindles to a Trickle', *Deutsche Welle*, 27 June 2019, <https://www.dw.com/en/german-iranian-trade-dwindles-to-a-trickle/a-49373454>, accessed 16 March 2020.

148 Gibson Dunn, 2019, loc. cit.

149 Geranmayeh & Rapnouil, op. cit. 65; Gibson Dunn, 2019, loc. cit.

150 On the potential for great powers weaponizing economic and other interdependencies, see Farrell H. & Newman A.L., 'Weaponized Interdependence: How Global Economic Networks Shape State Coercion', *International Security*, vol. 44, no. 1, 2019, pp. 42–79.

2.4. DOMESTIC POLITICS MEETS SANCTIONS: CONGRESSIONAL SANCTIONS ACTIVISM

To further complicate matters, during Trump's tenure in the White House inter-branch tensions over sanctions have assumed increased relevance, although such contestation between Capitol Hill and the White House over sanctions does have a long history. This can be attributed to the differing foreign-policy-related incentives of the legislative and executive branches. Members of Congress are less attuned to the negative side effects that sanctions may unleash on the international scene, and have utilized sanctions legislation for scoring points with domestic constituents. The White House, in contrast, has been wary of problems that rigid sanctions legislation can create for US foreign and economic policy in an interconnected world, and the limits they can place on diplomatic wiggle room. These concerns animated, for instance, the battles between President Obama and Congress on Iran sanctions, as well as inter-branch differences over the design of Russia sanctions in the aftermath of the 2014 annexation of Crimea.¹⁵¹

In a rare show of bipartisanship in a polarized age, Congress passed the Countering America's Adversaries Through Sanctions Act (CAATSA) in June 2017 with overwhelming (and veto-proof) majorities in both the House of Representatives and the Senate. This forced President Trump to grudgingly sign the bill into law in August of that year. CAATSA also lays out sanctions on Iran and North Korea, but the secondary sanctions with respect to Russia, pertaining to the country's intelligence, defence and energy sectors, have drawn most public attention. CAATSA also makes it more difficult for the President to waive sanctions on national security grounds by mandating a Congressional review of such decisions.¹⁵²

Although driven in part by doubts regarding President Trump's willingness to stand up to the Kremlin, this partial sidelining of the executive poses potential problems for US sanctions policy and America's allies and partners. A more activist Congress makes it more difficult for the executive to coordinate with international partners, and there have already been

151 Tama, J., 'So Congress Is Challenging the President about Sanctions? That Has a Long History', *The Washington Post*, Analysis, 16 June 2017, https://www.washingtonpost.com/news/monkey-cage/wp/2017/06/16/so-congress-is-challenging-the-president-about-sanctions-that-has-a-long-history/?utm_term=.20aeef8d3c3e, accessed 16 March 2020; Tama, J., 'Bipartisanship in a Polarized Age: The U.S. Congress and Foreign Policy Sanctions', *American University School of International Service Working Paper Series*, no. 2, 2015, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2553401, accessed 16 March 2020.

152 Blanc J. & Weiss, A.S., 'U.S. Sanctions on Russia: Congress Should Go Back to Fundamentals', *Carnegie Endowment for International Peace*, 3 April 2019, <https://carnegieendowment.org/2019/04/03/u.s.-sanctions-on-russia-congress-should-go-back-to-fundamentals-pub-78755>, accessed 16 March 2020; US Congress, *Countering America's Adversaries Through Sanctions Act*, (H.R.3364), 2 August 2017, <https://www.congress.gov/115/plaws/publ44/PLAW-115publ44.pdf>, accessed 16 March 2020.

episodes where European anxieties over implementation of CAATSA have caused cracks in transatlantic cooperation. One pertinent illustration is the lingering threat of sanctions against European companies involved in the Nordstream II pipeline project. In late December 2019, Donald Trump signed into law the 2020 National Defense Authorization Act (NDAA). It includes provisions for the US to sanction companies involved in the installation of the pipeline after a wind-down period of 30 days, and has already led to delays in completion of the project.¹⁵³ A yet-to-pass bill called the Defending American Security from Kremlin Aggression Act (DASKA) would further threaten new large-scale energy forays with mandatory US secondary sanctions.¹⁵⁴ Another example was the ill-fated US decision to sanction Russian oligarch Oleg Deripaska – and companies he controlled. The measure was initially undertaken with little transatlantic consultation, and threatened a profound impact on metal industries in Europe and globally.¹⁵⁵

2.5. CONCLUSION: AN ARRAY OF CHALLENGES FOR EUROPE

A perfect storm of sorts is currently brewing in US foreign policy when it comes to the unilateral use of economic sanctions. This tempest is the result of a peculiar collision of three proverbial weather fronts described above: *systemic factors* emanating from the increasingly competitive international arena, the *worldviews* of President Trump and key players in his administration, as well as the increased role assumed by Congress in sanctions matters after the 2016 presidential election. In the process, the commonality of purpose that still existed between the US and the EU during Barack Obama's tenure on key sanctions regimes has been seriously undermined. The sanctions storm in Washington thus poses significant challenges for the European Union.

Firstly, the Iran case in particular has illustrated that at least in the short term the EU has little bargaining power vis-à-vis Washington in situations where the current administration is intent upon pursuing a unilateral course. This reflects the animosity of Trump and some key

153 Shazan, G., 'US envoy defends Nord Stream 2 sanctions as "pro-European"', *The Financial Times*, 22 December 2019, <https://www.ft.com/content/21535ebe-23dc-11ea-9a4f-963f0ec7e134>, accessed 16 March 2020.

154 Sevastopulo, D., Buck, T. & Foy, H., 'US Senate Committee Backs Nord Stream 2 Sanctions', *The Financial Times*, 31 July 2019, <https://www.ft.com/content/9268b396-b3b7-11e9-bec9-fdcab53d6959>, accessed 16 March 2020; Zangerler P. & Knolle K., 'U.S. Senate committee backs Russia energy bills, delays vote on sanctions "from hell"', *Reuters*, World News, 11 December 2019, <https://www.reuters.com/article/us-usa-russia-sanctions/us-senate-committee-backs-russia-energy-bills-delays-vote-on-sanctions-from-hell-idUSKBN1VF2DP>, accessed 16 March 2020.

155 Blanc & Weiss, op. cit., pp. 7-8.

members of his team towards Europe. Beyond being frequently critical of America's European allies – Germany especially – the Trump administration has also exhibited a profoundly negative bent towards the EU per se. The President has gone as far as to call the Union a “foe” when it comes to issues of trade.¹⁵⁶ The tariffs that the US has in place on European steel and aluminium, not to mention the hanging threat of levies on automobiles, coupled with the still stalling transatlantic trade talks are further indications that relations between Brussels and Washington are likely to remain antagonistic at least until the 2020 presidential election.

Secondly, Europe's response to US unilateral sanctions with respect to Iran has exposed the inability of the Union and its leading member states to provide viable mechanisms for combatting and circumventing Washington's extraterritorial measures. The oft-rehearsed quip that the Union remains a military dwarf but is an economic giant does not seem to hold when it comes to playing the geoeconomic game in a newfound era of great-power competition, at least not in the face of America's still enviable structural advantages in the financial and economic domains. Such signs of weakness have potentially dire consequences for the Union's credibility as an international actor in the eyes of other international players, not to mention the European business community. Given the considerable political capital that the EU and its member states have invested in the JCPOA, the impending unravelling of the agreement would provide further evidence that in the absence of US backing Europe's ability to shape the international milieu remains circumscribed.¹⁵⁷

Thirdly, the sanctions storm in Washington poses considerable risks when it comes to the EU's internal cohesion. Through the transactionalist policies adopted by the Trump administration and evolving sanctions legislation in Congress, the US can drive “wedges” and exploit already existing divisions between EU member states.¹⁵⁸ The temptation to resort to bilateral bargaining with the US can be hard to resist, as illustrated by Greece's and Italy's decisions to negotiate waivers from US sanctions that allowed them to (initially) continue purchases of Iranian oil.¹⁵⁹ The

156 On prospects of the EU-US trade relationship, see e.g. Schneider-Petsinger, M., ‘US-EU Trade Relations in the Trump Era Which Way Forward?’, *Chatham House Research Paper*, 8 March 2019, <https://www.chathamhouse.org/publication/us-eu-trade-relations-trump-era-which-way-forward>, accessed 16 March 2020.

157 On the deal's prospects, see e.g. Slavin, B., ‘Iran and Europe play nuclear chicken’, *Atlantic Council*, 13 November 2019, <https://www.atlanticcouncil.org/blogs/iransource/iran-and-europe-play-nuclear-chicken/>, accessed 16 March 2020.

158 On wedging as a strategy in great-power competition, see Wigell, M., ‘Hybrid Interference as a Wedge Strategy: A Theory of External Interference in Liberal Democracy’, *International Affairs*, vol. 95, no. 2, 2019, pp. 255-275.

159 Batmanghelidj, E., ‘Trump's Iran waivers are not the concessions they seem’, *Bloomberg*, 8 November 2018, <https://www.bloomberg.com/opinion/articles/2018-11-08/trump-seeks-to-divide-with-iran-waivers-for-china-italy-greece>, accessed 16 March 2020.

case of Nordstream II is an even more pertinent example. Not only is the German–Russian pipeline project in the crosshairs of both the White House and Capitol Hill,¹⁶⁰ the project has been consistently viewed in a negative light by some EU member states – particularly Poland, Romania, Slovakia and the Baltic states – for both economic and security reasons.¹⁶¹ These countries are not only vulnerable to Russian forays, but also dependent on US security guarantees and, by implication, potentially susceptible to American pressure.¹⁶² Moreover, as the geoeconomic aspects of great–power competition push to the fore, it is becoming increasingly likely that US measures against Chinese companies (Huawei being the most high profile case) will ultimately force Europe to make painful and potentially divisive choices between Washington and Beijing.¹⁶³

Finally, the above–described state of affairs has led to newfound calls for Europe to (re)assert its economic sovereignty, to develop geoeconomic sensibility to excel in the era of great–power competition.¹⁶⁴ From this standpoint, perhaps the key point to appreciate regarding INSTEX is not the difficulty the Europeans have encountered in making it operational, but the fact that it presents a first–cut attempt by Europe to contest American dominance over the global financial infrastructure. It may thus be a harbinger of increased hedging measures against Washington, with potentially global implications.¹⁶⁵ The EU and other global players may start looking harder than previously for alternatives to the US dollar and envisage more mechanisms in the vein of the SPV to circumvent secondary sanctions. Some may even gradually decouple themselves from global supply and value chains to decrease their vulnerability to American economic strong–arming.

160 Sevastopulo et al., loc. cit.; Shazan, loc. cit.; Francis, D. ‘Cruz vows to thwart Russian bid to save Putin’s pipeline’, *Atlantic Council*, 18 March 2020, <https://atlanticcouncil.org/blogs/ukrainealert/cruz-vows-to-thwart-russian-bid-to-save-putins-pipeline/>, accessed 7 April 2020.

161 Siddi, M., ‘EU–Russia energy relations’, in M. Knodt & J. Kemmerzell eds., *Handbook of Energy Governance in Europe*, Springer, Cham, 2020, pp. 11–14.

162 Noël, P., ‘Nord Stream II and Europe’s strategic autonomy’, *The Survival Editors’ Blog*, 18 September 2019, <https://www.iiss.org/blogs/survival-blog/2019/09/energy-nord-stream-ii-europe-strategic-autonomy>, accessed 16 March 2020.

163 Lind, J., ‘The Rise of China and the Future of the Transatlantic Relationship’, *Chatham House Briefing*, 29 July 2019, <https://www.chathamhouse.org/publication/rise-china-and-future-transatlantic-relationship>, accessed 16 March 2020.

164 Leonard, M. et al., ‘Redefining Europe’s economic sovereignty’, in M. Leonard & J. Shapiro ed., *Strategic Sovereignty: How Europe Can Regain the Capacity to Act*, European Council on Foreign Relations, Berlin 2019, pp. 19–48; Helwig, N., ‘The new EU leadership: The von der Leyen Commission focuses on Europe’s geo–economic power’, *FIIA Briefing Paper*, no. 274, 13 November 2019, <https://www.fiaa.fi/en/publication/the-new-eu-leadership>, accessed 16 March 2020.

165 Rappeport A. & Rogers, K., ‘Trump’s Embrace of Sanctions Irks Allies and Prompts Efforts to Evade Measures’, *The New York Times*, 15 November 2019, <https://www.nytimes.com/2019/11/15/us/politics/trump-iran-sanctions.html?auth=login-email&login=email>, accessed 16 March 2020; on hedging see Keating, V. C. & Ruzicka, J., ‘Trusting Relationships in International Politics: No Need to Hedge’, *Review of International Studies* vol. 40, no. 4, 2014, pp. 753–770.

The unilateral overuse of sanctions by the US may thus have long-term systemic implications, and in the process erode the very structural advantages that the American sanctions enterprise has been built on.¹⁶⁶ Like other controversial aspects of President Trump’s foreign policy, whether climate policies or verbal tirades against allies and multilateral institutions, overreliance on economic coercion threatens a key building block of US power, namely America’s trustworthiness as an ally and its legitimacy as a custodian of the international order writ large. For the future, in terms of both transatlantic sanctions coordination and the longevity of the liberal rules-based order, the key question is how judiciously the current presidential administration in the year(s) to come – not to mention the administrations of the future – will utilize sanctions.

166 Burns, W.J. & Lew, J.J., ‘U.S. Treasury Secretary Jacob J. Lew on the Evolution of Sanctions and Lessons for the Future’, *Carnegie Endowment for International Peace*, 30 March 2016, <https://carnegieendowment.org/2016/03/30/u.s.-treasury-secretary-jacob-j.-lew-on-evolution-of-sanctions-and-lessons-for-future-event-5191>, accessed 16 March 2020; Lew, J.J. & Nephew, R., ‘The Use and Misuse of Economic Statecraft: How Washington Is Abusing Its Financial Might’, *Foreign Affairs*, vol. 97, no. 6, 2018, pp. 139–149.

/ 3

3. BREXIT AND AN INDEPENDENT UK SANCTIONS POLICY

Juha Jokela & Ilari Aula

Summary

- The UK has been the most active and influential member state in formulating the EU's sanctions policy and in setting up EU sanctions regimes.
- While the EU can replace the technical expertise provided by the UK, the level of ambition of the EU's sanctions policy could decrease after the UK's departure.
- Even if the UK has taken measures to maintain the sanctions regimes agreed as an EU member, divergence remains a risk of an independent UK sanctions policy.
- The envisaged coordination mechanisms of EU and UK sanctions policies can mitigate some of the negative implications of Brexit, yet they cannot replace the UK's EU membership.

Recommendations

- The EU and its member states should build up their technical expertise to facilitate decision-making on sanctions. In particular, this includes expertise in targeted financial sanctions and the substantiation of individual listings.
- The EU and the UK should aim for the closest possible coordination mechanism on sanctions as a part of the negotiations on EU-UK future relations. During the transition period, they should aim for close case-by-case coordination enabled by the Withdrawal Agreement.

- While respecting the autonomy of EU decision-making and the sovereignty of the UK, the UK's observer status in the EU sanctions decision-making process could turn out to be valuable. The UK should consider granting the EU reciprocal access to its sanctions policy-making.

3.1. INTRODUCTION

The United Kingdom (UK) has played an important role in advocating, designing and targeting sanctions as a component of the EU's Common Foreign and Security Policy (CFSP). In this context, the UK is often described as the most active and influential EU member state. It has provided political steering and leadership for the EU's sanctions decision-making as well as technical expertise for the setup of EU sanctions regimes. Consequently, the UK's withdrawal from the EU has potentially significant implications for the political ambition and technical capacity of the EU's sanctions policy. The recognized shared foreign and security policy interests of the EU and the UK might lead to close coordination between the two sanctions senders, yet the depth and practicalities of the coordination are still largely unknown, and linked to the negotiations of the post-Brexit EU-UK relationship. Relatedly, an autonomous UK sanctions policy could also present some challenges for the EU. During the transition period of the UK's withdrawal, the UK should continue to implement the CFSP decisions including restrictive measures. However, some uncertainty remains as to whether the strategies of the two notable sanctions senders will converge in the longer run.

This chapter focuses on the implications of Brexit for the EU's sanctions policy. It will first discuss the role of the UK in the formulation of EU sanctions and the EU's preparedness to replace the UK's political and technical input. It will then turn to the emergent independent sanctions policy of the UK, and its potential alignment with the EU. Finally, the chapter concludes with an assessment of the challenges posed by Brexit for the EU.

3.2. EU SANCTIONS WITHOUT THE UK

In a progressively turbulent neighbourhood and world, the EU has increasingly resorted to sanctions as one of the toughest foreign and security policy tools at its disposal. Importantly, the UK has traditionally been one

of the member states promoting the use of sanctions within the EU. It has contributed to their design and implementation, and has played a key role in intelligence-sharing and consensus-building among EU member states in sanctions decision-making.¹⁶⁷ The UK's withdrawal from the EU poses some notable challenges for the EU's sanctions policy. At the same time, Brexit negotiators on the UK side have reiterated the benefits of maintaining close connections with the EU sanctions policy and of striving for a continued partnership.¹⁶⁸ Equally, the Union has voiced its hope for continued cooperation, recognizing the benefits of mutually reinforcing sanctions.¹⁶⁹

The UK's role in EU consensus-building on sanctions

The role of the three biggest EU member states – Germany, France and the UK (EU3) – cannot be overlooked in the EU's foreign policy in general and its sanctions policy in particular. The alignment of these three countries in Iran's nuclear programme and Russia's unlawful actions in Ukraine have been imperative for the set-up of the most prominent EU sanctions regimes in recent years.

In the case of Iran, the EU3 played a key role in the negotiations between Iran and the permanent members of the UN Security Council and Germany (P5+1), which led to the Joint Comprehensive Plan of Action (JCPOA) agreement and temporarily resolved the dispute over Iran's nuclear programme. While the EU's High Representative for Foreign and Security Policy (HR/VP) led the diplomatic efforts and the negotiation process, the EU and the US increased pressure on Iran by implementing unilateral sanctions along with the sanctions imposed by the UN Security Council. The UK's role in forging tougher EU sanctions and transatlantic

167 Due to the sensitive and confidential nature of EU decision-making on sanctions, there is very little material in the public domain on the roles and influence of different member states in EU sanction formulation. Some estimates, however, suggest that the UK has been able to secure support for almost 80% of its sanctions proposals in the EU. See Moret, E. & Pothier, F., 'Sanctions after Brexit', *Survival*, vol. 60, no. 2, 2018, pp. 179–180, 183.

168 'We will continue to act in concert with our allies through partnerships and in multilateral settings where our objectives align. Where this is not the case, the UK is now capable of implementing its own autonomous sanctions regimes to combat threats and project our values, as demonstrated by our intention to establish an autonomous UK human rights sanctions regime.' UK House of Commons Foreign Affairs Committee, *Fragmented and incoherent: the UK's sanctions policy: Government Response to the Committee's Seventeenth Report*, 9 September 2019, <https://publications.parliament.uk/pa/cm201719/cmselect/cmfaff/2642/2642.pdf>, accessed 16 March 2020.

169 'While pursuing independent sanctions policies driven by their respective foreign policies, the Parties recognise sanctions as a multilateral foreign policy tool and the benefits of close consultation and cooperation.' European Commission, Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU, *Political declaration setting out the framework for the future relationship between the European Union and the United Kingdom*, 17 October 2019, https://ec.europa.eu/commission/sites/beta-political/files/revised_political_declaration.pdf, accessed 16 March 2020.

coordination over the Iran sanctions has been seen as imperative.¹⁷⁰ Yet in terms of the latter, the US withdrawal from the JCPOA and unitary re-imposition of sanctions have cast a shadow over the close US-EU coordination on sanctions under the current US administration (see Chapter 3).

The EU's sanctions against Russia resulted from the illegal annexation of Crimea and violation of the territorial integrity of Ukraine in its eastern parts. In terms of the latter, the EU also issued targeted economic sanctions such as financial sanctions and export bans in addition to more widespread blacklisting of persons and entities, resulting in asset freezes and travel bans. These measures were adopted in conjunction with the Minsk agreement, and their lifting was tied to the successful implementation of this agreement negotiated in the Normandy format (including Germany, France, Ukraine and Russia). Even though the UK was not part of the Normandy format, its role in the consensus-building among EU member states on Russia sanctions has been acknowledged, and at times underlined.¹⁷¹

Against this background, the fact that the UK has left the EU's institutional structures represents a major change in terms of the political dynamics at the highest levels of EU sanctions decision-making – namely the European Council and the Foreign Affairs Council – as well as in their preparatory consensus-seeking bodies such as Coreper and the Council Working Groups.

This is an important development as the EU has to continuously work for consensus in its sanctions policy (see Chapter 4). Restrictive measures agreed under the CFSP predominantly include a so-called sunset clause. In other words, they cease to apply unless they are renewed, or amended as appropriate after twelve months (or six months in the case of Russia sanctions). This means that the EU has to work firstly to establish and then often to retain the consensus on sanctions decisions. The UK's role to this end has been widely recognized. Indeed, while the UK is often seen to have marginalized itself in EU decision-making in general due to Brexit, it has continued to play a notable role in the EU sanctions policy. Furthermore, over time, a development in which the fifth largest economy in the world is no longer around the EU decision-making table(s) can potentially

170 Tabrizi, A.B. & Santini, R.H., 'EU Sanctions against Iran: new wine in old bottles?', *ISPI Analysis* 97, March 2012, https://www.ispionline.it/it/documents/Analysis_97_2012.pdf, accessed 10 December 2019; UK House of Lords European Union Committee, *Brexit: Sanctions policy*, 17 December 2017, p. 11, paragraph 29, p. 21, paragraph 67, <https://publications.parliament.uk/pa/ld201719/ldselect/lddeucom/50/50.pdf>, accessed 16 March 2020.

171 UK House of Lords European Union Committee, *op. cit.*, p. 21, paragraphs 65–66.

weaken the possibilities to aim for equal European burden-sharing of the costs of sanctions within the EU decision-making process.¹⁷²

These potential developments related to Brexit have highlighted the role of Franco-German cooperation in the CFSP and the EU's sanctions policy. If the two biggest member states agree on a joint policy, for example to maintain EU sanctions against Russia, it is difficult for sceptical member states to deviate from this position. However, the Franco-German cooperation is often marked by differences in their foreign policy postures and strategic cultures. These surfaced recently when French President Macron signalled his willingness to engage Russia more closely on questions of regional security, while at the same time criticizing the political stalemate in NATO. Germany has adopted a more careful position on both issues. Berlin is cautious about re-engaging with Russia without progress in Eastern Ukraine, and fears that a deepening of transatlantic divisions might pit Central against Western EU member states. The UK's departure represents a change for the dynamics of the "Franco-German couple" as they have to arrive at a consensus without the balancing factor of a "third wheel" in the form of the UK. Thus far, no other EU member state seems to be able to match the role played by the UK in the EU3. Relatedly, the UK's exit is likely to result in some concerns related to the future of the transatlantic cooperation in general and the coordination in sanctions policy.

The EU's dependence on the UK's expertise in sanctions

Reflecting its robust posture in the field of sanctions, the UK is an internationally recognized source of expertise in setting up sanctions regimes. To this end, it has also contributed extensively to the EU's capacity to act as a sanctions sender.¹⁷³ First, the UK has provided expertise in the form of highly qualified seconded officials to the EU institutions (most notably the EEAS and the Commission). Second, UK representatives in the EU have assumed a key role in framing and identifying the targets of EU measures, including the substantiation of the individual listings.¹⁷⁴ This has been based on UK Foreign and Commonwealth Office (FCO) personnel with

¹⁷² Moret and Pothier note that a compromise can sometimes be reached if the costs of sanctions are seen to be spread as evenly as possible across a given alliance of countries, and this prospect could potentially be diminished by Brexit. Moret & Pothier, op. cit. p. 184.

¹⁷³ UK House of Lords European Union Committee, op. cit., p. 21; see also, *ibid.*, p. 185.

¹⁷⁴ See European Commission, Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU, *Internal EU27 preparatory discussions on the framework for the future relationship: 'Security, Defence and Foreign Policy' (slides)*, 24 January 2018, https://ec.europa.eu/commission/publications/slides-security-defence-and-foreign-policy_en, accessed 30 April 2020.

expertise in sanctions unmatched in other EU member states,¹⁷⁵ as well as the UK's strong intelligence assets, including its national services and international cooperation such as participation in the "Five Eyes" alliance. Third, the UK's input in terms of expertise and implementation of financial sanctions has been seen as important for the EU.

As the UK has left the EU structures on its departure date, its contribution in providing technical expertise for the EU's sanctions policy-making has been largely lost, although the Withdrawal Agreement allows consultation of the UK during the transition period when there is a need for coordination in CFSP matters. The reason for this stems from the fact that the UK is bound to apply the CFSP decisions during the transition period even if it is not taking part in the CFSP decision-making, including restrictive measures. The Withdrawal Agreement also enforces the principle enabling the UK not to apply a CFSP decision on the grounds of vital and stated reasons of national policy.¹⁷⁶ Importantly, any formal future coordination mechanisms on sanctions policy remains an open question currently addressed in the negotiations concerning the future EU-UK relations.

During the UK's withdrawal negotiations, the EU side has approached the potential future consultation on sanctions within the overall framework for the future EU-UK relationship, and assuming that the UK becomes a third state in its relations with the EU. Against this backdrop, the EU's Task Force for Article 50 sketched a consultation mechanism based on three features.¹⁷⁷ First, it should be reciprocal in terms of advanced information-sharing on envisaged new sanctions or the review of imposed ones. Second, the mechanism should be scalable enabling (i) regular EU-UK sanctions dialogue about the overall policy and practice in EU and UK sanctions regimes; (ii) regimes in place and their effectiveness; and (iii) the exchange of good practices. Third, it could be formalized.¹⁷⁸ The scalability of the mechanism would allow intensification of dialogue and in-depth interaction at all appropriate stages of the policy cycle of

175 As a response to Brexit, the FCO has increased the number of staff working in its unit dedicated to sanctions. In many other EU member states, the number of people working on sanctions is significantly lower, and the expertise is often scattered across different units. For the FCO organization, see UK Parliament, *Written evidence from the Foreign and Commonwealth Office (FSP0015)*, 15 January 2019, Annex 2, <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/foreign-affairs-committee/global-britain-the-future-of-uk-sanctions-policy/written/94581.html>, accessed 18 December 2019.

176 European Commission, *Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community*, 17 October 2019, article 129(4), https://ec.europa.eu/commission/sites/beta-political/files/consolidated_withdrawal_agreement_17-10-2019_1.pdf, accessed 10 December 2019.

177 European Commission, Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU, *Foreign, security and defence policy (slides)*, 15 June 2018, https://ec.europa.eu/commission/sites/beta-political/files/slides_on_foreign_security_defence_policy.pdf, accessed 18 December 2019.

178 *ibid.*

sanctions regimes (old and new). Yet this would require a UK commitment to align itself with the EU foreign policy objectives that underpin the sanctions preparation in question. These key elements are largely reflected to draft text of the agreement on the new partnership with the UK provided by the European Commission.¹⁷⁹ However, UK Prime Minister Boris Johnson has stated that future EU-UK cooperation in foreign affairs does not need to be managed by an international treaty, still less through shared institutions.

A notable difference to the times of the UK's EU membership relates to the early stages of the formulation of the EU's and the UK's foreign policy objectives, including the application of sanctions. After Brexit, the UK is now outside the general foreign policymaking structures of the EU, which might over time lead to variation in their respective objectives. Importantly, the UK is no longer part of the preparatory or decision-making bodies in the Council when the EU objectives and application of sanctions are initially discussed. In other words, any envisaged consultation mechanism would kick in at a later stage of the policy cycle; that is, when the EU has formulated its objectives and the UK has arrived at more or less similar ones, and then decides to align with the EU.

Should the UK and the EU fail to strike an agreement on their future relations, coordination could continue through normal diplomatic channels available to a third state. A “no future deal Brexit” could significantly diminish trust between the EU and the UK, however, and have a negative effect on the overall relations with implications for foreign and security policy coordination.

Against this backdrop, any form of Brexit is likely to seriously hinder the UK's participation in the design of EU sanctions and its political and technical input with regard to their formulation. Possibilities to mitigate this challenge by establishing novel coordination mechanisms in the context of the future EU-UK relations remain an open question.

3.3. TOWARDS AN INDEPENDENT UK SANCTIONS POLICY

Brexit will mark a turning point after four decades during which the UK's sanctions policy has been anchored in the EU institutions. In May 2018, Britain established a legal framework for its autonomous sanctions policy

¹⁷⁹ European Commission, Task Force for Relations with the United Kingdom, *Foreign Policy, Security and Defence part of the Draft text of the Agreement on the New Partnership with the United Kingdom*, 18 March 2020, <https://ec.europa.eu/info/sites/info/files/200318-draft-agreement-forpolsec.pdf>, accessed 30 April 2020.

through the Sanctions and Anti-Money Laundering Act.¹⁸⁰ Civil servants have also prepared several statutory instruments to replicate a vast majority of the existing EU sanctions under the new legal framework.¹⁸¹ These efforts are aimed at giving the government the tools it needs to continue implementing existing sanctions, and at providing a legal backbone for London to impose its own sanctions independently of Brussels. As part of its foreign policy, Britain is to gain the autonomy to impose stricter, milder or completely different kinds of restrictive measures compared to the Union. However, the extent to which the autonomous UK sanctions policy that is being set up will align with that of the EU remains uncertain.¹⁸²

Demands for a clearer vision regarding the UK's future sanctions have grown more vocal as the Brexit negotiations have proceeded.¹⁸³ A report published in June 2019 by the Foreign Affairs Select Committee of the House of Commons suggests that the government's approach to sanctions is "fragmented and incoherent", thus posing a risk to national security.¹⁸⁴ Among its concerns, the report lists that the government has resourced the transition inadequately, obfuscated the viability of an independent human rights sanctions regime (the so-called Magnitsky Act), and failed to enhance cross-departmental coordination. The UK government's response published in September 2019 indicates that the workload to ensure that the UK is legally able to maintain existing sanctions after the unpredictable Brexit process has been "enormous and unprecedented".¹⁸⁵

No domestic agreement on the future sanctions policy has emerged. Many have pointed out that discrepancies between the EU and UK sanctions regimes would create a costly bureaucratic obstacle between the UK and continental Europe, as firms would have to ensure that they adhere to the requirements of both regimes. Such regulatory obstacles would not be conducive to the British government's aim of maintaining the ease of doing business in London.¹⁸⁶ For others, taking distance from the EU sanctions would signal that the UK has a sovereign foreign policy, which better realizes the vision of a "global Britain" than paralleling EU policies.

180 UK Government, *Sanctions and Anti-Money Laundering Act*, 23 May 2018, <http://www.legislation.gov.uk/ukpga/2018/13/contents/enacted>, accessed 16 March 2020.

181 Chase, I., Dall, E. & Keatinge, T., 'Designing Sanctions After Brexit' *RUSI, Occasional Paper*, September 2019, <https://rusi.org/publication/occasional-papers/designing-sanctions-after-brex-it-recommendations-future-uk-sanctions>, accessed 16 March 2020.

182 Moret & Pothier, *op. cit.*, p. 180.

183 Chase, Dall & Keatinge, *loc. cit.*

184 UK House of Commons Foreign Affairs Committee, *Fragmented and incoherent: the UK's sanctions policy*, 12 June 2019, <https://publications.parliament.uk/pa/cm201719/cmselect/cmfa/1703/170302.htm>, accessed 16 March 2020.

185 UK House of Commons Foreign Affairs Committee, 'Fragmented and incoherent: the UK's sanctions policy: Government Response to the Committee's Seventeenth Report', *op. cit.* pp. 1-2.

186 UK House of Lords European Union Committee, *loc. cit.*

Some even warn against adversarial moves, such as “sanctions dumping”, whereby the UK reaps commercial advantages by continuing trade with entities against which Europe maintains stricter sanctions.¹⁸⁷

Keeping the EU framework at arm’s length would not render Britain toothless, however. Brexit will increase the need for the UK to build up its own capacities, for instance as legal measures taken against sanctions policies shift from the European Court of Justice in Luxembourg to British courts. Targeting sanctions effectively, as well as designing asset freezes and other forms of financial measures requires significant expertise. On these fronts, Britain possessed better capacities than most EU member states even before the Brexit referendum, after which it started building its own sanctions policymaking, implementation and enforcement. In 2017, the UK created the Office of Financial Sanctions Implementation, a dedicated agency for implementing and enforcing sanctions. By building new measures, the UK is aiming to compensate for the lower influence it will wield with greater flexibility.¹⁸⁸

Significant leverage that the UK sanctions policy will retain post-Brexit relates to shaping access to the City of London, a global financial and business hub, which is a key asset for many global companies and wealthy individuals. No doubt Brexit may incentivize some companies to move their operations to Amsterdam, Dublin, Frankfurt, or Paris. However, until further notice, London remains a global business hub in which entities drawing the attention of both US and EU sanctions regulators have significant activities.¹⁸⁹ Applying this leverage has its limitations, however: British sanctions will be somewhat constrained by the need to maintain European business entities’ access to London. Further, any potential threat prohibiting an entity from using the British pound in business transactions is weakened by the availability of alternative currencies, such as the dollar, euro, renminbi and yen.¹⁹⁰ Further, as a single country, the UK might be more vulnerable to counter-sanctions and lobbying regarding London access than the entire EU.¹⁹¹

187 Moret & Pothier, *op. cit.*, pp. 187–88.

188 UK House of Lords External Affairs Sub-Committee, *Corrected oral evidence: Brexit: sanctions policy*, 20 July 2017, Tom Keatinge, Q10, <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/eu-external-affairs-subcommittee/brexit-sanctions-policy/oral/69307.html>, accessed 16 March 2020.

189 E.g. En+, a company owned by Oleg Deripaska, a Russian billionaire, de-listing from the London Stock Exchange due to US pressure. House of Commons Foreign Affairs Committee, ‘Fragmented and incoherent: the UK’s sanctions policy’, *op. cit.* paragraphs 37–48; UK House of Commons Foreign Affairs Committee, *Moscow’s Gold: Russian corruption in the UK*, 21 May 2018, <https://publications.parliament.uk/pa/cm201719/cmselect/cmfa/932/932.pdf>, accessed 16 March 2020.

190 UK House of Lords External Affairs Sub-Committee, *op. cit.*, Francesco Giumelli, Q15.

191 Moret & Pothier, *op. cit.*, p. 188.

3.4. ASSESSING THE KEY CHALLENGES

While the future trajectory of Britain's wider sanctions strategy is still shrouded in uncertainty, it is inevitable that Brexit will diminish the role that the UK can play in EU sanctions policy. The UK has departed from those EU negotiation tables on restrictive measures around which it has wielded considerable influence and amplified its sanctions position throughout the EU.¹⁹² Equally, it is not participating in formulating the range of foreign and security policy means, such as mediation, peace-keeping, dialogue and crisis management, which accompany the use of sanctions. Restrictive measures are never the only tool used in realizing policy goals, as illustrated in relation to the Iran nuclear agreement, in which sanctions and dialogue were applied simultaneously.¹⁹³

Based on the above, it is likely that the UK sanctions policy after Brexit will remain aligned with that of the EU, at least in the short-term perspective. The UK government is very likely to articulate the forthcoming UK-EU partnership as “unprecedented” to highlight its difference from the relatively unidirectional relationship between EU regulation and many other non-EU European countries, such as Switzerland and Norway.¹⁹⁴ However, many European measures, such as those against secondary sanctions, will remain in place. The UK has incorporated into UK domestic law the EU's Blocking Statute aimed at countering US extraterritorial influence, and has indicated that it will maintain the INSTEX instrument to facilitate trade between European businesses and Iran.¹⁹⁵ Convergence with the EU is also likely to prevail on the grounds that such an arrangement will help avoid overt administrative burdens for businesses in the UK, and increase the efficacy of sanctions that the UK imposes. Yet Brexit will pose some notable challenges for the EU from day one. These are related to the design of targeted sanctions and the substantiation of sanctions listings related to any new EU sanctions decision or review of existing ones. The ability of the EU and its member states to enhance their resources and expertise is therefore an urgent question for the EU (see Chapter 4).

A mid- and longer-term perspective may reveal alternative trajectories. One scenario is that the UK policy will side more with the US approach

192 UK House of Lords External Affairs Sub-Committee, op. cit., Maya Lester, Q2.

193 Moret & Pothier, op. cit., p. 184-85.

194 UK House of Lords European Union Committee, op. cit., Summary; Hellquist, E., 'Either with us or against us? Third-country alignment with EU sanctions against Russia/Ukraine', *Cambridge Review of International Affairs*, vol. 29, no. 3, 2016, pp. 997-1021.

195 Denton, R.L., 'UK Parliament approves regulations for post-Brexit blocking statute', *Baker McKenzie*, 9 May 2019, <https://sanctionsnews.bakermckenzie.com/uk-parliament-approves-regulations-for-post-brexit-blocking-statute/>, accessed 18 March 2020; Forwood, G. et al., 'Sanctions after Brexit – the first UK sanctions regimes', *White & Case*, 1 March 2019, <https://www.whitecase.com/publications/alert/sanctions-after-brexit-first-uk-sanctions-regimes>, accessed 16 March 2020.

in a manoeuvre to establish a “global UK” distinct from the EU. Prior to the Trump administration adopting a more unilateral position in its use of sanctions, the UK was instrumental in guiding the EU approach closer to the positions taken by the US, with which its own interests aligned.¹⁹⁶ Now Britain has indicated that it might impose stricter sanctions on Russia, for instance by using its Magnitsky clause on gross violations of human rights, which would align its approach more with that of the US.¹⁹⁷ This would in turn be a blow for the EU, for instance if EU-based companies subsequently felt even more compelled to comply with US secondary sanctions.

Alignment with EU sanctions still seems a likelier scenario, however, although how this will unfold is less certain. It might be that the UK and the EU will strive to establish a collaborative link between the regimes to retain some influence over each other’s policies at an early stage.¹⁹⁸ Coordinating sanctions may also take place among smaller groups of countries than the Union as a whole, which is not uncommon in foreign and security policy.¹⁹⁹ The UK will be free to impose its own sanctions, but the choices it makes will have to accommodate the policies of other power blocs, especially those of the EU and the US.²⁰⁰

The clear incentives for close EU-UK coordination on sanctions will have to adapt to the changing nature of the relationship in which the UK has underlined its sovereignty and the EU the autonomy of its decision-making. Should these key principles frame the envisaged overall future relations, collaboration on sanctions, including the potential institutional formats and mechanisms, might turn out to be “lighter” than some have anticipated. The current UK government’s pledge to conclude future relations negotiations by the end of 2020 suggests that there is very little time to introduce and agree upon any novel-type arrangements for a third state to plug into the CFSP. Furthermore, the UK government is not seeking treaty-based and institutionalized arrangements for the EU-UK cooperation on foreign affairs in the first place.

196 See Moret, E. et al., *The New Deterrent? International Sanctions against Russia over the Ukraine Crisis. Impact, Costs and Further Action*, The Graduate Institute Geneva, Geneva, 2016.

197 Forwood et al., loc. cit.

198 UK House of Lords External Affairs Sub-Committee, op. cit., Maya Lester, Q3.

199 Moret & Pothier, op. cit., pp. 192-193.

200 Forwood et al., loc. cit.

/4

4. EU DECISION-MAKING ON SANCTIONS REGIMES

Niklas Helwig & Matti Pesu

Summary

- The EU developed an elaborate decision-making process on restrictive measures. However, despite extensive deliberations between member states and input from EU services, individual or small groups of member states repeatedly slow down or veto final decisions on sanctions regimes.
- The European Commission proposed the use of qualified majority voting on EU sanctions. While a derogation from the unanimity rule might speed up decision-making, it risks making member states more cautious of proactively using the policy instrument given the looming prospect of being outvoted.
- The broader political context and EU foreign policy strategy is decisive for whether a sanctions regime is put in place and maintained successfully. The Russia sanctions in particular showed that leadership by large EU member states and a joint assessment of the violations or aggressions to be sanctioned is paramount.

Recommendations

- The departure of the UK from the EU decision-making process heightens the need for investing in joint resources for the preparation of sanctions. Additional resources at the EU level could be particularly useful in the process of compiling the open-source evidence packages that underpin the listing of sanctioned targets.
- The existing opportunities to use qualified majority voting during the amendment of sanction listings could be used more consistently.

This could contribute to a voting culture less dominated by the unanimity reflex.

- The EU can learn from its successful adoption and maintenance of Russia sanctions. The sanctions decision-making benefitted from being embedded in a broader diplomatic approach towards Russia, which ties sanctions relief to progress in peace efforts on the ground.

4.1. INTRODUCTION

The EU decision-making process on sanctions is rife with challenges. All EU member states with different security and economic interests have to reach an agreement to impose restrictive measures. Some sanctions regimes, for example sanctions against Russia and previously Iran, have significant economic implications for member states. Under these circumstances, it is astonishing that member states have made noteworthy qualitative progress on the adoption of this foreign policy tool during the last decade. However, with individual member states having the power to veto the adoption of legislation and thereby “torpedo” the whole decision-making process, it often remains slow and ineffective in adapting to changing circumstances on the ground. This chapter examines the mechanisms and politics that make the EU’s activity on restrictive measures possible. At the same time, it points to some of the remaining challenges for a more efficient decision-making process and discusses the possible effects of recent reform proposals.

The chapter starts with an overview of the decision-making process. It then discusses possible reforms and improvements to the EU’s sanctions machinery. The remainder of the chapter analyses the role of national preferences and strategic cultures as well as the politics between EU member states in the formation of sanctions regimes. In particular, it examines the political dynamics behind the EU decision-making on Russia sanctions.

4.2. HOW DOES THE EU DECIDE ON RESTRICTIVE MEASURES?

Over the decades, the EU has developed well-oiled machinery for determining, amending and renewing sanctions regimes. The system benefits from close interaction between member states, the European External Action Service, the European Commission and Council working groups (see Figure 1).

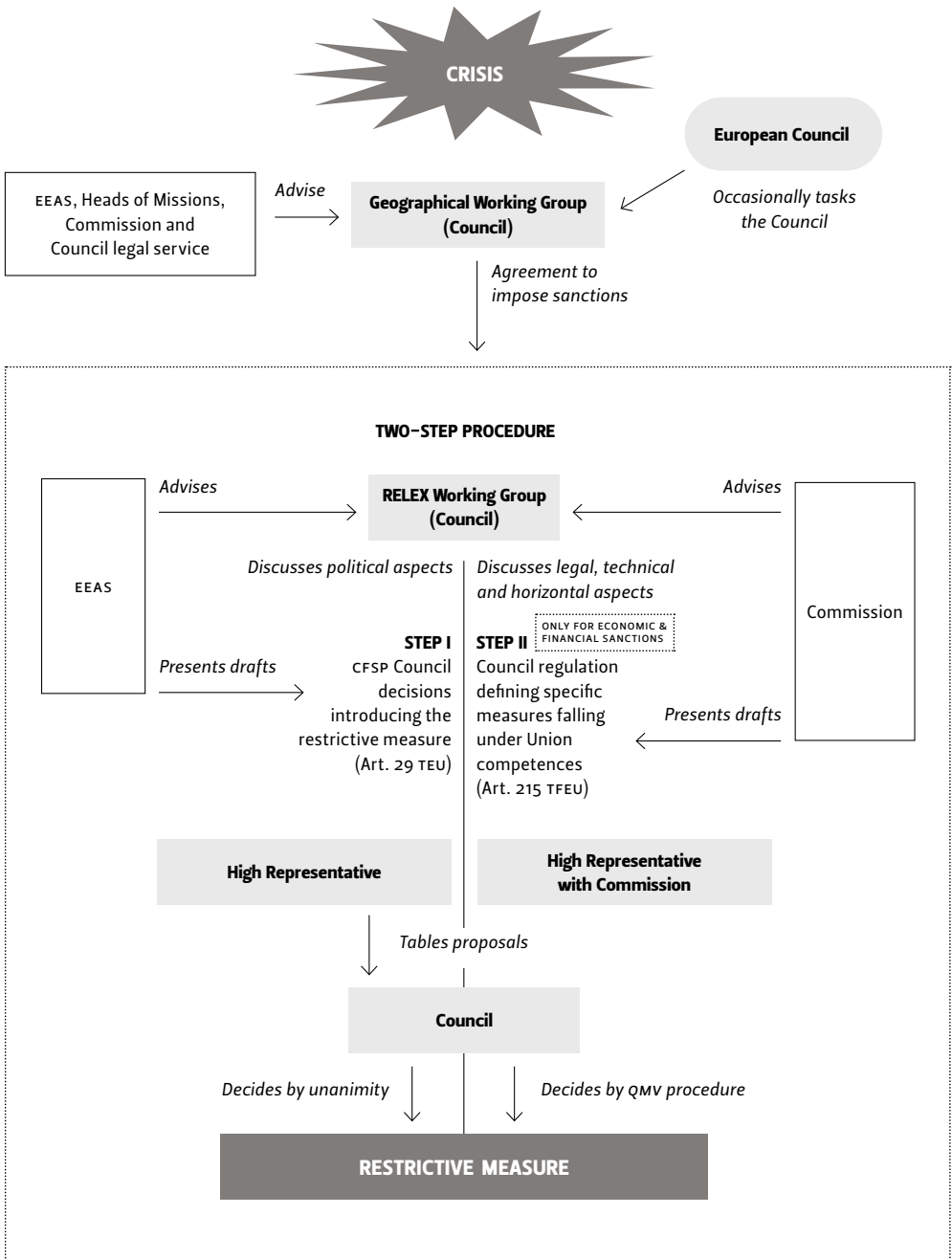


Figure 1. Decision-making process on the adoption of EU autonomous sanctions.

In some prominent cases, most notably the EU's sanctions on Russia, restrictive measures originated from the European Council, and heads of state and government tasked the Council with drawing up the concrete measures. In other instances, the decision-making process for EU sanctions centres on the deliberations of member-state representatives in the working groups of the Council.²⁰¹ The geographical Council working groups, such as COLAC for Latin America, MaMa for the Middle East or COEST for the post-Soviet space, are the first venue for discussions between member states when a crisis demands action. When the working group decides that sanctions should be pursued as part of the EU's overall response, the RELEX working group takes over and becomes the main body for the deliberations on the scope and details of the sanctions regime.

EU sanctions are adopted in a two-step procedure, which reflects the EU's division into an intergovernmental political framework (the CFSP) and an integrated economic entity (the single market). If the proposed sanctions include economic and financial restrictions, a Council decision in the CFSP has to be followed by a Council regulation that details the economic and financial aspects. While the two steps have a different legal nature, the EU machinery strives to adopt the texts simultaneously.

The mix of political and economic aspects means that an array of actors is involved in providing advice and preparing the sanctions regime. The heads of missions usually advise the geographical working group on the political aspects on the ground and possible listings of entities to be sanctioned, while the EEAS presents a draft of the Council decision. The Commission services, on the other hand, provide input on the economic and financial aspects and prepare the draft for the regulation. Since the adoption of the Lisbon Treaty, both acts are formally tabled by the EU High Representative for the final decision – in the case of a Council regulation in collaboration with the European Commission.

The final voting procedures differ between the two legal acts. The CFSP decision to adopt sanctions is taken by unanimity, while regulations can be adopted by a qualified majority vote. This leads to a peculiar dynamic. Due to the veto power that every member state holds over the CFSP decision, member states tend to use the text to reduce the leeway of the Commission in charge of drafting the regulation in order to prevent unfavourable listings. A member state may also delay the vote on the CFSP decision until the text on the implementing regulation is completed in order to maintain its veto power until the final details of the sanctions

201 See also Council of the European Union, *Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy*, (5664/18), Brussels, 4 May 2018, <https://data.consilium.europa.eu/doc/document/ST-5664-2018-INIT/en/pdf>, accessed 12 March 2020.

regime are settled. In any case, member states are adept at maintaining control over the details of the sanctions regime.

4.3. HOW CAN THE EU DECISION-MAKING PROCESS ON SANCTIONS BE MORE EFFICIENT?

In numerous cases, overwhelming member-state support for a restrictive measure has not translated into decisive joint action. For example:

- The EU delayed the Iranian oil embargo by several months before it was able to decide on its terms in early 2012. The Greek caretaker government reportedly had strong reservations, as it enjoyed favourable oil supply contracts with Iran and wanted to avoid negative effects on its already weak economy.²⁰² Other countries, such as Spain and Italy, were also heavily dependent on Iranian oil imports, but less vulnerable to a potential embargo. The EU agreed that the import ban would take effect on July 1, 2012.
- As mentioned above, Greece reportedly blocked EU sanctions in response to the violation of democratic norms and human rights in Venezuela in August 2017.²⁰³ The EU only imposed sanctions three months later after the situation on the ground had deteriorated further.
- Hungary delayed the renewal of the EU arms embargo against Belarus three times between 2017 and 2019. The measures were only rolled out after certain adjustments were made, such as new exemptions on the types of weapons and parts that would be banned or an advancement of the Belarus Partnership Priorities.²⁰⁴

Derogating from the CFSP unanimity rule on sanctions

The reason for a slowed-down decision-making process or watered-down decisions can often be traced back to opposition by one or more member states. In order to make it more difficult for individual member states to block decisions, it has been repeatedly proposed that the application of qualified majority voting (QMV) should be widened in the CFSP. In 2018, the Franco-German Meseberg declaration called for a “look into new ways

202 Mohammed, A., Pawlak, J. & Strobel, W., ‘Special Report: Inside the West’s economic war with Iran’, *Reuters*, 28 December 2012, <https://www.reuters.com/article/us-iran-sanctions/special-report-inside-the-west-economic-war-with-iran-idUSBRE8BRO4620121228>, accessed 29 October 2019.

203 Beesley, A., ‘EU refuses to recognise Venezuela poll but imposes no sanctions’, *Financial Times*, 2 August 2017, <https://www.ft.com/content/87430578-2deb-337f-a676-178b563d6908>, accessed 29 October 2019.

204 Gricius, G., ‘European Union Extends Arms Embargo Against Belarus’, *Global Security Review*, 12 March 2018, <https://globalsecurityreview.com/european-union-extends-arms-embargo-against-belarus/>, accessed 29 October 2019; Jozwiak, R., ‘EU Extends Belarus Arms Embargo’, *Radio Free Europe*, 20 February 2019, <https://www.rferl.org/a/eu-extends-belarus-arms-embargo/29780722.html>, accessed 29 October 2019.

of increasing the speed and effectiveness of the EU's decision-making in our Common Foreign and Security Policy", including the use of qualified majority voting.²⁰⁵ A subsequent paper by the European Commission picked up the initiative and explicitly suggested the adoption and amendment of EU sanctions regimes as an area that would benefit from QMV.²⁰⁶ Commission President-designate Ursula von der Leyen and the nominated High Representative Josep Borrell also pledged to push for qualified majority voting on foreign policy questions.²⁰⁷

Theoretically, the treaties provide different options to derogate from the unanimity requirement. For example, a limited number of member states can abstain from voting on a CFSP decision and are subsequently not bound by it (constructive abstention, Art. 31 (1) TEU). In the case of a CFSP sanctions decision, this would allow the Council the possibility to go ahead with the vote, even if a few member states had political reservations. However, abstaining member states will be obligated de facto to implement the EU sanctions because they have to refrain from any action that might impede the common position.

Member states can also enable the use of QMV when the European Council first adopts a unanimous decision, setting out the EU's strategic interests and objectives, or unanimously requesting the High Representative to prepare a proposal (Art. 31 (2) TEU). Both of these unused provisions would therefore ultimately require consensus in the European Council.

205 Meseberg Declaration by French President Emmanuel Macron and German Chancellor Angela Merkel. Die Bundesregierung, *Meseberg Declaration: Renewing Europe's promises of security and prosperity* [media release], 19 June 2018, <https://archiv.bundesregierung.de/archiv-de/meta/startseite/meseberg-declaration-1140806>, accessed 17 March 2020.

206 European Commission: *A stronger global actor: a more efficient decision-making for EU Common Foreign and Security Policy*, Brussels, 12 September 2018, https://ec.europa.eu/commission/sites/beta-political/files/soteu2018-factsheet-qmv_en.pdf, accessed 17 March 2020.

207 Von der Leyen U., *A Union that strives for more: My agenda for Europe: Political guidelines for the next European Commission 2019–2024*, Brussels, 16 July 2019, https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf, accessed 17 March 2020.

BOX 3: POSSIBLE DEROGATION FROM UNANIMITY RULE FOR EU SANCTIONS

Constructive abstention (Art. 31 (1) TEU): A number of member states can abstain from a CFSP decision. These member states will not be obliged by the decision. However, they have to refrain from any action undermining the decision.

Implementation of European Council position (Art. 31 (2) TEU): QMV is possible when the Council decides on the basis of a unanimous decision by the European Council relating to the Union's strategic interests and objectives.

High Representative proposal (Art. 31 (2) TEU): QMV suffices if the High Representative was unanimously tasked by the European Council with putting an initiative forward.

Passerelle clause (Art. 31 (3) TEU): The European Council can unanimously authorize the Council to use QMV in other cases.

The option to use QMV in accordance with Article 31(2) has already been used in the past to amend listings of EU sanctions, for example against Syria. The Commission proposed to use this potential to derogate from the unanimity rule more consistently when amending sanctions regimes.²⁰⁸ The use of Article 31(2) is not possible if the original CFSP decision stipulates that unanimity is required for amendment of listings. This is for example the case concerning the Russia sanctions. However, even amendments of listings can have significant implications for particular businesses or member states. Member states used the option only in less sensitive cases.

Even more ambitiously, the Commission advocates the use of the passerelle clause (Art. 31 (3) TEU) to introduce the QMV procedure to the adoption and amendment of sanctions. The clause allows the introduction of QMV voting in other cases based on a unanimously adopted decision by the European Council. In any case, a member state will still have the opportunity to stop the Council from taking a vote based on “vital and stated reasons of national policy” (Art. 31 (2) TEU). While member states still have the opportunity to block a decision, it becomes a much more difficult exercise politically, as they actively and openly have to stop the majority from acting.

At first sight, it is appealing to use the passerelle clause to introduce QMV to the EU's sanctions policy. Proponents of QMV state that a widening of QMV does not mean that member states will be regularly outvoted. Instead, the QMV rule works as a lubricant in the EU consensus machinery. The prospect of being outvoted in the Council incentivizes minority-position member states to intensify deliberations and reach a consensus

²⁰⁸ European Commission, 2018, loc. cit.

agreement. This has been the case in other policy areas in which QMV applies. In 2016, of all the cases where a qualified majority in the Council would suffice, member states reached a consensus nine out of ten times.²⁰⁹

The need for unanimity also makes it less likely that member states will make necessary adjustments to sanction regimes when they are up for renewal. Member states avoid opening up decisions for negotiation, which might see competing interests and a failure to reach consensus. Instead, member states often opt for simple renewals.²¹⁰ Without this fine-tuning of the sanctions regimes, it is more likely that targets remain one step ahead, restructure their businesses and manage to avoid sanctions.

However, qualified majority voting on EU sanctions has potential downsides. Votes taken by qualified majority send a weaker signal of EU unity to targets and allies. For example, the Russia sanctions were intended in part to demonstrate the resolve of the whole EU in condemning Russian behaviour and in being willing to exact a price for it.

Derogation from the unanimity rule on the adoption of sanctions might also disincentivize member states from implementing the measure properly.²¹¹ Stripped of the opportunity to readily veto a CFSP decision on sanctions, a member state in a minority position might choose to accommodate its reservations by adopting a more lenient interpretation of the sanctions regime. At a minimum, the incentive to follow stringent implementation of the agreed measure is lower. If the EU wants to prevent the worsening of the national implementation of EU sanctions regimes, it has to strengthen EU-level monitoring and enforcement.²¹² Tighter top-down control, however, would limit the room for member-state discretion and lower their incentives to agree on strong sanctions regimes in the first place.

As a result, the introduction of QMV on sanctions decision-making could have an adverse effect and slow down the EU's activity in this field. The power to veto any sanctions decision gives member states complete control and ownership of the sanctions regimes and heightens the trust that their national preferences will be respected. Even if a member state is uneasy about a certain restrictive measure, it has the ability to veto its periodic extension in the future. Member states' willingness to support

209 Bendiek, A., Kempin, R. & von Ondarza, N., 'Qualified Majority Voting and Flexible Integration for a More Effective CFSP?', *Stiftung Wissenschaft und Politik swp Comment*, no. 25, 2018, https://www.swp-berlin.org/fileadmin/contents/products/comments/2018C25_bdk_kmp_orz.pdf, p. 2, accessed 17 March 2020.

210 Keatinge, T. et al., 'Transatlantic (Mis)alignment: Challenges to US-EU Sanctions Design and Implementation', *RUSI Occasional Paper*, July 2017, <https://rusi.org/publication/occasional-papers/transatlantic-misalignment-challenges-us-eu-sanctions-design-and>, p. 26, accessed 17 March 2020.

211 See chapter 5 on implementation and enforcement.

212 Schuette, L., 'Should the EU make foreign policy decisions by majority voting?', *Center for European Reform*, 2019, https://www.cer.eu/sites/default/files/pbrief_qmv_15.5.19_1.pdf, p. 11, accessed 29 November 2019.

sanctions might be lower overall if they feel that they have lost control over their content and duration. While weak EU-level enforcement hampers the consistent implementation of a restrictive measure, it increases member states' willingness to use the foreign policy tool in the first place. Any decision to make QMV the norm for EU sanctions should be evaluated against its impact on the established decision-making dynamics in this field, which are characterized by a high level of trust, as well as member states' ownership and responsibility.

Challenges based on the EU's division between an economic and political pillar

Despite the intent of the 2009 Lisbon Treaty to simplify the EU's external relations, the EU remains divided between the commercial relations of its single market and the political relations organized in the Common Foreign and Security Policy (CFSP). Most types of EU restrictive measures – those that ban trade or sever financial relations with EU external entities – span these economic and political dimensions of the EU's external relations. The EU developed a two-step procedure whereby the Council decides on a unanimous CFSP decision (Art. 31 TEU), and a qualified majority regulation details the measures and scope of the restrictions (Art. 215 TFEU).

In light of the division between the EU's economic and political external relations, resources for the planning and monitoring of sanctions are scattered across institutions. Both the EEAS and the European Commission have units of about ten officials dealing with sanctions.²¹³ The EEAS unit is in charge of political aspects related to sanctions and the formulation of the CFSP decisions together with the Council working groups. The Commission has a unit in charge of the formulation of the implementing regulation. It also monitors member states' implementation of the EU's sanctions to some extent.

The Commission's sanctions unit used to be part of the Foreign Policy Instrument (FPI), which is co-located in the European External Action Service (EEAS) building and operated under the authority of the High Representative as Commission Vice-President. However, in autumn 2019 Commission President-designate Ursula von der Leyen announced that the sanctions unit would move from the FPI to the Directorate-General for Financial Stability, Financial Services and Capital Markets Union (FISMA). In the 2019–2024 Commission, it will operate under the Executive Vice-President for An Economy that Works for People, Valdis Dombrovskis. In addition to the administration of EU sanctions, Dombrovskis

²¹³ Raik, K., Jokela, J., Helwig, N., 'EU Sanctions Against Russia: Europe brings a hard edge to its economic power', *FIIA Briefing Paper*, no. 162, 21 October 2014, <https://www.fiaa.fi/en/publication/eu-sanctions-against-russia>, accessed 29 October 2019.

was tasked with “developing proposals to ensure Europe is more resilient to extraterritorial sanctions by third countries”.²¹⁴ With this change, the EU was reacting to the growing constraints stemming from US sanctions on European businesses.²¹⁵

The effect of the institutional changes on the EU’s ability to develop and implement its sanctions remains to be seen and might be limited. However, one of the reasons why the two-step process worked efficiently across the economic and political pillar in the past was that the High Representative had authority over both units in the Commission and the EEAS, which were also co-located in the organigram and the EU’s diplomatic service building.

Resources supporting decision-making

Current developments give rise to the question of whether the EU has the appropriate resources to design and implement its sanctions policy. With the UK leaving the EU, the bloc will lose a major contributor to and driver in this area.²¹⁶ Even now, the growing use of sanctions as a foreign policy tool and the EU’s high standards in collecting the underlying evidence behind the sanctions listings place substantial demands on member-state and EU resources.

Background interviews with several member-state representatives revealed that there was at the time of writing no apparent intention to compensate for the loss of UK resources with a substantial increase in national expertise elsewhere in the Union. While the bigger member states, especially France and Germany, have invested in staff that deal with sanction-related questions in the EU and UN context, the expertise is decentralized at the national level across different departments of the foreign ministries and between the ministries of foreign affairs, finance and the interior. These decentralized structures make it more challenging to invest in meaningful national resources that could bolster EU activities in this field.

The UK’s departure offers the opportunity to make sensible investments to support the design of sanctions at the EU level. As the EU targets more and more entities with sanctions, the number of legal challenges appearing before the Court of Justice of the European Union (CJEU) has skyrocketed into hundreds of cases, with many of the sanctions struck

214 Von der Leyen, U., ‘Mission letter to Valdis Dombrovskis, Executive Vice-President-designate for An Economy that Works for People’, *European Commission*, 10 September 2019, https://ec.europa.eu/commission/sites/beta-political/files/mission-letter-valdis-dombrovskis-2019_en.pdf, p. 6, accessed 29 October 2019.

215 See chapter 2 on the US sanctions policy.

216 See chapter 3 on the UK’s withdrawal from the EU.

down by the courts.²¹⁷ The EU has reacted to the increasing number of legal challenges and improved the process for justifying listings. However, the workload is substantial, as each listing requires general criteria as to why an individual has been chosen (“designation criteria”), a justification for targeting a person (“statement of reasons”) and evidence supporting the statement of reasons (“supporting evidence”).²¹⁸ Additional resources at the EU level could be particularly useful in the process of compiling the open-source evidence packages that can be shown to European courts in the event of a challenge.

4.4. WHAT DETERMINES MEMBER STATES’ DECISIONS ON SANCTIONS?

Multiple domestic and international factors determine how states approach international sanctions. Strategic culture, economic factors, security concerns, history and international pressure and norms, inter alia, are all potential elements in the decision-making process on sanctions. Thus, EU member states unsurprisingly have very diverse preferences for the Union’s sanctions policy. Although the EU has an institutionalized decision-making system for sanctions (and for foreign policy in general), the formation of restrictive measures is a political process writ large.

Firstly, one must pay attention to a state’s general attitude towards sanctions as a policy instrument. One of the key elements affecting strategic behaviour identified by the research literature is a state’s strategic culture. Countries have divergent and historically evolved traditions of policymaking and statecraft.²¹⁹ Some states are more inclined to rely on coercive tools, while others prefer softer diplomatic measures. Although strategic culture has predominantly been used to analyse defence policy, the concept also captures essential factors shaping non-military strategic behaviour such as economic statecraft in general and sanctions policy in particular.

The EU is a patchwork of different strategic cultures, with some member states being more assertive and prone to use coercive tools, and others

217 Chachko, E., ‘Foreign Affairs in Court: Lessons from CJEU Targeted Sanctions Jurisprudence’, *Yale Journal of International Law*, vol. 44, no. 1, 2019, pp. 1-151, <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1694&context=yjil>, accessed 29 November 2019.

218 Pursiainen, A., ‘Targeted EU Sanctions and Fundamental Rights’, *Solid Plan Consulting*, https://um.fi/documents/35732/48132/eu_targeted_sanctions_and_fundamental_rights/14ce3228-19c3-a1ca-e66f-192cad8be8de?t=1525645980751 p. 6, accessed 29 November 2019.

219 Booth, K. & Trood R., *Strategic Cultures in the Asia-Pacific Region*, Palgrave Macmillan, London, 1999.

less willing to promote coercive measures.²²⁰ For instance, the Netherlands is one of the countries with a robust idealist culture prone to “escalate legitimately when core foreign policy values were perceived to be under threat”.²²¹ Greece, in turn, is one of those member states “traditionally sceptical about the efficiency of policies based on sanctions”.²²² The bottom line is that there are promoters of both hawkish and dovish measures within the EU. These various preferences are rooted in diverse national understandings of what the best tools for conducting statecraft might be.

The second noteworthy issue is a country’s position on a certain sanctions regime. As one commentator pointed out, “[i]t is a combination of overlapping historical, cultural, geopolitical and economic factors that shape EU member states’ positions [concerning sanctions]”. More precisely, close economic ties between the sender and the target of economic sanctions can be a hindering factor in sanctions imposition if the expected losses for the sender’s economy are great. Geopolitical factors entail threat perceptions or other security concerns that sanctions could potentially address.²²³ Moreover, cultural or religious affinity and historical enmity or friendship are also aspects pertinent to a country’s sanctions policy. Lastly, domestic politics such as the pressure of interest groups can also be critical when a government is contemplating the direction of its policy line. One obvious interest group that is salient when it comes to sanctions formation are the respective industries and business lobbies of the member states.

In addition to domestic factors, the international environment may also explain individual states’ decisions to join sanctions regimes. Both persuasion or outright pressure and coercion from other states might push a country to adopt sanctions regardless of initial reluctance.²²⁴ This international dimension is a highly salient factor in multilateral frameworks such as the EU, and peer pressure is a recognized phenomenon in European politics.²²⁵ EU member states must carefully consider when to pursue their national interest assertively, since reputational losses may eventually decrease bargaining power within the Union.

220 Biehl, H., Giegerich, B. & Jonas, A., eds., *Strategic Cultures in Europe. Security and Defence Policies Across the Continent*, Springer vs., Wiesbaden, 2013.

221 Angstrom, J. & Honig J.W., ‘Regaining Strategy: Small Powers, Strategic Culture, and Escalation in Afghanistan’, *Journal of Strategic Studies*, vol. 35, no. 5, 2012, p. 674.

222 Tzogopoulos, G.N., ‘View from Athens: Walking the line between Europe and Russia’, *ECFR Commentary*, 6 April 2015, https://www.ecfr.eu/article/commentary_view_from_athens_walking_the_line_between_europe_and_russia31161, accessed 4 November 2019.

223 See e.g. Sjursen, H. & Rosen, G., ‘Arguing sanctions. On the EU’s response to the crisis in Ukraine’, *Journal of Common Market Studies*, vol. 55, no. 1, 2017, pp. 20–36.

224 See e.g. Drezner, D., *The Sanctions Paradox: Economic Statecraft and International Relations*, Cambridge University Press, Cambridge, 1999.

225 See e.g. Meyer, C., ‘The hard side of soft policy co-ordination in EMU: the impact of peer pressure on publicized opinion in the cases of Germany and Ireland’, *Journal of European Public Policy* vol. 11, no. 5, 2004, pp. 814–831.

4.5. WHAT ARE THE POLITICS BEHIND THE EU'S DECISION ON RUSSIA SANCTIONS?

The EU's sanctions against Russia were unusual and novel in many respects. The EU imposed sanctions on a neighbouring great power that was the subject of highly diverse perceptions among member states. The sanctions included sectoral bans and combined several regimes into one sanctions package. They also included serious economic restrictions against Russia. What were the factors that enabled the Union to arrive at a consensus on enacting such sanctions against the country?

Helene Sjursen and Gury Rosén argue that the centripetal factor constituting the EU's response to the Russian aggression in Ukraine was normative. In other words, the EU's collective action "was anchored in agreement across all member states that fundamental principles of international law were breached". After an argumentative process among member states, EU members felt obliged to respond to Russia's violation of Ukraine's territorial integrity and right to self-determination. Mere security concerns were not enough to persuade member states to agree on a common line because not all member states were equally concerned about their security. Sjursen and Rosén therefore conclude that norms trumped security interest, and it was the blatant violation of territorial integrity in Europe that pushed the EU to agree on the restrictive measures.²²⁶

The "hawk" countries pushing a harder line include the Baltic states, Poland, the United Kingdom and Sweden. In addition, Germany and Finland have also consistently supported the restrictive measures imposed upon Russia.²²⁷ The common denominators between these states are either Russia-related security concerns or an activist strategic culture. Austria, Greece, Cyprus, Italy and Hungary, for example, have in turn been portrayed as "doves", reluctantly sticking to the common EU line. Close economic ties and cultural, political and religious affinities are key factors explaining their tepidity towards the EU's restrictive measures. Between the hawkish and dovish approaches lies a considerable middle way, which is constituted by lukewarm supporters (e.g. France, Spain and the Netherlands), internally divided member states (e.g. the Czech Republic and Slovakia), and bystanders (e.g. Ireland and Belgium).²²⁸

²²⁶ Sjursen & Rosen, loc. cit.

²²⁷ On similarities between Finland and Germany, see Siddi, M., *National Identities and Foreign Policy in the European Union. The Russia Policy of Germany, Poland, and Finland*, ECPR Press/Rowman and Littlefield, New York & London, 2017.

²²⁸ Shagina, M., 'Friend or Foe? Mapping the positions of EU Member States on Russia sanctions', *ELN Commentary*, 28 June 2017, <https://www.europeanleadershipnetwork.org/commentary/friend-or-foe-mapping-the-positions-of-eu-member-states-on-russia-sanctions/>, accessed 4 November 2019.

The role of powerful member states has been essential in the formation process. They have considerable negotiation power and are able to lead by example. For example, both the UK and Germany supported sanctions early on, which swayed France to scrap its initial opposition.²²⁹ Major power interests are highly salient from a weaker state's perspective. A stronger power can deny the smaller party certain benefits if it acts against its interest. For example, Greece – having been aware of Germany's preferences – may not have wanted to endanger its interests in other domains by vetoing the Russia sanctions.

The fate of the Russia sanctions hinges upon a number of issues. The EU began imposing restrictive measures on Russia over five years ago. The consensus underpinning the EU's sanctions policy has prevailed thus far, and member states have renewed the existing sanctions over Ukraine biannually. Although a few states – such as Italy and Greece – have threatened to veto the renewal of the Russia sanctions, there is strong confidence among EU diplomats that the sanctions will remain in place.²³⁰

Peer pressure is a key factor contributing to the durability of the restrictive measures. For some member states, maintaining the sanctions is an ultimate concern, which is respected by other less concerned members.²³¹ Moreover, power also matters in a multilateral context. It is unlikely that member states would deviate from the EU line if the Franco-German duo sticks to the current policy. Furthermore, reputational factors also count.²³² Hence, by questioning the maintenance of Russia sanctions, a state may lose negotiation capital in other EU policy domains. Moreover, Russia's ongoing campaign to weaken the EU consensus on sanctions and its aggressive actions elsewhere – from Syria to Salisbury – has sustained the critical attitude towards Moscow, which has contributed to the continuity of the restrictive measures.

The ideal way out of the sanctions would be a successful implementation of the Minsk protocol and the return of Crimea to Ukraine, which would result in all Russia sanctions related to its aggression in Ukraine

229 Cadier, D., 'Continuity and change in France's policies towards Russia: a milieu goals explanation', *International Affairs*, vol. 94, no. 6, 2018, pp. 1349–1369; Forsberg, T., 'From Ostpolitik to "frostpolitik"? Merkel, Putin and German foreign policy towards Russia', *International Affairs*, vol. 92, no. 1, 2016, pp. 21–42; Russell, M., 'EU sanctions: A key foreign and security policy instrument', *European Parliamentary Research Service, Briefing*, May 2018, http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI%282018%29621870, accessed 4 November 2019.

230 Buchanan, R.T., 'Greece threatens EU veto over Russian sanctions', *The Independent*, 29 January 2015, <https://www.independent.co.uk/news/world/europe/greece-threatens-eu-veto-over-russian-sanctions-10010138.html>, accessed 4 November 2019; Galindo, G., 'Salvini: Italy "not afraid" to use EU veto to lift Russian sanctions', *Politico*, 16 July 2018, <https://www.politico.eu/article/matteo-salvini-italy-not-afraid-to-use-eu-veto-to-lift-russian-sanctions-crimea-vladimir-putin/>, accessed 4 November 2019.

231 See Cadier, loc. cit.

232 See e.g. Portela, C., 'Member states' resistance to EU foreign policy sanctions', *European Foreign Affairs Review*, vol. 20, no. 3, 2015, pp. 39–61.

being lifted. Both scenarios – hardly the only imaginable ones²³³ – currently look highly unlikely, particularly the return of Crimea.²³⁴ The more likely scenario of sanctions relief entails a political compromise or bargain between Russia and some Western powers such as the United States, France and Germany. In other words, due to waning security concerns and evaporating “normative outrage” caused by the Russian aggression, major states in the increasingly fragmented West might think that reconciliation is needed to tackle global challenges such as the rise of China and terrorism. Furthermore, the US and France have both entertained the idea of the reintroduction of the G8 format.²³⁵ Another question concerns the demand for possible concessions from the Russian side. In terms of lifting the non-Crimea-related sanctions, EU leaders have been clear about the need for implementing the Minsk Agreement. However, it is also possible that some member states are willing to ease sanctions, demanding only partial compliance or accepting concessions in unrelated policy fields.²³⁶

The fate of the EU’s restrictive measures against Russia is determined in practice by the interplay of normative questions, security and economic interests, and other concerns not related to the situation in Ukraine. The question is intimately tied to the diplomatic process around the Ukrainian crisis. The most desirable way of lifting the sanctions would be a diplomatic solution, which is out of reach at the time of writing.

4.6. CONCLUSION

The EU is capable of deciding on and maintaining significant sanctions regimes. The restrictive measures against Russia, or previously against Iran, are proof of this. However, the decisions often concern vital national security and economic interests. The politics behind the setting-up and renewal of sanctions regimes is therefore bound to be messy and slow. More often than not, it requires clear leadership by bigger member states, a process of persuasion and member-state willingness to compromise.

Consequently, the degree to which institutional reforms can improve the efficiency of decision-making on sanctions is overstated. Existing

233 Moret, E. et al., *The New Deterrent? International Sanctions against Russia over the Ukraine Crisis. Impact, Costs and Further Action*, The Graduate Institute Geneva, Geneva, 2016.

234 Allan, D., ‘The Minsk Agreements Rest on Incompatible Views of Sovereignty’, *Chatham House*, 15 July 2019, <https://www.chathamhouse.org/expert/comment/minsk-agreements-rest-incompatible-views-sovereignty>, accessed 4 November 2019.

235 Rose, M., ‘France wants progress in Ukraine before Russia returns to G7’, *Reuters*, 21 August 2019, <https://www.reuters.com/article/us-g7-summit-france-russia/france-wants-progress-in-ukraine-before-russia-returns-to-g7-idUSKCN1VBOSA>, accessed 13 November 2019.

236 Moret, E. et al., op. cit., pp. 25-29.

options in the EU treaties to derogate from the unanimity rule have only been used to amend listings in EU sanctions regimes in less sensitive cases. In most cases, member states still value their tight control over the CFSP decision-making process.²³⁷ The introduction of qualified majority voting promises to bring about more efficiency, especially in cases where only one or two member states deviate from the majority position. Yet it risks weakening member states' ownership of EU sanctions policy. A less controversial option would be to make more consistent use of the existing QMV options (Art. 31 (2) TEU) during the amendment of sanctions regimes, duly fostering a voting culture that weakens the unanimity reflex. In addition, the EU's resources can be improved to help with the increasingly complex design of sanctions regimes. Additional staff in the EEAS can contribute to improving the underlying evidence that supports the sanctions decisions.

237 Koenig, N., 'Qualified Majority Voting in EU Foreign Policy: Mapping Preferences', *Policy Brief, Jacques Delors Centre*, 10 February 2020, https://hertieschool-f4e6.kxcdn.com/fileadmin/user_upload/20200210_Policy_Brief_QMV_Koenig.pdf, accessed 13 November 2019.

/5

5. IMPLEMENTATION AND ENFORCEMENT

Clara Portela

Summary

- While the adoption of sanctions legislation at the EU level is centralized, implementation and enforcement remain, by contrast, in the hands of the member states. Other than supervision by the Commission, the current system foresees a mechanism for information exchange among member states on interpretation, implementation and enforcement issues, keeping the European External Action Service (EEAS) and the Commission in the loop.
- The current set-up does not guarantee uniform implementation of EU sanctions, as it leaves individual member states with considerable room for manoeuvre. This creates a risk of significant discrepancies among member states in terms of implementation and enforcement.
- Any attempt to tighten the supervision of member state compliance might affect the readiness of member states to agree to CFSP sanctions in the first place.

Recommendations

- Improvements in the collection and analysis of member states' information on the enforcement and derogation of sanctions could improve the homogeneous implementation of sanctions and make shopping practices by third actors less likely.
- In order to minimize overcompliance with EU sanctions by European businesses, national authorities could be mandated to closely follow Commission opinions. This would reduce the confusion

regarding the coverage of EU bans and prevent possible discrepancies in interpretation.

The EU operates a decentralized system of sanctions implementation and enforcement, which contrasts with its centralized production of sanctions legislation. In other words, the EU has legislative competence (*compétence normative*) but lacks operational competence (*compétence opérationnelle*) in sanctions policy.²³⁸ The system is set out in two key Council documents. These include “Guidelines on implementation and evaluation of restrictive measures in the framework of the EU” (henceforth “Guidelines”), first adopted in 2003 and most recently updated in 2018, and the 2015 “Best Practices on Effective Implementation of Financial Restrictive Measures”.²³⁹ Both documents deal with standardization of wording and common definitions for legal instruments, while the political aspects of sanctions policy are discussed elsewhere, in the “Principles for the Use of Restrictive Measures”.²⁴⁰

5.1. HOW EU SANCTIONS ARE IMPLEMENTED

While the adoption of sanctions legislation at the EU level is centralized, implementation remains, by contrast, in the hands of the member states. EU sanctions legislation stipulates the conditions under which exemptions may be dispensed.²⁴¹

The procedure for granting exemptions to private operators differs depending on whether the regime originates from the United Nations Security Council (UNSC), or is an autonomous²⁴² EU regime:

238 Martin, E., ‘La politique de sanctions de l’Union Européenne: Ambition multilatéral contre logique de puissance’ [‘The sanctions policy of the European Union: Multilateral ambition against power logics’], *Etudes de l’Ifri*, October 2019, https://www.ifri.org/sites/default/files/atoms/files/martin_sanctions_ue_2019.pdf, accessed 17 March 2020.

239 Council of the European Union, *Restrictive measures (Sanctions): Update of the EU Best Practices for the effective implementation of restrictive measures*, (10254/15), Brussels, 24 June 2015, <http://data.consilium.europa.eu/doc/document/ST-10254-2015-INIT/en/pdf>, accessed 17 March 2020.

240 Council of the European Union, *Basic principles on the use of restrictive measures (Sanctions)*, (10198/1/04), Brussels, 7 June 2004, <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2010198%202004%20REV%201>, accessed 12 March 2020.

241 Council of the European Union, *Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy*, (5664/18), Brussels, 4 May 2018, p. 12., <https://data.consilium.europa.eu/doc/document/ST-5664-2018-INIT/en/pdf>, accessed 12 March 2020.

242 When the UN Security Council (UNSC) agrees sanctions, the EU passes legislation to implement the bans stipulated in UNSC Resolutions. When the EU decides its own measures, it adopts exactly the same type of legislation as when it implements UNSC decisions, but it does not act under its authority.

1. When the EU implements sanctions mandated by the UNSC, the authority to grant exemptions remains with the UN Sanctions Committee responsible for the sanctions regime at hand. In accordance with the text of the UNSC resolution, requests for exemptions by member states are processed by the UN Sanctions Committee.
2. For autonomous sanctions regimes, exemptions are granted by national authorities, which decide on them on a case-by-case basis, ensuring that they are not misused to circumvent the objectives of the ban.²⁴³ Member states notify each other of exemptions granted, informing the Commission as well.

Not all measures require implementation by the private sector, as some are implemented directly by member states. This applies notably to visa bans, where member states operate a no-objection procedure: A member state wishing to grant exemptions notifies the Council. The exemption is granted unless a member state raises an objection within two working days, in which case the Council, acting by qualified majority, may grant the exemption.²⁴⁴

5.2. HOW EU SANCTIONS ARE ENFORCED

The enforcement system takes a decentralized form. EU legislation exhorts member states to enact penalties for violations of bans. According to the “Guidelines”, member states must ensure that bans are implemented and complied with, and must lay down penalties applicable to breaches of sanctions legislation.²⁴⁵ Thus, each member state is responsible for designating the authority in charge of implementation and enforcement and endowing it with appropriate powers, and for passing national laws penalizing breaches and determining penalties.

The decentralization that characterizes the enforcement system has its foundation in the principle of subsidiarity, enshrined in the EU Treaty. According to this principle, matters are best handled at the level closest to the citizen, given that the national legislator is best positioned to take into account local conditions. Locating the authority to determine penalties

²⁴³ Council of the European Union, 2018, loc. cit.

²⁴⁴ Council of the European Union, *Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria*, (OJ L 147), 1 June 2013, Art. 72(7), p. 19, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:147:0014:0045:EN:PDF>, accessed 30 March 2020.

²⁴⁵ Council of the European Union 2018, op. cit., p.19.

with the member states facilitates coherence with the legal tradition of each country, and ensures that the financial fines are adequate for local standards.

Similar to other fields of EU action, the Commission is responsible for collecting information on laws and associated penalties in each member state, and for checking their adequacy and alignment with the provisions of EU sanctions legislation. In the event of misalignment, the Commission is responsible for approaching the member states at fault and requesting them to take corrective action. As a last resort, it has the power to launch an infringement procedure against any member state for failing to implement EU legislation.

Other than supervision by the Commission, the current system foresees a mechanism for information exchange among member states on interpretation, implementation and enforcement issues, keeping the European External Action Service (EEAS) and the Commission in the loop. The “Guidelines” provide that member states shall inform each other of assets frozen and the amounts concerned, derogations granted, measures taken in implementation of sanctions legislation, violation and enforcement problems and relevant judgments by national courts.²⁴⁶

5.3. HOW PRIVATE SECTOR COMPLIANCE IS SUPPORTED

Providing guidance to private actors on how to comply with sanctions is a responsibility of member states exercised via national authorities. While national authorities constitute the first point of contact, the European Commission also plays a role.

Standard bans on armaments, and restrictions on admission and asset freezes, which constitute the most common CFSP sanctions, present little difficulty in terms of interpretation. Arms embargoes routinely apply to the pre-agreed “common military list”, while visa bans and asset freezes apply to blacklists of individuals and entities featuring identifiers. However, when the EU introduces new types of restrictions, further clarification may be required by affected industries. The measures imposed on Russia in 2014 are a case in point. When the legal text leaves room for ambiguity regarding the scope of the bans, the Council may draft a new version of the legislation specifying their coverage. Another option, complementary to the previous one, is the issuance of guidance, which is, by its very nature, non-binding.

²⁴⁶ *ibid.*, p. 50

5.4. WHERE (POSSIBLE) DEFICITS LIE

The current set-up does not guarantee uniform implementation of EU sanctions, as it leaves individual member states with considerable room for manoeuvre.²⁴⁷ This creates a risk of significant discrepancies among member states in terms of implementation and enforcement. The present section draws attention to a number of possible weaknesses that may hamper the operation of the current system.²⁴⁸

Exemptions

Firstly, a decentralized system for granting exemptions affords third-country actors opportunities for shopping. EU companies are obliged to obtain authorizations from the authority responsible for their country, but nothing prevents third-country actors from trying their luck in several member states. Since national authorities enjoy discretion in determining whether a specific request falls under an exemption, interpretations may vary. When a national authority rejects an application for an exemption, the requesting entity may approach another member state in the hope of eventually receiving a positive answer. National authorities face mixed incentives. On the one hand, they might interpret prohibitions with laxity out of humanitarian concerns, or out of a desire not to obstruct legitimate trade flows needlessly. On the other hand, authorizing a request rejected elsewhere may incur reputational costs.

The only entity foreseen for conflict resolution here is the Commission. A member state that objects to an authorization granted by another member state may bring the matter to the attention of the Commission, which can approach the national authority allegedly in the wrong and request the withdrawal of the controversial authorization. The dissatisfied member state can contact the national authorities allegedly at fault directly to voice concern. In both cases, the national authorities, having granted the disputed authorization, can benefit from the discreet nature of the démarche. No publicly accessible data exist on whether member states disagree with authorizations granted by other member states and, if so, which methods of conflict resolution they select and with what outcome. While the Commission retains the option of launching an infringement procedure against a state in the hypothetical case that it refuses to enforce sanctions legislation, this scenario has never materialized.

²⁴⁷ Martin *loc. cit.*

²⁴⁸ In the absence of data that can provide an accurate picture of its performance, the following analysis does not make any claim regarding the actual exploitation of identified loopholes by any of the actors involved.

Capacities for evasion detection

While equipping the authority competent for implementation and enforcement with the necessary tools is the responsibility of member states, national agencies may differ considerably in terms of size, investigative capacity, manpower and expertise at their disposal.²⁴⁹ Accordingly, their ability to detect and prosecute evasion may be at variance. Neither the “Guidelines” nor EU legislation stipulate *what* specific resources member states need to make available to ensure optimal compliance by domestic actors. In other words, possible deficiencies in state capacity for sanctions implementation and enforcement remain unaddressed.

Penalties

The Commission checks national legislation stipulating the penalties for sanctions violations. If the Commission detects inadequacies, it can approach the member state in question and request their correction. In the event that the member state at fault persistently refuses to rectify identified deficiencies, the Commission could open an infringement procedure. In any case, the Commission would follow the standard it expects the Court to apply; in other words, only blatant deviations, such as disproportionately low fines, would qualify. The opening of an infringement procedure is also an option available to the Commission in the event that the enforcement authorities of a member state manifestly fail to stop evasion of a sanctions regime.

Guidance for private actors

The issuance of non-binding guidance was recently introduced by the Commission, with the specific aim of assisting private actors to comply with EU bans. Moreover, at the request of national authorities, the Commission may issue opinions.²⁵⁰ This replicates standard practice elsewhere. Still, Commission guidance, offered as a Commission Notice following a Q&A format, as well as Commission opinions include the following disclaimer:

“The Commission oversees the application of Union law under the control of the Court of Justice of the European Union. Pursuant to the Treaties, only the Court of Justice

249 Dall, E.A., ‘New Direction for EU Sanctions: The new Commission and the use of sanctions’, *RUSI Commentary*, 21 November 2019, <https://rusi.org/commentary/new-direction-eu-sanctions-new-commission-and-use-sanctions>, accessed 17 March 2020; Golumbic, C. & Ruff, R., ‘Who do I call for an EU sanctions exception? Why the EU economic sanctions regime should centralize licensing’, *Georgetown Journal of International Law*, vol. 44, no. 3, 2013, pp. 1007–1053.

250 Commission opinions can currently be found on the FPI website: https://ec.europa.eu/fpi/what-we-do/sanctions_en.

*of the European Union can provide legally binding interpretations of acts of the institutions of the Union”.*²⁵¹

As highlighted by this disclaimer, adhering to Commission guidance does not fully protect private operators from fines, given that, in the event of litigation, the national prosecutor’s interpretation of a ban may differ from the Commission’s understanding. Uncertainty is exacerbated by a lack of coincidence as the entity responsible for initiating prosecution, which is located at the national level, is not the same actor that issues guidance, the Commission.²⁵² This diverges from the US system, where the Treasury’s Office of Foreign Asset Control (OFAC) is empowered to carry out both functions. As a result, private operators may be inclined to *overcomply* with bans, foregoing operations that the sanctions designers never intended to ban.²⁵³ In particular, many banks are known to *overcomply* with sanctions legislation as part of their regular policy of “de-risking”. The inability to transact financially with actors in target countries amplifies the breadth of the measures, affecting legitimate trade flows.

In addition, private operators have sometimes lamented the weak responsiveness by national authorities. An executive from a major European bank reports that it took him about a year to receive clarification on a question of legal interpretation that he had requested from his national authority, while the US Treasury agency, OFAC, replied in one week.²⁵⁴ Both phenomena, purposeful overcompliance by the private sector and protracted processing times by competent national agencies, have been pinpointed as obstructive to the operations of humanitarian actors.²⁵⁵

5.5. SHOULD THE SYSTEM BE REFORMED?

Our brief survey reveals that the system is not watertight: It allows for discrepancies in the interpretation of bans, offering third-country operators aspiring to benefit from exemptions opportunities for shopping. The current system was shaped by a preference for a member state-driven

251 European Commission, *Commission Notice: Commission guidance note on the implementation of certain provisions of Regulation (EU) No 833/2014 (C(2017) 5738 final)*, Brussels, 25 August 2017, https://ec.europa.eu/fpi/sites/fpi/files/1_act_part1_v3_en.pdf, accessed 17 March 2020.

252 National agencies may also issue guidance.

253 Portela, ‘How the EU learned to love sanctions’, 2016, loc. cit.

254 “l’OFAC a répondu en une semaine, tandis que chez nous cela a mis un an”, [“OFAC replied in one week, while here (in France) it took one year”] quoted in Martin op. cit., p. 20.

255 Debarre, A., *Safeguarding Humanitarian Action in Sanctions Regimes*, International Peace Institute, New York, 2019.

sanctions process that centralized relatively few functions with the Brussels institutions. Neither major instances of violations nor significant deficits in member state implementation have been publicly exposed. Is the system working satisfactorily despite its shortcomings?

Little is known about the extent of discrepancies in implementation and enforcement between member states, and what their origins are. Since neither the EEAS nor the Commission share data on implementation and enforcement, we lack accurate information to assess the extent to which the system deters and addresses violations. In addition, it is impossible to know whether the Commission actually receives all required information from national agencies. In the absence of publicly available data, independent research on the implementation of EU sanctions remains scarce.²⁵⁶ An academic comparison of sanctions enforcement legislation in two member states finds notable differences.²⁵⁷

Nevertheless, the fact that implementation and enforcement have not proved problematic thus far does not mean that they will not become an issue in the future. In the past, EU autonomous sanctions were largely free of consequences for European firms, bar the defence industry.²⁵⁸ Now that EU sanctions entail economic consequences affecting businesses, implementation and enforcement are increasingly coming under scrutiny by private firms, which aspire to level the playing field. Certain private operators in some member states perceive discrepancies in the stringency with which sanction legislation is implemented. Some of them have expressed concern that competitors in other EU countries do not apply restrictions as diligently as they do.²⁵⁹

There are recent indications of a new willingness for improved implementation and enforcement of sanctions. One strand points to creating a centralized agency dealing with implementation and enforcement, following the OFAC model. The UK set up an Office of Financial Sanctions Implementation (OFSI), which already issued several enforcement actions, one of which fined a bank for dealing with a person blacklisted under the EU's Egypt sanctions regime.²⁶⁰ French Minister Bruno LeMaire proposed

256 Martin loc. cit.; Portela, C., 'Member states' resistance to EU foreign policy sanctions', *European Foreign Affairs Review*, vol. 20, no. 3, 2015, pp. 39-61; Vries, A. de, Portela, C. & Guijarro, B., 'Improving the effectiveness of sanctions: A checklist for the EU', *CEPS special report*, no. 95, CEPS, Brussels, 2014.

257 Drulakova, R. & Prikryl, P., 'The implementation of sanctions imposed by the European Union', *Central European Journal of International and Security Studies*, vol. 10, no. 1, 2016, pp. 134-160.

258 Portela, C., 'How the EU learned to love sanctions', in M. Leonard ed., *Connectivity Wars*, European Council on Foreign Relations, London, 2016, pp. 36-42

259 East Office of Finnish Industries, *How to prepare for sanctions in Russia - Impacts, best practices and latest guidelines*, EOFI, Helsinki, 2019.; Dall loc. cit.

260 Information from UK Treasury on OFSI can be found at: https://www.gov.uk/government/collections/enforcement-of-financial-sanctions?utm_source=c9daf843-0354-41ad-9475-1af9f0310d65&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate.

the establishment of an agency comparable to the US Treasury's OFAC, which is endowed with far-reaching powers and staffed with a two hundred-strong workforce,²⁶¹ a proposal that has resonated with the think-tank community.²⁶² The establishment of an EU agency comparable to the US Treasury's OFAC is not readily practicable in the short to medium term given that the OFAC is endowed with competences that are currently in the hands of member states. Since the transfer of such competences would require a qualitative leap in integration that is not currently planned, the eventual establishment of a European OFAC can be only be understood as part of a long-term vision.

Another strand advocates the enhanced use of powers at the disposal of the EU, in the absence of institutional reform. Dutch Prime Minister Mark Rutte recently called for enhanced coordination in sanctions policy and supervision with a view to ensuring a level playing field for firms, and to strengthening the role of the Commission in monitoring enforcement and providing guidance for private actors.²⁶³ Following the appointment of Josep Borrell as the new High Representative, the Foreign Ministers of Czechia, Denmark and the Netherlands laid out their vision for EU foreign policy, arguing as follows: "Sanctions need swifter implementation, better guidance and stricter compliance. This is above all a national responsibility. But we also must strengthen European institutions to ensure maximum coordination and full compliance with the sanctions regime".²⁶⁴

This approach appears to have resonated with the current Commission. In her mission letter to Commissioner Valdis Dombrovskis, Executive Vice President for an Economy that Works for People, new President of the European Commission Ursula von der Leyen provides an explicit mandate to enhance implementation: "Given that any legislation is only as good as its implementation, I want you to focus on the application and enforcement of EU law within your field. You should provide support and continuous guidance to Member States on implementation, and be ready

261 France24, 'France urges Europe to push back against "unacceptable" US sanctions on Iran', *France24*, 11 May 2018, <https://www.france24.com/en/20180511-iran-france-usa-europe-business-push-back-against-unacceptable-sanctions-nuclear-trump>, accessed 17 March 2020.

262 Hackenbroich, J. & Leonard, M., 'Verteidigen wir Europa!' ['Let's defend Europe!'], *Die Zeit*, 7 August 2019, <https://www.zeit.de/2019/33/eu-handelspolitik-us-sanktionen-protektionismus>, accessed 18 March 2020; Geranmayeh, E. & Rapnouil, M.L., 'Meeting the Challenge of Secondary Sanctions', in M. Leonard & J. Shapiro eds., *Strategic Sovereignty: How Europe Can Regain the Capacity to Act*, European Council on Foreign Relations, Berlin, 2019, pp. 61-84.

263 "A level playing field demands that companies know that any breach of sanctions will trigger enforcement action throughout the EU. The European Commission can serve as a linking pin for the national enforcement authorities, prompting them to take effective action and calling them to account if they fail to do so. The Commission can also inform companies across the EU about what they can and cannot do". Rutte, M., 'The EU: From the power of principles towards principles and power', *Churchill lecture*, Europa Institute of the University of Zurich, 13 February 2019.

264 Kofod, J., Blok & S., Petricek, T., 'How to revamp EU foreign policy', *Politico*, 9 December 2019, <https://www.politico.eu/article/how-to-revamp-eu-foreign-policy-josep-borrell/>, accessed 17 March 2020.

to take swift action if EU law is breached”.²⁶⁵ The simultaneous transfer of the Commission’s sanctions unit from Foreign Policy Instruments (FPI) to the Directorate General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA) as part of the latest reorganization of Commission portfolios²⁶⁶ makes it clear that the monitoring of sanctions implementation is part of that task. President von der Leyen explicitly mandates Commissioner Dombrovskis “to ensure that the sanctions imposed by the EU are properly enforced, notably throughout its financial system”.²⁶⁷

However, any attempt to tighten the supervision of member state compliance might affect the readiness of member states to agree to CFSP sanctions in the first place. While individual capitals often agree to the enactment of sanctions regimes, even in situations where national priorities are not at stake, the possibility of exposing themselves to public criticism, or judicial action, for deficient implementation and enforcement may disincline them to do so in the future.

5.6. RECOMMENDATIONS

Notwithstanding the possible consideration of a more ambitious reform, a number of modest improvements to the current system could be envisaged in the short term:

1. National authorities only have an obligation to notify the requests for derogations they accept, not those that were declined. Collecting information on declined requests, mirroring current practice with export controls, can provide insights into the possible existence of “shopping” practices by third actors and/or diverging interpretations of provisions among national authorities. It can also help identify items sought by humanitarian actors.
 - In the event that “shopping” practices by third countries are detected, a mechanism to address shopping should be devised.
2. A key hurdle to the analysis of the state of implementation and enforcement in the EU is posed by the lack of information.

²⁶⁵ Von der Leyen, U., ‘Mission letter to Valdis Dombrovskis, Executive Vice-President-designate for An Economy that Works for People’, *European Commission*, 10 September 2019, https://ec.europa.eu/commission/sites/beta-political/files/mission-letter-valdis-dombrovskis-2019_en.pdf, accessed 29 October 2019.

²⁶⁶ European Commission, *Allocation of portfolios and supporting services note*, Brussels, 7 November 2019, https://ec.europa.eu/commission/sites/beta-political/files/allocation-portfolios-supporting-services_en_0.pdf, accessed 17 March 2020.

²⁶⁷ *Ibid.*

Nevertheless, it is evident that the present system presents various vulnerabilities.

- The first recommendation consists of strengthening the availability of data to enable the research necessary to give us a clear picture.
- The vast amount of information currently collected by the Commission could be analysed for the production of some basic statistics on the nature of the items for which derogations are granted, the number of enforcement actions and court cases conducted in each member state, and the amounts allowed for basic expenses for blacklisted individuals.
- A study should be conducted to compile detailed information on the capacity of individual member states for implementation and enforcement, including human resources committed full-time, in police and investigative agencies, prosecutor offices, and relevant sections of the ministries involved. In accordance with the findings of this study, recommendations should be formulated for individual member states regarding the optimal allocation of resources to each of the agencies/ sections involved, proportional to the size of the finance sector and the volume of external trade of the member state in question. Equally, penalties for violations should be reviewed with reference to their deterrent effects.

The phenomenon of overcompliance is associated with the existence of US sanctions with extraterritorial effects. However, this may also result from confusion regarding the coverage of EU bans. However, the current system could be improved if observance of Commission Opinions were made binding upon national authorities, preventing possible discrepancies in interpretation.

5.7. CONCLUSION

The configuration of the current system for sanctions imposition and implementation has not proved controversial in spite of the scarcity of means available to EU institutions to address deficiencies. The increasingly economic nature of EU bans might soon put previously inconspicuous vulnerabilities or discrepancies in member state implementation and enforcement into the public spotlight and lead to calls for improving the current system.

16

6. SECONDARY SANCTIONS

Ilari Aula

Summary

- Secondary sanctions imposed by the US pose a notable challenge for the economic sovereignty of the EU and its member states and hamper its foreign policy. The challenge of the current situation is heightened by the breakdown of collaboration between the US and the EU as sanctions senders.
- The EU's possibilities to respond to US measures are limited due to the importance of the US market for EU businesses, the pivotal position of US financial institutions, and the efficient implementation and enforcement of US sanctions.

Recommendations

- The EU should systematically make it costlier for the US to impose secondary sanctions. Measures include developing a robust risk mitigation and sharing mechanism, bolstering the euro as a medium of exchange, and advancing INSTEX as one test case.
- The EU's efforts should take into account that in the not-too-distant future, other major economies might become relevant senders of sanctions with extraterritorial implications for the EU.

Secondary sanctions pose a challenge to the EU, as their increasingly assertive use by the United States compromises the Union's authority over citizens, firms and organizations under its jurisdiction, and threatens to counteract the Union's common foreign policy. This section explores

the current situation and the ways in which the EU has responded to secondary sanctions.

6.1. TRANSATLANTIC ACTIVITIES

The EU imposes primary sanctions, which aim to control the dealings of EU entities with foreign actors, for instance by prohibiting EU citizens from engaging in business transactions with their counterparts in a sanctioned country. From a European perspective, secondary sanctions are demands that a non-EU state imposes on a European entity in order to stop the entity from engaging in dealings that the non-EU state disapproves of. They are a tool used by a foreign state to exert influence on EU entities; even though secondary sanctions are not enforced by the EU member states, EU firms might still have an incentive to comply with them.²⁶⁸

So far, secondary sanctions of concern to the EU have been those enacted by the United States. The US administration has presented or threatened to present European firms with a choice between access to US markets or to those of a targeted country.²⁶⁹ The size of the US market, the role of the US dollar as an international currency, and the centrality of many American companies in global financial transactions, such as Visa and Mastercard, have been a weighty factor even for those European firms that do not operate in the US home markets.²⁷⁰ Over-compliance by European businesses amplifies the effect of US secondary sanctions, as firms interpret the restrictions broadly for fear of violating US restrictions.²⁷¹ As detailed in this study, the Trump administration has harnessed an assertive sanctions regime, using the threat of losing access to US markets

268 Meyer, J.A., 'Second Thoughts on Secondary Sanctions', *Pennsylvania Journal of International Law*, vol. 30, no. 3, 2009, pp. 905-967.

269 'Secondary sanctions generally are directed towards foreign persons. These measures threaten to cut off foreign individuals or companies from the U.S. financial system if they engage in certain conduct with a sanctioned entity, even if none of that activity touches the United States directly.' Lew, J., 'Remarks of Secretary Lew on the Evolution of Sanctions and Lessons for the Future at the Carnegie Endowment for International Peace', *US Department of the Treasury*, 30 March 2016, <https://www.treasury.gov/press-center/press-releases/pages/jl0398.aspx>, accessed 17 March 2020.

270 Geranmayeh, E. & Rapnouil, M.L., 'Meeting the Challenge of Secondary Sanctions', in M. Leonard & J. Shapiro eds., *Strategic Sovereignty: How Europe Can Regain the Capacity to Act*, European Council on Foreign Relations, Berlin, 2019, pp. 61-84; Fleming, S. 'Currency warrior: why Trump is weaponizing the dollar', *Financial Times*, 1 July 2019, <https://www.ft.com/content/5694b0dc-91e7-11e9-aea1-2b1d33ac3271>, accessed 17 March 2020.

271 Portela, C., 'How the EU learned to love sanctions', in M. Leonard ed., *Connectivity Wars*, European Council on Foreign Relations, London, 2016, pp. 36-42.

as a tool to push foreign entities to sever their ties with countries such as North Korea, Iran, Russia, and Venezuela.²⁷²

Among the US secondary sanctions to which Europe is sensitive are those imposed against Iran. In January 2016, Iran, China, France, Russia, the UK, the US, and Germany successfully negotiated the Joint Comprehensive Plan of Action (JCPOA) aimed at nuclear non-proliferation. In May 2018, the new Trump administration withdrew from the agreement, reimposed heavy sanctions on Iran to realign its nuclear policies, and began pressuring financial institutions around the world to stop dealings with Iranian actors. European business engaging with Iran now faces the risk of being cut off from the US financial system.²⁷³ Even if European authorities considered the firms' conduct in line with the Union's continued commitment to the JCPOA, an exodus of European companies from Iran, including France's Total, Germany's Siemens, and Italy's Danieli, has ensued.²⁷⁴

The US has also imposed secondary sanctions on Russia. In the aftermath of the 2014 Ukraine crisis, the EU and the US agreed on the broad lines of restrictive measures imposed on Russian entities. Since 2017, Washington has adopted a more assertive position, passing legislation that imposes secondary sanctions on foreign actors involved with Russian energy and banking sectors, and retaining the option of further sanctions.²⁷⁵ While the European sanctions against Russia remain in place, many European businesses have deemed it necessary to comply with US demands as well. In Finland, for instance, Russian oligarch Boris Rotenberg unsuccessfully filed a lawsuit against several banks operating in Finland, claiming that they had refused to provide banking services because they feared US secondary sanctions.²⁷⁶ Recent measures taken

272 Harrell, P.E., 'Trump's Use of Sanctions Is Nothing Like Obama's', *Foreign Policy*, 5 October 2019, <https://foreignpolicy.com/2019/10/05/trump-sanctions-iran-venezuela-russia-north-korea-different-obamas/>, accessed 13 March 2020; Gibson Dunn '2018 Year-End Sanctions Update', *Gibson Dunn*, 11 February 2019, <https://www.gibsondunn.com/2018-year-end-sanctions-update/>, accessed 13 March 2020.

273 Sultoon, S. & Walker, J., 'Secondary sanctions' implications and the transatlantic relationship', *Atlantic Council & UK Finance*, September 2019, https://www.atlanticcouncil.org/wp-content/uploads/2019/09/SecondarySanctions_Final.pdf, accessed 17 March 2020.

274 European External Action Service, *Iran deal: EU remains committed to the continued implementation of the nuclear deal, Mogherini says*, 8 May 2018, https://eeas.europa.eu/headquarters/headquarters-homepage/44239/iran-deal-eu-remainscommitted-continued-implementation-nuclear-dealmogherini-says_de, accessed 17 March 2020; Economist, 'European companies will struggle to defy America on Iran', *The Economist*, 8 November 2018, <https://www.economist.com/business/2018/11/08/european-companies-will-struggle-to-defy-america-on-iran>, accessed 17 March 2020.

275 US Department of the Treasury, *Countering America's Adversaries Through Sanctions Act*, 2017, <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/caatsa.aspx>, accessed 17 March 2020; Reuters, 'FACTBOX - "The sanctions bill from hell" against Russia makes a comeback', *Reuters*, 21 February 2019, <https://uk.reuters.com/article/usa-russia-sanctions/factbox-the-sanctions-bill-from-hell-against-russia-makes-a-comeback-idUKL5N20F58G>, accessed 17 March 2020.

276 Yle, 'Russian oligarch files service violation lawsuit against Finnish banks', *Yle News*, 21 October 2018, https://yle.fi/uutiset/osasto/news/russian_oligarch_files_service_violation_lawsuit_against_finnish_banks/10467870, accessed 17 March 2020.

by the Trump administration against firms building Nord Stream 2, a gas pipeline between Russia and Germany, illustrate the versatility of the tool.

6.2. EUROPEAN RESPONSE

The EU is keen to find a defence against US secondary sanctions, as they compromise the Union's authority over its independent investment and trade policies.²⁷⁷ A key legislative tool has been the Blocking Statute, which prohibits European companies from complying with US extraterritorial sanctions. The legislation was drafted but never implemented to dissuade the US from imposing sanctions against Cuba, Iran and Libya in the mid-1990s. In 2018, the Statute was updated to defend the EU's foreign policy on Iran.²⁷⁸ Further, France, Germany and the UK have established the Instrument in Support of Trade Exchanges (INSTEX), which attempts to provide EU nations and non-EU members with a non-US dollar, non-SWIFT mechanism for doing business with Iranian companies. Up to now, the instrument has been confined to facilitating trade in goods permitted under the US sanctions, such as pharmaceuticals, medical devices, and agri-food goods.²⁷⁹

Initially, the divergence between EU and US sanctions policies seems to place European companies between a rock and a hard place. The US authorities pressure European companies to comply with secondary sanctions while Europeans build up measures, including legal instruments, to insulate the firms against the US influence. The unilateral US strategy has often prevailed to date: the case of Iran in particular has exposed the fact that European capitals currently possess relatively few means to convince European firms not to exit the country if the US threatens businesses with repercussions.²⁸⁰

At least three factors have contributed to this asymmetry. First, the US sanctions regime is better resourced for the strategic use of secondary

277 Bildt, C., 'Trump's decision to blow up the Iran deal is a massive attack on Europe', *The Washington Post*, 13 May 2018, <https://www.washingtonpost.com/news/global-opinions/wp/2018/05/12/trumps-decision-to-blow-up-the-iran-deal-is-a-massive-attack-on-europe/>, accessed 17 March 2020.

278 European Commission, *The Blocking Statute: protecting EU operators, reinforcing European strategic autonomy*, 2018, https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/blocking-statute_en, accessed 17 March 2020.

279 E3 Foreign Ministers, *Joint statement on the creation of INSTEX, the special purpose vehicle aimed at facilitating legitimate trade with Iran in the framework of the efforts to preserve the Joint Comprehensive Plan of Action (JCPOA)*, 31 January 2019, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/775681/19_01_31_Joint_Statement_E3.pdf, accessed 17 March 2020; Geranmayeh, E. & Batmanghelidj, E., 'Trading with Iran via the special purpose vehicle: How it can work', *European Council on Foreign Relations*, 7 February 2019, https://www.ecfr.eu/article/commentary_trading_with_iran_special_purpose_vehicle_how_it_can_work, accessed 17 March 2020.

280 Batmanghelidj, E. & Hellman, A., 'OFAC off', *Foreign Policy*, 15 June 2018, <https://foreignpolicy.com/2018/06/15/ofac-off/>, accessed 17 March 2020; Geranmayeh & Rapnouil, loc. cit.

sanctions than the EU's decentralized system is for countering them. In designing, implementing and enforcing sanctions, the US Office of Foreign Asset Control (OFAC) follows up on foreign companies' undertakings on a scale that has no parallel in Europe.²⁸¹ The OFAC has managed to use its resources strategically through "naming and shaming" the entities it targets, and by maintaining fuzzy guidelines on the measures that the firms need to take to avoid secondary sanctions. As a result, European companies also tend to "overcomply" in order to ensure that they will not be accused of circumventing sanctions.²⁸²

In comparison, the EU does not yet have robust mechanisms for sharing and mitigating the risks companies face if they reject US secondary sanctions. INSTEX shows that European countries recognize the need for a common front, but the instrument has gained momentum slowly and remains confined to trade in products that do not defy the US sanctions.²⁸³ Other potential measures to counter US pressure include improving the EU's own implementation of its sanctions and countermeasures to them, such as the Blocking Statute. However, the relative lack of risk-sharing mechanisms enables OFAC to target individual European companies.

Second, changes in US foreign policy have made its secondary sanctions seem intrusive for Europeans. During the Obama administration, the use of secondary sanctions against Iran was part of a foreign policy more or less coordinated with that of the EU. Moreover, in the immediate aftermath of the Russian annexation of Crimea, the US and the EU held shared foreign policy concerns. However, the US has stepped up its secondary sanctions regime against both states with little transatlantic dialogue, a process cemented by the 2017 Countering America's Adversaries Through Sanctions Act (CAATSA).²⁸⁴

Accordingly, the EU has explored means of resisting rather than appeasing US demands. Experts have called for European deterrence and resilience measures against secondary sanctions, which would include reducing the US opportunities to use the interdependencies against Europe's interests, and building the capacity of the European bloc to retaliate with similar measures. Such proposals do not rule out a dialogue between the US and EU sanctions policies, but the Trump administration's unilateral policy line tends to diminish the possibilities for this in the short

281 E.g. the listing and delisting of the En+ Group on the London Stock Exchange: UK House of Commons Foreign Affairs Committee, *Fragmented and incoherent: the UK's sanctions policy*, 12 June 2019, <https://publications.parliament.uk/pa/cm201719/cmselect/cmcaff/1703/170302.htm>, accessed 16 March 2020, paragraphs 42–46.

282 Geranmayeh & Rapnouil loc. cit.; Sultoon & Walker loc. cit.

283 Economist, 'European companies will struggle to defy America on Iran', loc. cit.

284 Sultoon & Walker loc. cit.; US Department of the Treasury, loc. cit.; Harrell loc. cit.

term. Further, there are no guarantees that future US presidents would not resort to new secondary sanctions.²⁸⁵

Third, the US secondary sanctions derive much of their strength from European companies' asymmetrical dependence on the US financial markets. As noted above, it is not only European enterprises aiming for US home markets that are affected. The US dollar remains a global medium of exchange, and American authorities operate or have a say in several key elements of the global financial system. For example, in November 2018, SWIFT, a company based in Belgium, yielded to US demands by cutting the access of certain Iranian banks to its cross-border payment network, a decision that came as a disappointment to European policy-makers.²⁸⁶ American say in many key tenets of the global financial system is unlikely to diminish in the short term. Yet the EU can shield itself against some forms of US strong-arming. Bolstering the global role of the euro is one part of the efforts. Enhancing international dialogue on sanctions could also help reduce the Union's interdependence on other power blocs, as other countries, including China, India, Russia and Turkey, are simultaneously engaged in creating non-dollar platforms. The aim of such efforts is not to reduce Europe's dependencies on the US economy, but rather to make it costlier for the US to use them against European interests.²⁸⁷

The EU is looking for new measures against secondary sanctions at a time when major powers are making increasing use of economic asymmetries as foreign policy tools. The likelihood that European firms dealing with China or Russia – which are more important trading partners for Europe than Iran – will face further secondary sanctions in the future cannot be ruled out. Moreover, it is unlikely that the US will remain the only major actor that leverages its economic weight to exert extraterritorial demands for geopolitical gains. Hence, the EU's measures to counter secondary sanctions reflect a wider trend in international politics.

285 Geranmayeh & Rapnouil loc. cit.

286 Peel, M., 'Swift to comply with US sanctions on Iran in blow to EU', *The Financial Times*, 5 November 2018, <https://www.ft.com/content/8f16f8aa-e104-11e8-8e70-5e22a430c1ad>, accessed 17 March 2020.

287 Geranmayeh & Rapnouil loc. cit.

/ 7

7. FUTURE PROSPECTS: ADAPTING TO THE GEO-ECONOMIC ENVIRONMENT

Niklas Helwig & Juha Jokela

Summary

- In addition to being an incentive for closer cooperation, economic interdependence between states is increasingly regarded as a potential vulnerability. The disruption of trade, financial relations or energy supply can have far-reaching consequences, while at the same time being a more cost-effective and acceptable tool in international relations compared to military confrontation.
- Given the EU-level competences in the field of trade and its regulatory clout, the EU is at first sight well-positioned to be a powerful actor in the geo-economic competition. However, other actors, such as China, Russia and the US, can use the decentralized system of the EU by actively undermining its internal cohesion.
- The geo-economic competition poses a challenge to the EU's sanctions policy with regard to the Union's cohesion (ability to decide), sovereignty (ability to implement) and credibility (ability to matter).

Recommendations

- Multilateral cooperation is an important prerequisite for the effective use of EU sanctions. The EU and its member states should build alliances in political and diplomatic support of international sanctions regimes.
- While geo-economic competition might make the adoption of comprehensive, bilateral sanctions more challenging in the future, the EU can make progress in horizontal sanctions regimes. The recently initiated EU human rights framework is a positive example.

- The departure of the UK and disquieting developments in the US sanctions policy underline the need for a broader discussion on the future prospects of sanctions as an EU foreign policy instrument among member states.

7.1. INTRODUCTION

The development of the EU's sanctions policy is taking place amidst a larger shift in the international order, which affects the EU's ability to formulate and effectively apply joint policies. The last decade has seen a relative decline in the power of "the West" and the rise of new players. China in particular has transformed from an economic powerhouse into the prime challenger of US hegemony.²⁸⁸ More than previously, the US administration under President Donald Trump has acknowledged the new competitive international environment and made great-power rivalry a core theme of its latest national security strategy.²⁸⁹ It did not take long for Europeans to realize that their traditional foreign policy model based on multilateral rule-based cooperation facilitated by strong global and regional institutions is facing difficulties. By way of example, the former German foreign minister declared in 2017, "in a world full of carnivores, vegetarians have a very tough time of it".²⁹⁰ In a similar vein, President of the European Commission Ursula von der Leyen stated on the eve of her inauguration that the EU could no longer rely on soft power to promote its interests and that "Europe must learn the language of power".²⁹¹ This chapter explores the challenges that the EU and its sanctions policy are facing in the area of international competition and what this means for the future prospects of this specific policy area.

7.2. THE EU IN THE GEO-ECONOMIC COMPETITION

A key feature of today's international competition is that states are increasingly rivals on the economic playing field. Most relevant international

288 Creutz, K. et al., 'The changing global order and its implications for the EU', *FIIA Report*, no. 59, 7 March 2019, <https://www.fiaa.fi/en/publication/the-changing-global-order-and-its-implications-for-the-eu>, accessed 17 March 2020.

289 Trump, D.J., 'National Security Strategy of the United States of America', *White House*, December 2017, <https://www.whitehouse.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf>, accessed 13 March 2020.

290 Interview of Sigmar Gabriel: Federal Foreign Office of Germany, *In a world full of carnivores, vegetarians have a very tough time of it* [retrieved from Der Spiegel], 1 May 2018, accessed 17 March 2020.

291 Von der Leyen, U., 'State of Europe', speech at the *Allianz Forum*, 8 November 2019, https://ec.europa.eu/commission/presscorner/detail/en/speech_19_6248, accessed 27 April 2020.

players deploy economic means to pursue their strategic goals. China uses its “Belt and Road Initiative” of infrastructure development to exert influence in Asia, Africa and in the Asian–European corridor. It is expected to pour about 1.2 – 1.3 trillion US dollars into the development of railways, highways or energy pipelines by 2027.²⁹² The US administration and US Congress increasingly favour the economic tools in their foreign policy toolbox and do not shy away from imposing trade tariffs on key competitors including the EU, and economic sanctions on foes, with secondary implications for allies.²⁹³ Russia allegedly uses its energy resources for political ends in order to divide Western partners and to keep its alliances together.²⁹⁴

These individual strategies signify that international relations are very different today from the expectations of the 1990s. After the Cold War, a cooperative and rule-based approach seemed possible, based on the growing economic interdependence of states. In the last decade, the vulnerabilities associated with economic interdependence became much more prominent.²⁹⁵ The disruption of trade, financial systems or energy supply can have far-reaching consequences for a target and can, at the same time, be more cost-effective and acceptable compared to military confrontation.

In addition to the exploitation of economic interdependencies, states use investments and regulatory power to compete in the race for new technologies and for setting global standards. While multilateral cooperation (for example via the UN system, the World Trade Organization or the more informal G20) was once intended to resolve transnational challenges in a cooperative fashion, it is now limping. Instead, bilateral trade deals have increased in relevance, and are pursued with the aim of setting joint standards and maintaining strategic partnerships. In addition, unilateral action has moved to centre stage, for example on the question of how to certify next-generation mobile communication technology (5G). Instead of finding a solution at the EU level, member states set their own criteria for the adoption of the new mobile technology. In short, the current era of geo-economic competition is less multilateral in nature and more antagonistic as well as national interest-driven instead.

292 Chatzky, A. & McBride, J., ‘China’s Massive Belt and Road Initiative’, *Council on Foreign Relations*, 21 May 2019, <https://www.cfr.org/backgrounder/chinas-massive-belt-and-road-initiative>, accessed 17 March 2020.

293 See chapter 2.

294 Wigell, M. and Vihma, A., ‘Geopolitics versus geoeconomics: the case of Russia’s geostrategy and its effects on the EU’, *International Affairs*, vol. 92, no. 3, 2016, pp. 605–627.

295 Scholvin, S. & Wigell, M., ‘Geo-Economics as Concept and Practice in International Relations: Surveying the State of the Art’, *FIIA Working Paper*, no. 102, 16 April 2018, <https://www.fiaa.fi/en/publication/geo-economics-as-concept-and-practice-in-international-relations>, accessed 18 March 2020.

At first sight, the EU is relatively well-positioned to be a more powerful actor in the geo-economic rather than the geopolitical competition. On foreign and security policy, the EU's international clout is weakened by the fact that "high politics" still remains at the core of member states' sovereignty. In contrast, member states transferred the regulatory and commercial competences of the internal market, including external trade policy, to the supranational level a long time ago and allocated sizable sums in the EU budget for investments in research and development or international assistance. The single currency and monetary policy set by the supranational Europe Central Bank has strengthened the EU's position in the global financial system and regulation. Consequently, the EU and the European Commission are much more at home on the geo-economic playing field. President Trump's perception of an EU "killing" the US on trade matters simply goes to show that the EU is taken seriously on the international stage. The 2019 start of the European Commission under Ursula von der Leyen exemplifies the confident role that Brussels seemingly takes in a more competitive world. On issues such as climate change, digitalization, and defence capabilities, the von der Leyen Commission is willing to use its budget as well as regulatory and executive powers to push a global agenda in Europe's interest.²⁹⁶

However, one should avoid an all too rosy picture of the EU's ability to make an impact on the geo-economic competition. The EU has some systemic disadvantages compared to its competitors.²⁹⁷ Compared to authoritarian states, or states with strong state control of domestic industries, such as China and Russia, the EU lacks the ability to translate political interests directly into economic actions. As a liberal economy, the EU and its member states can only regulate and incentivize economic activities within the framework of the law.

In addition, the EU is also faced with a disadvantage compared to other democracies, such as the US. While the US is centralized in its foreign policy decision-making and has significant resources for nationwide implementation of policies, the EU's decision-making is slowed down by the divergent interests of member states and is often dependent on national authorities for implementation.²⁹⁸ While the EU's supranational competences are strongest in the field of the economy, they do not match those of key competitors.

296 Helwig, N., 'The new EU leadership: The von der Leyen Commission focuses on Europe's geo-economic power', *FIIA Briefing Paper*, no. 274, 13 November 2019, <https://www.fiaa.fi/en/publication/the-new-eu-leadership>, accessed 16 March 2020.

297 Kundnani, H. 'Europe's limitations', in Leonard, M. *Connectivity Wars*, European Council for Foreign Relations, 2016, pp. 156-162.

298 See chapters 4 and 5.

Competitors, such as China, Russia and the US, can also try to benefit from the decentralized system of the EU by actively trying to influence EU member states, with implications for the EU's internal cohesion. While an outside power can actively use economic interdependencies to break the EU consensus, they can also rely on more subtle forms of influence to advance their interests. The existence of close economic ties or foreign investment alone can change the calculus of an EU member state on important geo-economic or foreign policy matters. The most vivid example of this is China's strategic investment in Greek infrastructure, especially in the Port of Piraeus. The economic ties between Beijing and Athens allegedly held Greece back in its support for an EU statement on Chinese human rights abuses.²⁹⁹

7.3. GEO-ECONOMIC CHALLENGES FOR THE EU'S SANCTIONS POLICY

We can identify three geo-economic challenges for the EU's sanctions policy:

- *Cohesion challenge*: The unanimity requirement of EU sanctions makes this policy area vulnerable to economic and political coercion from outside players. Thus far, attempts to undermine EU cohesion on sanctions through hard economic diplomacy have been unsuccessful. For example, Russia's counter-actions towards EU sanctions, including import bans, can also be interpreted as an attempt to undermine EU cohesion in its approach towards Russia during the Ukraine crisis. Even though the counter-actions affected some countries more than others, such as Finland, the EU consensus on Russia sanctions was not broken. However, in a trade war with a major power, such as China, the economic effects for big export countries like Germany would be much more far-reaching and consensus could be difficult to uphold.
- *Sovereignty challenge*: The accumulation of economic power outside the EU leads to a situation in which sovereign decisions by elected governments in Europe are undermined or rendered ineffective. For example, the dominance of the US market and the dollar for global payments is a massive source of power for the US administration. The US Congress or the White House do not shy away from

²⁹⁹ Emmott, R. & Koutantou, A., 'Greece blocks EU statement on China human rights at U.N.', *Reuters*, 18 June 2017, <https://www.reuters.com/article/us-eu-un-rights/greece-blocks-eu-statement-on-china-human-rights-at-u-n-idUSKBN1990FP>, accessed 18 March 2020.

making use of this power and pressuring EU business to comply with US sanctions.³⁰⁰ In the case of the Iran nuclear deal, this meant that the sovereign decision of EU countries to lift sanctions against Iran and implement the nuclear deal was rendered ineffective when the US reinstated its sanctions and forced EU businesses to comply. There are signs that the US might increasingly make use of this coercive policy tool.³⁰¹ Even though there are no concrete signs, it is also not beyond the realms of possibility that China might strong-arm the EU in the future through trade restrictions (for example on rare earths).³⁰²

- *Credibility challenge*: Power in international relations is dependent on perceptions. Imagine a new round of nuclear negotiations with Iran ten years from now. The leadership in Teheran will know from experience that the real economic power does not reside with Europe but with the US, and will see the EU's position in the talks as less credible. EU sanctions policy will lose its relevance if the targets perceive the real power to be residing elsewhere. Relatedly, if the consensus on major sanctions regimes set by the EU breaks down and sanctions are lifted without achieving their stated objectives (or a new negotiated resolution to the issues), the credibility of the EU as a sanctions sender and foreign policy actor would be severely damaged.

7.4. FUTURE PROSPECTS

As geo-economic competition increases, there are clear signs that the world in the 2020s will not be the same as during the 2010s. EU member states cannot take it for granted that the qualitative improvements in the EU's sanctions policy can be sustained over the next decade. The future prospects of the EU's sanctions policy depend on the way in which geo-economic competition will develop and on how the EU will be able to adapt to the new environment.

In particular, sweeping economic sanctions will be difficult for the EU to adopt and maintain in a future marked by geo-economic competition. As the Iran and Russia sanctions of the past two decades have shown, broader trade and financial bans often require a high degree of

³⁰⁰ See chapter 6.

³⁰¹ See chapter 2.

³⁰² Geranmayeh, E. & Rapnouil, M.L., 'Meeting the Challenge of Secondary Sanctions', in M. Leonard & J. Shapiro eds., *Strategic Sovereignty: How Europe Can Regain the Capacity to Act*, European Council on Foreign Relations, Berlin, 2019, pp. 61-84.

international cooperation, EU internal cohesion to achieve the political decision, and economic instruments to implement them. In the case of the Iran sanctions, this was realized through the involvement of the P5+1 and a close consultation process in Brussels on the progress of the nuclear talks. While the Russia sanctions were to some degree based on German leadership, the support of the Obama administration in nudging the remaining sceptics in European capitals to an agreement was vital. The competitive international environment already constrained international cooperation on these security issues. In addition, for some member states, breaking with the EU consensus and following policies more closely in line with either US or Russian interests might be appealing.

Nevertheless, there is still a future for the EU's sanctions policy. First, the obituary on multilateral cooperation has not been written yet. The US attack on multilateral agreements and organizations, from the Iran nuclear deal to the World Trade Organization, has already caused a counter-reaction. For example, Germany, together with France, has launched the "Alliance for Multilateralism". Participating countries, such as Canada, Mexico, South Korea and Japan, have high stakes in the preservation of a rules-based order. The EU has also been busy forging new alliances on human rights matters in the UN Human Rights Council.³⁰³ It seems obvious that multilateralism in a world with a more assertive China, US and Russia is prone to being more complicated and often based on ad-hoc coalitions and piecemeal compromises. Nevertheless, it will still offer possibilities to cooperate and build alliances in political and diplomatic support of international sanctions regimes. Keeping the UK as closely aligned as possible with the EU's sanctions policy is paramount in this regard.

Second, it is still very early days for the development of a better economic toolbox for the EU to implement its policies amidst a competitive environment. It is widely acknowledged that the INSTEX mechanism for trade with Iran, despite US sanctions on Teheran, has yielded poor results so far. Despite being the second largest currency, the international role of the euro has remained relatively weak.³⁰⁴ Yet the EU has woken up to the challenge. Ursula von der Leyen tasked the Commissioner for Energy, Kadri Simson, with "looking at ways to sharply increase the use of the euro in energy markets".³⁰⁵ The Russian energy giant Rosneft

303 Gowan, R. & Dworkin, A., 'Three crises and an opportunity: Europe's stake in multilateralism', *ECFR Policy Brief*, 5 September 2019, https://www.ecfr.eu/publications/summary/three_crises_and_an_opportunity_europes_stake_in_multilateralism, accessed 18 March 2020.

304 Sandbu, M., 'Europe First: taking on the dominance of the US dollar', *Financial Times*, 5 December 2019, <https://www.ft.com/content/3165c19c-0ba0-11ea-bb52-34c8d9dc6d84>, accessed 18 March 2020.

305 Von der Leyen, U., 'Mission letter to Kadri Simson, Commissioner-designate for Energy', *European Commission* 10 September 2019, https://ec.europa.eu/commission/sites/beta-political/files/mission-letter-kadri-simson_en.pdf, accessed 18 March 2020.

has announced that it will run future tenders denominated in euros not dollars.³⁰⁶ These efforts do not aim to decouple the EU's trade relations from the US economy, but they might render a future US strong-arming tactic against EU businesses a less attractive option.³⁰⁷

Third, the main advance in the EU's sanctions policy in the last decade has been made in the field of targeted sanctions in the form of travel bans and asset freezes, while the larger yet still targeted bans, such as those against sectors of the Iranian and Russian economies, have been the exception.³⁰⁸ The toolbox of targeted sanctions can be further improved irrespective of the growing geo-economic competition. The push towards horizontal sanctions regimes – organized along thematic lines rather than by countries – is noteworthy. In early December 2019, the EU Foreign Affairs Council cleared the way for the creation of an EU human rights sanctions framework similar to the US Magnitsky Act. Instead of singling out specific countries, this framework will allow for the listing of targets related to human rights abuses independent of their location. Another EU sanctions regime headlined by a theme rather than a country concerns cyber perpetrators.³⁰⁹ The EU has taken action to deter cyber-attacks by building its readiness to respond with sanctions.

By targeting specific concerns rather than countries, the EU avoids singling out and confronting individual countries. At the same time, it will be more nimble in reacting to international events. On the downside, horizontal sanctions do not put the same kind of pressure on a targeted regime. One of the main benefits of the traditional country-specific sanctions is that they are part of a broader diplomatic approach aimed at changing the calculation of a country's leadership. The effect of horizontal sanctions regimes is more diffuse and the pressure on targets cannot be as easily leveraged by traditional diplomatic instruments.

7.5. CONCLUSION

Without question, the EU's sanctions policy faces serious challenges in the environment of geo-economic competition. From a European perspective, sanctions are primarily seen and have been used as a tool in support of

306 Chumakova, N., & Yagova, O., 'Exclusive: Russia's Rosneft to switch to euros in oil products tenders – traders', *Reuters*, 21 August 2019, <https://www.reuters.com/article/us-russia-rosneft-tenders-euro/exclusive-russias-rosneft-to-switch-to-euros-in-oil-products-tenders-traders-idUSKCN1VB15J>, accessed 18 March 2020.

307 See chapter 6.

308 See chapter 1.

309 Portela, C. 'The Spread of Horizontal Sanctions', *CEPS in Brief*, 7 March 2019, <https://www.ceps.eu/the-spread-of-horizontal-sanctions>, accessed 18 March 2020.

international norms based on multilateral cooperation. When actors, such as the US, use sanctions as a tool of power politics, the EU has difficulties in adapting to this harsh new reality. There is already a clear intention to increase the resilience of the EU's sanctions policy framework. However, the departure of the UK, disquieting developments in the US sanctions policy and a general climate of geo-economic competition also underline the need for a broader discussion on the future prospects of sanctions as an EU foreign policy instrument among member states.

CONCLUSIONS AND RECOMMENDATIONS

Niklas Helwig, Juha Jokela & Clara Portela

The EU's sanctions regimes have become a prominent coercive instrument in the CFSP's toolkit. They are considered the "go-to option" for decision-makers to address a growing number of foreign policy and security challenges.³¹⁰ The last decade saw a qualitative leap in the EU's use of restrictive measures, as demonstrated by the bans adopted to support the nuclear non-proliferation efforts in Iran and the sanctions against Russia over the Ukraine crisis.³¹¹ In neither case did the EU shy away from introducing targeted economic sanctions despite the noticeable costs they entail for European firms. The sanctions on Russia constituted a shift in the foreign policy tradition of several member states, such as Germany, which was characterized by profuse economic engagement with Moscow. The use of targeted sanctions against officials, influential businesspeople and companies became a frequent instrument in a decade marked by regional crises ranging from the European neighbourhood to Latin America.

The efficacy of sanctions has frequently been called into question, as the modification of targets' behaviour often proves elusive. Critics of EU sanctions against Russia often point to Moscow's continued violation of international norms in Ukraine despite the EU's diplomatic, financial and trade restrictions. Such a view fails to consider the multiplicity of functions that sanctions perform. These include, inter alia, stigmatizing violations of international norms, deterring further escalation, demonstrating resoluteness towards domestic audiences, displaying EU unity,

³¹⁰ Lohmann, S., 'Diplomats and the Use of Economic Sanctions', in V. Stanzel (ed.), *New Realities in Foreign Affairs*, Nomos, Baden-Baden, 2019, pp. 23-32, p. 23.

³¹¹ Portela, C., 'How the EU learned to love sanctions', in M. Leonard (ed.), *Connectivity Wars*, European Council on Foreign Relations, London, 2016, pp. 36-42.

as well as supporting allies in the sanctions coalition. High Representative Josep Borrell recently underlined the “indispensable role” of sanctions in countering breaches of international law, stanching the flow of arms into war zones, combatting human rights abuses, and supporting peace processes.³¹²

There have been challenges along the way, however, which are representative of the struggles of the CFSP in general. These include delays in sanctions imposition (e.g. on Venezuela), watered-down compromises (e.g. on Belarus) or even the failure to agree on EU-level bans at all (e.g. weapons exports to Turkey).³¹³ Nevertheless, the EU has been able to use sanctions to draw red lines when it comes to violations of international norms, and has been ready to compromise its own short-term economic interests in support of internationally agreed principles.

Today, it looks far from certain as to whether the positive story of EU sanctions will continue into the 2020s. The international environment puts pressure on the EU’s decision-making capabilities and restrictive measures as a foreign policy tool. Increased international competition is likely to harm the EU’s internal cohesion as powers such as China and Russia might seek to undermine the EU consensus. The UK’s withdrawal has left the EU without its most capable sanctions player, and the US has morphed from a privileged partner in sanctions diplomacy into a challenger of European sovereignty, as the secondary sanctions on Iran or Nord Stream II exemplify. In order to adapt its sanctions policy to today’s challenges, the EU ought to tackle the abovementioned questions in a more strategic fashion than hitherto. Moreover, in the light of the increasing centrality of this tool in the CFSP, a reassessment of the adequacy of the internal machinery for sanctions adoption and implementation is in order. In the following sections, we identify five key challenges to the future development of EU sanctions policy and suggest avenues to address them.

312 Council of the European Union, *Declaration by the High Representative Josep Borrell on behalf of the EU on the UN Secretary General’s appeal for an immediate global ceasefire* [media release], 3 April 2020, https://www.consilium.europa.eu/en/press/press-releases/2020/04/03/declaration-by-the-high-representative-josep-borrell-on-behalf-of-the-eu-on-the-un-secretary-general-s-appeal-for-an-immediate-global-ceasefire/?mc_cid=418455de9d&mc_eid=d35535bd98, accessed 30 April 2020.

313 For some examples, see König, N., ‘Qualified Majority Voting in EU Foreign Policy: Mapping Preferences’, *Policy Brief*, Jacques Delors Centre, 10 February 2020, https://hertieschool-f4e6.kxcdn.com/fileadmin/user_upload/20200210_Policy_Brief_QMV_Koenig.pdf, accessed 13 March 2019.

RECOMMENDATIONS

Reviewing the EU's internal machinery

Decision-making

The EU's sanctions system is designed to keep member states in the driving seat: decisions on sanctions require unanimity and their implementation is decentralized. The advantage of the system is that member states retain ownership of the EU's sanctions policy, which arguably makes the proactive and credible use of the policy instrument possible in the first place. The downside is their vulnerability to foreign interference disrupting the EU consensus. The challenges the EU faces have led to calls for a reform of the Union's sanctions machinery. The ideas put forward by the European Commission and some member states include the introduction of qualified majority voting (QMV) on CFSP decisions to impose sanctions, and a centralized licensing agency similar to the US Office of Foreign Assets Control (OFAC). Pending the introduction of drastic reforms, a number of modest albeit potentially effective steps could improve the management of sanctions.

The EU could adopt a pragmatic approach to the application of QMV on sanctions decision-making. This can be done by invoking the use of treaty provisions like Art. 32(2) TEU, which allows sanctions to be amended without the need for unanimity, unless specified otherwise in the original CFSP decision.³¹⁴ The aim is to allow the Council to adjust sanctions more quickly to changing circumstances on the ground and to foster a culture of majority voting on foreign policy issues. However, only a cautious expansion of QMV is advisable, and should ideally be applied to modifications of listings in uncontroversial sanctions regimes. The systematic use of QMV in this politically and economically sensitive policy area might harm the sense of ownership by member states, which is crucial for maintaining unity in the Council. A sudden shift from unanimity to QMV in sanctions matters risks alienating member states that fear losing influence over the process. After all, the imposition of EU sanctions impinges directly on national sovereignty and, equally importantly, on prosperity. Ultimately, what drives the imposition and persistence of sanctions regimes is the exercise of persuasive leadership in the decision-making process of sanctions adoption. The sanctions against Russia have shown that leadership by some member states on sanctions decision-making is crucial. Leadership not only concerns influential member states like Germany and France,

³¹⁴ European Political Strategy Centre, 'A Union that delivers. Making use of the Lisbon Treaty's *passerelle* clauses', *EPSC Brief*, January 2019; König, *op. cit.*

but may also emerge from member states with particular expertise and interest in sanctions policy, such as the Netherlands or Denmark, and/or coalitions of member states.

Implementation

A joint EU approach is equally important during the implementation phase of sanctions. Both the implementation and enforcement of sanctions remain in the hands of member states, which sometimes allows for an uneven application of the rules and creates opportunities for some actors to evade the bans. Stricter implementation, closely monitored by the Commission, will help to homogenize standards across the EU and erode the perceived advantage enjoyed by firms operating elsewhere. If the goal is to foster an even, EU-wide implementation and enforcement of sanctions under closer Commission supervision, every member state must ensure that it is implementing and enforcing bans properly.

Capacity building

Due to their targeted nature, sanctions are becoming increasingly complex. They must be carefully designed to affect specific actors or industries and to withstand legal challenges in front of the ECJ. Targeted sanctions require greater institutional capacity than full embargoes to be properly implemented and to avoid humanitarian impacts.³¹⁵ Their design and implementation is a collective effort by 27 member states involving various ministries, state agencies and the private sector. This exercise obviously requires solid expertise. Now that the UK has withdrawn, EU member states have lost one of the principal drivers and sources of expertise on sanctions policy from their ranks. To offset this loss of expertise, the EU should strengthen its own capabilities for the design as well as the implementation and enforcement of sanctions. Ideally, this entails an upgrade at both national and EU levels.

At the EU level, member states could enhance joint resources, particularly on the labour-intensive compilation of evidence packages that underpin sanctions listings. The EEAS could better support the preparation of sanctions (e.g. preparing evidence packages) if its resources were increased. The European Commission's role in the collection and exchange of information on sanctions implementation at the national level should be enhanced in order to promote the homogeneous implementation of sanctions regimes throughout the EU.

³¹⁵ Charron, A., Giummelli, F. & Portela, C., 'The United Nations and targeted sanctions', *International Affairs*, vol. 91, no. 6, 2015, pp. 1335-1337.

While strengthening the capabilities at the EU level might be the most cost-effective option, a parallel upgrading at the national level is desirable and will help capitals retain some national ownership. Resources available for the design and implementation of sanctions are modest in most member states. New resources are particularly needed in government units that deal with the design, implementation and enforcement of sanctions. Depending on the organization of sanctions planning and implementation in each member state, these resources might be located in the finance ministry or other agencies. As part of capacity-building efforts, foreign ministries across the EU could integrate a training element on sanctions design and implementation into their regular diplomatic education. The build-up of human capital at the EU and member state level would also benefit from fostering research in this area and from engaging closely with the research community. If small and middle-sized states are not endowed with appropriate design and analysis capacities commensurate with the increased requirements of international sanctions, they will remain under the influence of those member states with larger bureaucracies. Enhancing capacity is not only useful for the purpose of crafting, implementing and enforcing EU autonomous sanctions. It will also assist EU members to become better at implementing UN sanctions, especially since they are often elected as rotating members of the UN Security Council and play a role in the design and management of its sanctions.

Outreach

Collaboration and communication channels between a broad range of government and civil society bodies on sanctions matters should be maintained, since they have implications for a wide range of actors not only in various ministries but also in the private sector. Each capital should ensure that information on sanctions – their scope, intention, justification, and practical implications – is widely shared in the professional community. The build-up of capabilities at the EU and member-state level would benefit from engaging closely with the research community and from fostering research in this area.

Launching a strategic debate on the role of sanctions in the CFSP

Upgrading capacity is not the whole story, however. Sanctions are an effective tool only when combined with robust diplomatic action. Trade restrictions are not an end in themselves. Instead, the EU resorts to sanctions in order to attach a price tag to the violation of international norms and, with the help of diplomacy, to dissuade targeted countries from their chosen course of action. Today, the international use of sanctions

and other trade restrictions does not always follow the same goal-driven, limited and pragmatic approach. As an entity mostly composed of small or middle-sized, export-oriented countries, the EU should avoid a situation in which the international economy falls victim to power politics and is stifled by unnecessary trade restrictions. The EU should adopt sanctions in order to uphold international norms, always as part of a broader and realistic diplomatic approach. The new horizontal sanctions regimes may represent a step in the right direction as long as their global reach is followed up with diplomatic action.

Disquieting developments in US sanctions policy and the British withdrawal from the EU have created a need for a broader discussion on the future prospects of sanctions as an EU foreign policy instrument among member states. The debate should be geared to the mid- and long-term perspective of the strategic nature of the instrument. When, where and how should the EU deploy sanctions, and when is it better not to? What sort of relationship should its sanctions policy have vis-à-vis similar measures by other actors such as the UN, the US, Canada or the UK? How should the instrument be adapted to the increasingly competitive geo-economic environment? This debate should be informed by strategic priorities and, ideally, be complemented with insights from research.

Keeping sanctions cooperation alive

A cohesive EU sanctions policy is particularly needed in today's international environment, which is marked by geo-economic competition. Current US policies bent on bilateralizing and transactionalizing its relations with Europe are most worrisome from a European perspective. The White House is following an increasingly assertive course, using sanctions and other trade restrictions aggressively, which has led some voices to speak of sanctions "overuse".³¹⁶

EU member states should lobby in unison against unfriendly US policies. This is particularly true for secondary sanctions against Iran and Russia, which are detrimental to their interests. To respond to the challenge of secondary sanctions, the EU should strive for a robust risk mitigation of non-compliance with US secondary sanctions, and highlight to Washington the benefits of a coordinated approach. Without EU action, small countries, and the private sector generally, will continue to be exposed to pressure by the US and possibly from other powers, such as China.

In view of evident tensions in the transatlantic relationship, Brussels should form the key bulwark that allows European states to re-engage

³¹⁶ Gibney, J., 'Trump's sanctions are losing their bite', *Bloomberg*, 2 April 2020, <https://www.bloomberg.com/opinion/articles/2020-04-02/trump-s-overuse-of-sanctions-is-weakening-their-effectiveness>, accessed 30 April 2020.

Washington. Diplomatic engagement with the US administration and with US Congress remains central, and it is vital to keep abreast of developments in Washington and enhance cooperation at levels below the sensationalized realm of high politics. It is important for EU member states to deliver a unitary message to US counterparts. Following alleged Russian meddling in the 2016 elections, the US debate on foreign policy has become increasingly polarized. Europeans ought to divert the attention of US policymakers away from the domestic political competition back to the international stage. EU member states should continue to seek a common line. EU capitals should cultivate contacts on both sides of the political aisle on Capitol Hill, while fostering links with officials at the subfederal level, in key states and cities. Interest groups and the American business community are key interlocutors and can serve as backchannels for feeding ideas into the saturated political debates that unfold in Washington.

Finally, since the UK has been a driving force behind the EU's sanctions policy, Brussels should seek to maintain a close association with the UK and promote alignment in sanctions matters. To this end, a framework that enables the closest possible coordination between London and Brussels should be put in place. The extent of future discrepancies between UK and EU sanctions ought to be limited as much as possible to avoid exacerbating the complexity that the private sector has to grapple with.³¹⁷ During the negotiations on EU-UK future relations, the EU should strive for an arrangement that facilitates sanctions alignment in the framework of an institutionalized relationship in the field of foreign and security policy. Other than constituting a venue for valuable information exchange on sanction issues, such an arrangement will reduce the likelihood of London liaising selectively with key partners only, and will ensure that every EU capital remains involved at all stages of the coordination process.

317 Dall, E., Chase, I. & T. Keatinge, 'Coordinating Sanctions after Brexit', *Occasional Paper*, Royal United Services Institute, May 2020.

REFERENCES

- Airault, P., 'Instex, le mécanisme européen mort-né de transaction commerciale avec l'Iran', *L'Opinion*, International, 26 June 2019, <https://www.lopinion.fr/edition/international/instex-mecanisme-europeen-mort-ne-transaction-commerciale-l-iran-190883>, accessed 12 March 2020.
- Alcaro, R. & Bassiri Tabrizi, A., 'European and Iran's nuclear issue: The labours and sorrows of a supporting actor', *International Spectator*, vol. 49, no. 3, 2014, pp. 14-20.
- Alessi, C., 'German Businesses blame US for Iran trade disappointment', *The Wall Street Journal*, Business, 31 August 2016, <https://www.wsj.com/articles/german-business-blames-u-s-for-iran-trade-disappointment-1472646058>, accessed 12 March 2020.
- Ali, A., 'The challenges of a Sanctions Machine: Some reflections on the legal issues of EU restrictive measures in the field of common foreign security policy', in L. Antonioli, L. Bonatti & C. Ruzza eds., *Highs and Lows of European Integration: Sixty Years After the Treaty of Rome*, Springer, Cham, 2019, pp. 49-62.
- Allan, D., 'The Minsk Agreements Rest on Incompatible Views of Sovereignty', *Chatham House*, 15 July 2019, <https://www.chathamhouse.org/expert/comment/minsk-agreements-rest-incompatible-views-sovereignty>, accessed 4 November 2019.
- Andreas, P., 'Criminalising consequences of sanctions: Embargo busting and its legacy', *International Studies Quarterly*, vol. 49, no. 2, 2005, pp. 335-360.
- Angstrom, J. & Honig, J.W., 'Regaining Strategy: Small Powers, Strategic Culture, and Escalation in Afghanistan', *Journal of Strategic Studies*, vol. 35, no. 5, 2012, pp. 663-687.
- Ashton, C., *Speech by European Union High Representative on the EU's policy on restrictive measures*, European Parliament, Brussels, 1 February 2012. https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/127812.pdf, accessed 13 March 2020.
- Baldwin, D. & Pape, R., 'Evaluating Economic Sanctions', *International Security*, vol. 23, no. 2, 1998, pp. 189-198.
- Barber, J., 'Economic Sanctions as a Policy Instrument', *International Affairs*, vol. 55, 1979, pp. 367-384.
- Bartels, L., *Human Rights Conditionality in the EU's International Agreements*, OUP, Oxford, 2005.
- Batmanghelidj, E., 'Trump's Iran waivers are not the concessions they seem', *Bloomberg*, Politics & Policy, 8 November 2018, <https://www.bloomberg.com/opinion/articles/2018-11-08/trump-seeks-to-divide-with-iran-waivers-for-china-italy-greece>, accessed 16 March 2020.
- Batmanghelidj, E. & Hellman, A., 'OFAC off', *Foreign Policy*, Argument, 15 June 2018, <https://foreignpolicy.com/2018/06/15/ofac-off/>, accessed 17 March 2020.
- Beaucillon, C., 'Unilateral state sanctions and the extraterritorial effects of national legislation', in N. Ronzitti ed., *Coercive Diplomacy, Sanctions and International Law*, Brill Nijhoff, Leiden, 2016, pp. 103-126.
- Beesley, A., 'EU refuses to recognise Venezuela poll but imposes no sanctions', *Financial Times*, 2 August 2017, <https://www.ft.com/content/87430578-2deb-337f-a676-178b563d6908>, accessed 29 October 2019.
- Bendiek, A., Kempin, R. & von Ondarza, N., 'Qualified Majority Voting and Flexible Integration for a More Effective CFSP?', *Stiftung Wissenschaft und Politik SWP Comment*, no. 25, 2018, https://www.swp-berlin.org/fileadmin/contents/products/comments/2018C25_bdk_kmp_orz.pdf, accessed 17 March 2020.
- Bergeijk, P. van, *Economic Diplomacy, Trade and Commercial Policy. Positive and Negative Sanctions in a New World Order*, Edward Elgar, Aldershot, 1994.
- Biehl, H., Giegerich, B. & Jonas A. eds., *Strategic Cultures in Europe. Security and Defence Policies Across the Continent*, Springer VS., Wiesbaden, 2013.
- Biersteker, T., Eckert, S. & Tourinho, M., *Targeted Sanctions. The effectiveness of UN Action*, Cambridge University Press, Cambridge, 2016.
- Biersteker, T. & Portela, C., 'EU sanctions in context: three types', *EUISS Brief*, no. 26, 2015.
- Bildt, C., 'Trump's decision to blow up the Iran deal is a massive attack on Europe', *The Washington Post*, 13 May 2018, <https://www.washingtonpost.com/news/global-opinions/wp/2018/05/12/trumps-decision-to-blow-up-the-iran-deal-is-a-massive-attack-on-europe/>, accessed 17 March 2020.

- Blanc J. & Weiss, A.S., 'U.S. Sanctions on Russia: Congress Should Go Back to Fundamentals', *Carnegie Endowment for International Peace*, 3 April 2019, <https://carnegieendowment.org/2019/04/03/u.s.-sanctions-on-russia-congress-should-go-back-to-fundamentals-pub-78755>, accessed 16 March 2020.
- Blavoukos, S. & Bourantonis, D., 'Do Sanctions Strengthen the International Presence of the EU?', *European Foreign Affairs Review*, vol. 19, no. 3, 2014, pp. 393–410.
- Blockmans, S., 'Curbing the circumvention of sanctions against Iran over its nuclear programme: Afrasiabi', *Common Market Law Review*, vol. 50, no. 2, 2013, pp. 23–40.
- Booth, K. & Trood, R., *Strategic Cultures in the Asia-Pacific Region*, Palgrave Macmillan, London, 1999.
- Borzyskowski, I. v. & Portela, C., 'Sanctions cooperation and regional organisations', in S. Aris et al. eds., *Inter-organisational Relations in International Security: Cooperation and Competition*, Routledge, Abingdon, 2018, pp. 240–261.
- Brzoska, M., 'From dumb to smart? Recent reforms of UN sanctions', *Global Governance*, vol. 9, no. 4, 2003, pp. 519–535.
- 'Research on the effectiveness of international sanctions', in H. Hegemann, R. Heller & M. Kahl eds., *Studying 'effectiveness' in International Relations*, Budrich, Opladen, 2013, pp. 143–160.
- Buchanan, R.T., 'Greece threatens EU veto over Russian sanctions', *The Independent*, 29 January 2015, <https://www.independent.co.uk/news/world/europe/greece-threatens-eu-veto-over-russian-sanctions-10010138.html>, accessed 4 November 2019.
- Burns, W.J. & Lew, J.J., 'U.S. Treasury Secretary Jacob J. Lew on the Evolution of Sanctions and Lessons for the Future', *Carnegie Endowment for International Peace*, 30 March 2016, <https://carnegieendowment.org/2016/03/30/u.s.-treasury-secretary-jacob-j.-lew-on-evolution-of-sanctions-and-lessons-for-future-event-5191>, accessed 16 March 2020.
- Cadier, D., 'Continuity and change in France's policies towards Russia: a milieu goals explanation', *International Affairs*, vol. 94, no. 6, 2018, pp. 1349–1369.
- Cardwell, P., 'The legalisation of EU foreign policy and the use of sanctions', *Cambridge Yearbook of European Legal Studies*, vol. 17, no. 1, 2015, pp. 287–310.
- Caytas, J.D., 'Weaponizing Finance: U.S. and European Options, Tools, and Policies', *Columbia Journal of European Law*, vol. 23, no. 2, 2017, pp. 441–476.
- Chachko, E., 'Foreign Affairs in Court: Lessons from CJEU Targeted Sanctions Jurisprudence', *Yale Journal of International Law*, vol. 44, no. 1, 2019, pp. 1–151. <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1694&context=yjil>, accessed 29 November 2019.
- Charron, A., *United Nations Sanctions and Conflict*, Routledge, Abingdon, 2011.
- Charron, A., Giumelli, F. & Portela, C., 'The United Nations and targeted sanctions', *International Affairs*, vol. 91, no. 6, 2015, pp. 1335–1337.
- Chase, I., Dall, E. & Keatinge, T., 'Designing Sanctions After Brexit', *RUSI Occasional Paper*, September 2019, <https://rusi.org/publication/occasional-papers/designing-sanctions-after-brexite-recommendations-future-uk-sanctions>, accessed 16 March 2020.
- Chatzky, A. & McBride, J., 'China's Massive Belt and Road Initiative', *Council on Foreign Relations*, 21 May 2019, <https://www.cfr.org/backgrounders/chinas-massive-belt-and-road-initiative>, accessed 17 March 2020.
- Chelotti, N., *The Formulation of EU Foreign Policy*, Routledge, Abingdon, 2016.
- Christie, E., 'The design and impact of Western economic sanctions against Russia', *RUSI Journal*, vol. 161, no. 3, 2016, pp. 52–64.
- Chumakova, N., & Yagova, O., 'Exclusive: Russia's Rosneft to switch to euros in oil products tenders – traders', *Reuters*, 21 August 2019, <https://www.reuters.com/article/us-russia-rosneft-tenders-euro/exclusive-russias-rosneft-to-switch-to-euros-in-oil-products-tenders-traders-idUSKCN1VB15J>, accessed 18 March 2020.
- Cohen, D.S., Meltzer R. I. & Nikou S., 'US Reimposes First Tranche of Iran-Related Sanctions', *Wilmer Hale*, 7 August 2018, <https://www.wilmerhale.com/en/insights/client-alerts/20180807-us-reimposes-first-tranche-of-iran-related-sanctions>, accessed 16 March 2020.
- Cortright, D. & Lopez, G., *The Sanctions Decade. Assessing UN Strategies in the 1990s*, Lynne Rienner Publishers, Boulder, Co., 2000.

- Council of the European Union, *Declaration by the High Representative Josep Borrell on behalf of the EU on the UN Secretary General's appeal for an immediate global ceasefire* [media release], 3 April 2020, https://www.consilium.europa.eu/en/press/press-releases/2020/04/03/declaration-by-the-high-representative-josep-borrell-on-behalf-of-the-eu-on-the-un-secretary-general-s-appeal-for-an-immediate-global-ceasefire/?mc_cid=418455de9d&mc_eid=d35535bd98, accessed 30 April 2020.
- *Turkey's illegal drilling activities in the Eastern Mediterranean: Council adopts framework for sanctions* [media release], 11 November 2019, <https://www.consilium.europa.eu/en/press/press-releases/2019/11/11/turkey-s-illegal-drilling-activities-in-the-eastern-mediterranean-council-adopts-framework-for-sanctions/>, accessed 12 March 2020.
- *Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy*, (5664/18), Brussels, 4 May 2018, <https://data.consilium.europa.eu/doc/document/ST-5664-2018-INIT/en/pdf>, accessed 12 March 2020.
- *Restrictive measures (Sanctions): Update of the EU Best Practices for the effective implementation of restrictive measures*, (10254/15), Brussels, 24 June 2015, <http://data.consilium.europa.eu/doc/document/ST-10254-2015-INIT/en/pdf>, accessed 17 March 2020.
- *Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria*, (OJ L 147), 1 June 2013, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:147:0014:0045:EN:PDF>, accessed 30 March 2020.
- *Basic principles on the use of restrictive measures (Sanctions)*, (10198/1/04), Brussels, 7 June 2004, <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2010198%202004%20REV%201>, accessed 12 March 2020.
- *Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy*, (15579/03), Brussels, 3 December 2003, <https://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2015579%202003%20INIT>, Accessed 12 March 2020.
- *A secure Europe in a better world: European Security Strategy*, Brussels, 12 December 2003, https://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/en/reports/78367.pdf, accessed 12 March 2020.
- Court of Justice of the European Union, *Annual Report 2014*, https://curia.europa.eu/jcms/jcms/Jo2_11035/rapports-annuels, accessed 15 April 2020.
- *Annual Report 2017*, https://curia.europa.eu/jcms/jcms/Jo2_11035/rapports-annuels, accessed 15 April 2020.
- Creutz, K. et al., 'The changing global order and its implications for the EU', *FIIA Report*, no. 59, 7 March 2019, <https://www.fiaa.fi/en/publication/the-changing-global-order-and-its-implications-for-the-eu>, accessed 17 March 2020.
- Crowley M. and Kurmanaev, A., 'Trump Imposes New Sanctions on Venezuela', *The New York Times*, 6 August 2019, <https://www.nytimes.com/2019/08/06/us/politics/venezuela-embargo-sanctions.html>, accessed 16 March 2020.
- Dall, E.A., 'New Direction for EU Sanctions: The new Commission and the use of sanctions', *RUSI, Commentary*, 21 November 2019, <https://rusi.org/commentary/new-direction-eu-sanctions-new-commission-and-use-sanctions>, accessed 17 March 2020.
- Dall, E., Chase, I. and T. Keatinge, 'Coordinating Sanctions after Brexit', *Occasional Paper*, Royal United Services Institute, May 2020.
- De Vries, A.W., Portela, C. & Guijarro, B., *Improving the effectiveness of sanctions: A checklist for the EU, CEPS special report*, no. 95, Brussels, 2014.
- Debarre, A., *Safeguarding Humanitarian Action in Sanctions Regimes*, International Peace Institute, New York, 2019.
- Denton, R.L., 'UK Parliament approves regulations for post-Brexit blocking statute', *Baker McKenzie*, 9 May 2019, <https://sanctionsnews.bakermckenzie.com/uk-parliament-approves-regulations-for-post-brexit-blocking-statute/>, accessed 18 March 2020.
- De Neuilly, B.Y., 'European Union's external relations fields: the multipillar issue of economic sanctions against Serbia', in M. Knodt & S. Princen eds., *Understanding the European Union's external relations*, Routledge, Abingdon, 2003, pp. 92-106.

- Die Bundesregierung, *Meseberg Declaration: Renewing Europe's promises of security and prosperity* [media release], 19 June 2018, <https://archiv.bundesregierung.de/archiv-de/meta/startseite/meseberg-declaration-1140806>, accessed 17 March 2020.
- Dikov, I., 'EU defied US over Iran's nuclear programme with INSTEX', *European Views*, 14 August 2019, <https://www.european-views.com/2019/08/eu-defied-us-over-irans-nuclear-program-with-instex-was-it-worth-it/>, accessed 12 March 2020.
- Doxey, M., 'Reflections on the sanctions decade and beyond', *International Journal*, vol. 64, no. 2, 2009, pp. 539-549.
- Drezner, D., *The Sanctions Paradox: Economic Statecraft and International Relations*, Cambridge University Press, Cambridge, 1999.
- Drulakova, R. & Prikryl, P., 'The implementation of sanctions imposed by the European Union', *Central European Journal of International and Security Studies*, vol. 10, no. 1, 2016, pp. 134-160.
- E3 Foreign Ministers, *Joint statement on the creation of INSTEX, the special purpose vehicle aimed at facilitating legitimate trade with Iran in the framework of the efforts to preserve the Joint Comprehensive Plan of Action (JCPOA)*, 31 January 2019, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/775681/19_01_31_Joint_Statement_E3.pdf, accessed 17 March 2020.
- Early, B.R., 'Deterrence and Disclosure: The Dual Logics Promoting U.S. Sanctions Compliance', *Center for a New American Security*, 10 June 2019, <https://www.cnas.org/publications/commentary/deterrence-and-disclosure-the-dual-logics-promoting-u-s-sanctions-compliance>, accessed 13 March 2020.
- East Office of Finnish Industries, *How to prepare for sanctions in Russia - Impacts, best practices and latest guidelines*, EOFI, Helsinki, 2019.
- Eckert, S., 'The role of sanctions' in S. V. Einsiedel, D. Malone & S. Stagno Ugarte eds., *The UN Security Council in the 21st Century*, Lienne Rynner, Boulder, Co., 2016, pp. 413-439.
- Economist, 'European companies will struggle to defy America on Iran', *The Economist*, 8 November 2018, <https://www.economist.com/business/2018/11/08/european-companies-will-struggle-to-defy-america-on-iran>, accessed 17 March 2020.
- 'Who are you calling a rogue?', *The Economist*, 18 June 2015, <https://www.economist.com/business/2015/06/18/who-are-you-calling-a-rogue>, accessed 3 April 2020.
- Elliott, K., 'Assessing UN sanctions after the cold war: New and evolving standards of measurement', *International Journal*, vol. 65, no. 1, 2010, pp. 85-97.
- Emmott, R. & Koutantou, A., 'Greece blocks EU statement on China human rights at U.N.', *Reuters*, 18 June 2017, <https://www.reuters.com/article/us-eu-un-rights/greece-blocks-eu-statement-on-china-human-rights-at-un-idUSKBN1990FP>, accessed 18 March 2020.
- EUR-Lex, *Council Common Position 2003/139/CFSP of 27 February 2003 concerning restrictive measures against the leadership of the Transnistrian region of the Moldovan Republic*, (2003/139/CFSP), 28 February 2003, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32003E0139>, accessed 15 April 2020.
- European Commission, *Allocation of portfolios and supporting services note*, Brussels, 7 November 2019, https://ec.europa.eu/commission/sites/beta-political/files/allocation-portfolios-supporting-services_en_0.pdf, accessed 17 March 2020.
- *Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community*, 17 October 2019, https://ec.europa.eu/commission/sites/beta-political/files/consolidated_withdrawal_agreement_17-10-2019_1.pdf, accessed 10 December 2019.
- *The Blocking Statute: protecting EU operators, reinforcing European strategic autonomy*, 2018, https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/blocking-statute_en, accessed 17 March 2020.
- *A stronger global actor: a more efficient decision-making for EU Common Foreign and Security Policy*, Brussels, 12 September 2018, https://ec.europa.eu/commission/sites/beta-political/files/soteu2018-factsheet-qmv_en.pdf, accessed 17 March 2020.
- *Updated Blocking Statute in Support of Iran Nuclear Deal Enters into Force* [media release], 6 August 2018, https://europa.eu/rapid/press-release_IP-18-4805_en.htm, accessed 16 March 2020.

- *Commission Notice: Commission guidance note on the implementation of certain provisions of Regulation (EU) No 833/2014*, Brussels, 25 August 2017, https://ec.europa.eu/fpi/sites/fpi/files/1_act_part1_v3_en.pdf, accessed 17 March 2020.
- European Commission, Task Force for Relations with the United Kingdom, *Foreign Policy, Security and Defence part of the Draft text of the Agreement on the New Partnership with the United Kingdom*, 18 March 2020, <https://ec.europa.eu/info/sites/info/files/200318-draft-agreement-forpolsce.pdf>, accessed 30 April 2020.
- European Commission, Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU, *Political declaration setting out the framework for the future relationship between the European Union and the United Kingdom*, 17 October 2019, https://ec.europa.eu/commission/sites/beta-political/files/revised_political_declaration.pdf, accessed 16 March 2020.
- *Internal EU27 preparatory discussions on the framework for the future relationship: 'Security, Defence and Foreign Policy' (slides)*, 24 January 2018, https://ec.europa.eu/commission/publications/slides-security-defence-and-foreign-policy_en, accessed 16 March 2020.
- *Foreign, security and defence policy (slides)*, 15 June 2018, https://ec.europa.eu/commission/sites/beta-political/files/slides_on_foreign_security_defence_policy.pdf, accessed 18 December 2019.
- European External Action Service, *Chair's statement following the 28 June 2019 meeting of the Joint Commission of the Joint Comprehensive Plan of Action* [media release], 28 June 2019, https://eeas.europa.eu/headquarters/headquarters-homepage/64796/chairs-statement-following-28-june-2019-meeting-joint-commission-joint-comprehensive-plan_en, accessed 16 March 2020.
- *Iran deal: EU remains committed to the continued implementation of the nuclear deal, Mogherini says*, 8 May 2018, https://eeas.europa.eu/headquarters/headquarters-homepage/44239/iran-deal-eu-remainscommitted-continued-implementation-nuclear-dealmogherini-says_de, accessed 17 March 2020.
- European Political Strategy Centre, 'A Union that delivers: Making use of the Lisbon Treaty's passerelle clauses', *EPSC Brief*, January 2019.
- European Union Institute for Security Studies, *Yearbook of European Security*, EUISS, Paris, 2019.
- Falke, A., 'Confronting the Hegemon. The EU-US Dispute over Sanctions Policy', *European Foreign Affairs Review*, vol. 5, no. 2, 2000, pp. 139-163.
- Federal Foreign Office of Germany, *In a world full of carnivores, vegetarians have a very tough time of it* [retrieved from Der Spiegel], 1 May 2018, <https://www.auswaertiges-amt.de/en/newsroom/news/gabriel-spiegel/1212494>, accessed 17 March 2020.
- Finnish Customs, Official Statistics of Finland. Monthly statistics on the international trade in goods 2013-2019.
- Fleming, S. 'Currency warrior: why Trump is weaponizing the dollar', *Financial Times*, 1 July 2019, <https://www.ft.com/content/5694b0dc-91e7-11e9-aea1-2b1d33ac3271>, accessed 17 March 2020.
- Foreign and Commonwealth Office, *INSTEX successfully concludes first transaction*, 31 March 2020, <https://www.gov.uk/government/news/instex-successfully-concludes-first-transaction>, accessed 7 April 2020.
- Forsberg, T., 'From Ostpolitik to "frostpolitik"? Merkel, Putin and German foreign policy towards Russia', *International Affairs*, vol. 92, no. 1, 2016, pp. 21-42.
- Forwood, G. et al., 'Sanctions after Brexit - the first UK sanctions regimes', *White & Case*, 1 March 2019, <https://www.whitecase.com/publications/alert/sanctions-after-brexit-first-uk-sanctions-regimes>, accessed 16 March 2020.
- France24, 'France urges Europe to push back against "unacceptable" US sanctions on Iran', *France24*, 11 May 2018, <https://www.france24.com/en/20180511-iran-france-usa-europe-business-push-back-against-unacceptable-sanctions-nuclear-trump>, accessed 17 March 2020.
- Friedman, U., 'The New Concept Everyone in Washington Is Talking About', *The Atlantic*, Politics, 6 August 2019, <https://www.theatlantic.com/politics/archive/2019/08/what-genesis-great-power-competition/595405>, accessed 13 March 2020.
- Fürutter, M., 'The transnationalised reality of EU sanctioning: a new research agenda beyond the study of effective economic sanctions', *Journal of European Public Policy* [online], 17 October 2019, <https://www.tandfonline.com/doi/full/10.1080/13501763.2019.1678661>, accessed 6 May 2020, pp. 1-13.

- Galindo, G., 'Salvini: Italy "not afraid" to use EU veto to lift Russian sanctions', *Politico*, 16 July 2018, <https://www.politico.eu/article/matteo-salvini-italy-not-afraid-to-use-eu-veto-to-lift-russian-sanctions-crimea-vladimir-putin/>, accessed 4 November 2019.
- Galtung, J., 'On the Effects of International Economic Sanctions, with examples from the case of Rhodesia', *World Politics*, vol. 19, no. 3, 1967, pp. 378–416.
- Geranmayeh, E., 'Secondary reach of US sanctions in Europe: how far is too far?', *European Council on Foreign Relations*, 12 June 2014, https://www.ecfr.eu/blog/entry/secondary_reach_of_us_sanctions_in_europe_how_far_is_too_far, accessed 12 March 2020.
- Geranmayeh, E. & Batmanghelidj, E., 'Trading with Iran via the special purpose vehicle: How it can work', *European Council on Foreign Relations*, 7 February 2019, https://www.ecfr.eu/article/commentary_trading_with_iran_special_purpose_vehicle_how_it_can_work, accessed 17 March 2020.
- Geranmayeh, E. & Rapnouil, M.L., 'Meeting the Challenge of Secondary Sanctions', in M. Leonard & J. Shapiro eds., *Strategic Sovereignty: How Europe Can Regain the Capacity to Act*, European Council on Foreign Relations, Berlin, 2019, pp. 61–84.
- Gestri, M., 'Sanctions imposed by the European Union: Legal and institutional aspects', in N. Ronzitti ed., *Coercive Diplomacy, Sanctions and International Law*, Brill Nijhoff, Leiden, 2016, pp. 70–102.
- Gibney, J., 'Trump's sanctions are losing their bite', *Bloomberg*, 2 April 2020, <https://www.bloomberg.com/opinion/articles/2020-04-02/trump-s-overuse-of-sanctions-is-weakening-their-effectiveness>, accessed 30 April 2020.
- Gibson Dunn, '2019 Year-End Sanctions Update', *Gibson Dunn*, 23 January 2020, <https://www.gibsondunn.com/wp-content/uploads/2020/01/2019-year-end-sanctions-update.pdf>, accessed 3 April 2020.
- '2018 Year-End Sanctions Update', *Gibson Dunn*, 11 February 2019, <https://www.gibsondunn.com/2018-year-end-sanctions-update/>, accessed 13 March 2020.
- 'Iran Sanctions 2.0: The Trump Administration Completes Its Abandonment of the Iran Nuclear Agreement', *Gibson Dunn*, 9 November 2018, https://www.gibsondunn.com/iran-sanctions-2-0-the-trump-administration-completes-abandonment-of-iran-nuclear-agreement/#_ftn28, accessed 16 March 2020.
- '2017 Year-End Sanctions Update', *Gibson Dunn*, 5 February 2018, <https://www.gibsondunn.com/2017-year-end-sanctions-update/>, accessed 16 March 2020.
- Giumelli, F., 'The purposes of targeted sanctions', in T. Biersteker, S. Eckert & M. Tourinho eds., *Targeted Sanctions: The effectiveness of UN Action*, Cambridge University Press, Cambridge, 2016, pp. 38–59.
- Golumbic, C. & Ruff, R., 'Who do I call for an EU sanctions exception? Why the EU economic sanctions regime should centralize licensing', *Georgetown Journal of International Law*, vol. 44, no. 3, 2013, pp. 1007–1053.
- Gordon, J. 'Extraterritoriality: Issues of Overbreadth and the Chilling Effect in the Cases of Cuba and Iran', *Harvard International Law Journal* [online], vol. 57, 2016, https://harvardilj.org/wp-content/uploads/sites/15/January-2016_Vol-57_Gordon.pdf, accessed 13 March 2020.
- Gould-Davies, N., 'Russia, the West and sanctions', *Survival*, vol. 62, no. 1, 2020, pp. 7–28.
- Gowan, R. & Dworkin, A., 'Three crises and an opportunity: Europe's stake in multilateralism', *ECFR Policy Brief*, 5 September 2019, https://www.ecfr.eu/publications/summary/three_crises_and_an_opportunity_europes_stake_in_multilateralism, accessed 18 March 2020.
- Graupner, H., 'German-Iranian Trade Dwindles to a Trickle', *Deutsche Welle*, Business, 27 June 2019, <https://www.dw.com/en/german-iranian-trade-dwindles-to-a-trickle/a-49373454>, accessed 16 March 2020.
- Gricius, G., 'European Union Extends Arms Embargo Against Belarus', *Global Security Review*, 12 March 2018, <https://globalsecurityreview.com/european-union-extends-arms-embargo-against-belarus/>, accessed 29 October 2019.
- Hackenbroich, J. & Leonard, M., 'Verteidigen wir Europa!', *Die Zeit*, 7 August 2019, <https://www.zeit.de/2019/33/eu-handelspolitik-us-sanktionen-protektionismus>, accessed 18 March 2020.
- Harrell, P.E., 'Trump's Use of Sanctions Is Nothing Like Obama's', *Foreign Policy*, 5 October 2019, <https://foreignpolicy.com/2019/10/05/trump-sanctions-iran-venezuela-russia-north-korea-different-obamas/>, accessed 13 March 2020.

- 'Is the U.S. Using Sanctions Too Aggressively? The Steps Washington Can Take to Guard Against Overuse', *Foreign Affairs*, 11 September 2018, <https://www.foreignaffairs.com/articles/2018-09-11/us-using-sanctions-too-aggressively?cid=int-fls&pgtype=hpg>, accessed 13 March 2020.
- Hellquist, E., 'Either with us or against us? Third-country alignment with EU sanctions against Russia/Ukraine', *Cambridge Review of International Affairs*, vol. 29, no. 3, 2016, pp. 997-1021.
- Helwig, N., 'The new EU leadership: The von der Leyen Commission focuses on Europe's geo-economic power', *FIIA Briefing Paper*, no. 274, 13 November 2019, <https://www.fiaa.fi/en/publication/the-new-eu-leadership>, accessed 16 March 2020.
- Heupel, M., 'Multilateral sanctions against terror suspects and the violation of due process standards', *International Affairs*, vol. 85, no. 2, pp. 307-321.
- Hoffmann, F., 'The Functions of Economic Sanctions: A Comparative Analysis', *Journal of Peace Research*, vol. 4, no. 2, 1967, pp. 140-160.
- Hovell, D., 'Unfinished Business of International Law: The Questionable Legality of Autonomous Sanctions', *AJIL Unbound*, vol. 113, 2019, pp. 140-145.
- Hufbauer, G. et al., *Economic Sanctions Reconsidered*, 3rd edn, Peterson Institute for International Economics, Washington D.C., 2007.
- Lind, J., 'The Rise of China and the Future of the Transatlantic Relationship', *Chatham House Briefing*, 29 July 2019, <https://www.chathamhouse.org/publication/rise-china-and-future-transatlantic-relationship>, accessed 16 March 2020.
- Jiménez, F., 'Medidas restrictivas en la Unión Europea: Entre las "sanciones" y el unilateralismo europeo', in C. Martínez & E. Martínez eds., *Nuevos Retos para la Acción Exterior Europea*, Tirant lo Blanch, Valencia, 2017, pp. 509-534.
- Jokela, J. & Aula, I., 'EU sanctions and Brexit. Losing the hard edge of European foreign policy?', *FIIA Briefing Paper*, no. 277, 31 January 2020, https://www.fiaa.fi/wp-content/uploads/2020/01/bp277_eu-sanctions-and-brexit.pdf, accessed 3 April 2020.
- Jones, S., *European Security Co-operation*, Cambridge University Press, Cambridge, 2007.
- Jozwiak, R., 'EU Extends Belarus Arms Embargo', *Radio Free Europe / Radio Liberty*, 20 February 2019, <https://www.rferl.org/a/eu-extends-belarus-arms-embargo/29780722.html>, accessed 29 October 2019.
- Keating, V. C. & Ruzicka, J., 'Trusting Relationships in International Politics: No Need to Hedge', *Review of International Studies* vol. 40, no. 4, 2014, pp. 753-770.
- Keatinge, T. et al., 'Transatlantic (Mis)alignment: Challenges to US-EU Sanctions Design and Implementation', *RUSI Occasional Paper*, July 2017, <https://rusi.org/publication/occasional-papers/transatlantic-misalignment-challenges-us-eu-sanctions-design-and>, accessed 17 March 2020.
- Koch, S., 'A Typology of Political Conditionality Beyond Aid: Conceptual Horizons Based on Lessons from the European Union', *World Development*, vol. 75, 2015, pp. 97-108.
- Koenig, N., 'Qualified Majority Voting in EU Foreign Policy: Mapping Preferences', *Policy Brief, Jacques Delors Centre*, 10 February 2020, https://hertieschool-f4e6.kxcdn.com/fileadmin/user_upload/20200210_Policy_Brief_QMV_Koenig.pdf, accessed 13 November 2019.
- 'The EU and the Libyan crisis. In quest of coherence?', *International Spectator*, vol. 46, no. 4, 2011, pp. 11-30.
- Kofod, J., Blok, S., & Petříček, T., 'How to revamp EU foreign policy', *Politico*, 9 December 2019, <https://www.politico.eu/article/how-to-revamp-eu-foreign-policy-josep-borrell/>, accessed 17 March 2020.
- Korhonen, I., 'Sanctions and counter-sanctions - What are their economic effects in Russia and elsewhere?', *BOFIT Policy Brief*, no. 2, 13 September 2019, <https://helda.helsinki.fi/bof/bitstream/handle/123456789/16334/bpb0219.pdf?sequence=1>, accessed 18 March 2020.
- Koutrakos, P., *Trade, Foreign Policy and Defence in EU Constitutional Law*, Hart, Oxford, 2001.
- Krause, J., 'Western economic and political sanctions as instruments of strategic competition with Russia', in N. Ronzitti ed., *Coercive Diplomacy, Sanctions and International Law*, Brill Nijhoff, Leiden, 2016, pp. 270-286.
- Kundnani, H., 'Europe's limitations', in M. Leonard ed., *Connectivity Wars*, European Council for Foreign Relations, London, 2016, 156-162.
- Laderman C. & Simms B., *Donald Trump: The Making of a World View*, I.B. Tauris, New York, 2017.

- Lehmkuhl, D. & Shagina, M., 'EU sanctions in the post-soviet space' in I. Tache ed., *The European Union and the challenges of the new global context*, Cambridge Scholars Publishing, Newcastle upon Tyne, 2015, pp. 52–85.
- Leonard, M. et al., 'Redefining Europe's economic sovereignty', in M. Leonard & J. Shapiro ed., *Strategic Sovereignty: How Europe Can Regain the Capacity to Act*, European Council on Foreign Relations, Berlin 2019, pp. 19–48.
- Lew, J., 'Remarks of Secretary Lew on the Evolution of Sanctions and Lessons for the Future at the Carnegie Endowment for International Peace', *US Department of the Treasury*, 30 March 2016, <https://www.treasury.gov/press-center/press-releases/pages/jl0398.aspx>, accessed 17 March 2020.
- Lew, J.J. & Nephew, R., 'The Use and Misuse of Economic Statecraft: How Washington Is Abusing Its Financial Might', *Foreign Affairs*, vol. 97, no. 6, 2018, pp. 139–149.
- Lidington, D., 'Letter addressed to Lord Tugendhat, Chairman of EU Subcommittee C', *House of Lords*, 21 February 2014, <https://www.parliament.uk>, accessed 30 March 2020.
- Lindsay, J., 'Trade Sanctions as Policy Instruments: A Re-Examination', *International Studies Quarterly*, vol. 30, no. 2, 1986, pp. 153–173.
- Lohmann, S., 'Extraterritorial U.S. Sanctions', *SWP Comment* 5, 2019, https://www.swp-berlin.org/fileadmin/contents/products/comments/2019C05_lom.pdf, accessed 12 March 2020.
- 'The convergence of transatlantic sanctions policy against Iran', *Cambridge Review of International Affairs*, vol. 29, no. 3, 2016, pp. 930–951.
- 'Diplomats and the Use of Economic Sanctions', in V. Stanzel ed., *New Realities in Foreign Affairs*, Nomos, Baden-Baden, 2019, pp. 23–32.
- Martin, E., 'La politique de sanctions de l'Union Européenne : Ambition multilatéral contre logique de puissance', *Etudes de l'Ifri*, October 2019, https://www.ifri.org/sites/default/files/atoms/files/martin_sanctions_ue_2019.pdf, accessed 17 March 2020.
- Mazumdaru, S., 'How Trump's Sanctions Are Crippling Iran's Economy', *Deutsche Welle*, Business, 24 June 2019, <https://www.dw.com/en/how-trumps-sanctions-are-crippling-irans-economy/a-49335908>, accessed 16 March 2020.
- McMaster, H.R. & Cohn, G.D., 'America First Doesn't Mean America Alone', *The Wall Street Journal*, Opinion, 30 May 2017, <https://www.wsj.com/articles/america-first-doesnt-mean-america-alone-1496187426>, accessed 13 March 2020.
- Mead, W.R., 'The Return of Geopolitics: The Revenge of the Revisionist Powers', *Foreign Affairs*, vol. 93, no. 3, 2014, pp. 69–79.
- Meister, K., 'EU Sanctions and Legal Challenges', Master thesis, Graduate Institute, Geneva, 2015.
- Meyer, C., 'The hard side of soft policy co-ordination in EMU: the impact of peer pressure on publicized opinion in the cases of Germany and Ireland', *Journal of European Public Policy*, vol. 11, no. 5, 2004, pp. 814–831.
- Meyer, J.A., 'Second Thoughts on Secondary Sanctions', *Pennsylvania Journal of International Law*, vol. 30, no. 3, 2009, pp. 905–967.
- Ministry of Foreign Affairs of Denmark, *Joint statement on joining INSTEX by Belgium, Denmark, Finland, the Netherlands, Norway and Sweden*, 29 November 2019, <https://um.dk/en/news/newsdisplaypage/?newsid=a9fea648-6b78-45be-9386-eebe30c7c61f>, accessed 16 March 2020.
- Mohammed, A., Pawlak, J. & Strobel, W., 'Special Report: Inside the West's economic war with Iran', *Reuters*, Special Reports, 28 December 2012, <https://www.reuters.com/article/us-iran-sanctions/special-report-inside-the-wests-economic-war-with-iran-idUSBRE8BR04620121228>, accessed 29 October 2019.
- Morello, C., 'Trump Administration's Use of Sanctions Draws Concern', *The Washington Post*, National Security, 6 August 2018, https://www.washingtonpost.com/world/national-security/trump-administrations-use-of-sanctions-draws-concern/2018/08/05/36ec7dde-9402-11e8-a679-b09212fb69c2_story.html, accessed 16 March 2020.
- Moret, E., 'What would Brexit mean for EU sanctions policy?', *European Council on Foreign Relations*, 23 March 2016, https://www.ecfr.eu/article/commentary_what_would_brexit_mean_for_eu_sanctions_policy6046, accessed 13 March 2020.
- Moret, E. et al., *The New Deterrent? International Sanctions against Russia over the Ukraine Crisis. Impact, Costs and Further Action*, The Graduate Institute Geneva, Geneva, 2016.
- Moret, E. & Pothier, F., 'Sanctions after Brexit', *Survival*, vol. 60, no. 2, 2018 pp. 179–200.

- Mortlock D. & O'Toole B., 'US Sanctions: Using a Coercive Economic and Financial Tool Effectively', *Atlantic Council Issue Brief*, 8 November 2018, <https://www.atlanticcouncil.org/in-depth-research-reports/issue-brief/us-sanctions-using-a-coercive-and-economic-tool-effectively/>, accessed 13 March 2020.
- Mounier, J.L., 'Russia's undiplomatic return to the Council of Europe', *France 24*, Europe, 28 June 2019, <https://www.france24.com/en/20190628-russia-undiplomatic-return-council-europe-ukraine>, accessed 13 November 2019.
- Nephew, R., 'Transatlantic Sanctions Policy: From the 1982 Soviet Gas Pipeline Episode to Today', *Columbia Center on Global Energy Policy*, 22 March 2019, <https://energypolicy.columbia.edu/research/report/transatlantic-sanctions-policy-1982-soviet-gas-pipeline-episode-today>, accessed 13 March 2020.
- *The Art of Sanctions: A View from the Field*, Columbia University Press, New York, 2017.
- Noël, P., 'Nord Stream II and Europe's strategic autonomy', *The Survival Editors' Blog*, 18 September 2019, <https://www.iiss.org/blogs/survival-blog/2019/09/energy-nord-stream-ii-europe-strategic-autonomy>, accessed 16 March 2020.
- Norrlof, C., *America's Global Advantage: US Hegemony and International Cooperation*, Cambridge University Press, Cambridge, 2010.
- Pape, R., 'Why Economic Sanctions Still Do Not Work', *International Security*, vol. 23, no. 1, 1998, pp. 66-77.
- Peel, M., 'Swift to comply with US sanctions on Iran in blow to EU', *The Financial Times*, 5 November 2018, <https://www.ft.com/content/8f16f8aa-e104-11e8-8e70-5e22a430c1ad>, accessed 17 March 2020.
- Peksen, D., 'When do imposed economic sanctions work? A critical review of the sanctions effectiveness literature', *Defence and Peace Economics*, vol. 30, no. 6, 2019, pp. 635-647.
- Poeschke, O., 'Maastrichts langer Schatten: Das auswärtige Handeln der EU - Verschiebungen im institutionellen Gefüge?', *Hamburg Review of Social Sciences*, vol. 3, no. 1, 2008, pp. 37-69.
- Portela, C., 'A blacklist is born: Building a resilient EU human rights sanctions regime', *EUISS Brief*, no. 5, March 2020, <https://www.iiss.europa.eu/sites/default/files/EUISSFiles/Brief%205%20HRS.pdf>, accessed 15 April 2020.
- 'The Spread of Horizontal Sanctions' *CEPS in Brief*, 7 March 2019, <https://www.ceps.eu/the-spread-of-horizontal-sanctions>, accessed 18 March 2020.
- 'Are EU sanctions "targeted"?', *Cambridge Review of International Affairs*, vol. 29, no. 3, 2016, pp. 912-929.
- 'How the EU learned to love sanctions', in M. Leonard ed., *Connectivity Wars*, European Council on Foreign Relations, London, 2016, pp. 36-42.
- 'The EU's evolving responses to nuclear proliferation crises', *SIPRI Non-Proliferation Papers*, no. 46, July 2015, <https://www.sipri.org/publications/2015/eu-non-proliferation-papers/eus-evolving-responses-nuclear-proliferation-crisis-incentives-sanctions>, accessed 18 March 2020.
- 'Member states' resistance to EU foreign policy sanctions', *European Foreign Affairs Review*, vol. 20, no. 3, 2015, pp. 39-61.
- 'The EU Sanctions Operation against Syria: Conflict management by other means?', *Egmont Security Brief* 36, 4 September 2012, <http://www.egmontinstitute.be/the-eu-sanctions-against-syria-conflict-management-by-other-means/>, accessed 18 March 2020.
- *European Union Sanctions and Foreign Policy*, Routledge, Abingdon, 2010.
- 'National implementation of United Nations Security Council sanctions: Towards fragmentation', *International Journal*, vol. 65, no. 1, 2009, pp. 13-30.
- Protess, B. & Silver-Greenberg, J., 'BNP Paribas Admits Guilt and Agrees to Pay \$8.9 Billion Fine to U.S.', *The New York Times*, Deal Book, 30 June 2014, <https://dealbook.nytimes.com/2014/06/30/bnp-paribas-pleads-guilty-in-sanctions-case/?mtrref>, accessed 16 March 2020.
- Pursiainen, A., 'Targeted EU Sanctions and Fundamental Rights', *Solid Plan Consulting*, https://um.fi/documents/35732/48132/eu_targeted_sanctions_and_fundamental_rights/14ce3228-19c3-a1ca-e66f-192cad8be8de?t=1525645980751, accessed 29 November 2019.
- Raik, K., Jokela, J. & Helwig, N., 'EU Sanctions Against Russia: Europe brings a hard edge to its economic power', *FIIA Briefing Paper*, no. 162, <https://www.fiaa.fi/en/publication/eu-sanctions-against-russia>, accessed 29 October 2019.
- Rappeport A. & Rogers, K., 'Trump's Embrace of Sanctions Irks Allies and Prompts Efforts to Evade Measures', *The New York Times*, 15 November 2019, <https://www.nytimes.com/2019/11/15/us/politics/trump-iran-sanctions.html?auth=login-email&login=email>, accessed 16 March 2020.

- Rettman, A., 'US halts building of Russia-Germany pipeline', *EUobserver*, Foreign Affairs, 21 December 2019, <https://euobserver.com/foreign/146996>, accessed 13 March 2020.
- 'EU extends Russia blacklist by six months', *EUobserver*, Foreign Affairs, 8 September 2016, <https://euobserver.com/foreign/128900>, accessed 13 March 2020.
- 'Human rights abusers to face future EU blacklists', *EUobserver*, Foreign Affairs, 9 December 2019, <https://euobserver.com/foreign/146865>, accessed 12 March 2020.
- Reuters, 'FACTBOX - "The sanctions bill from hell" against Russia makes a comeback', *Reuters*, 21 February 2019, <https://uk.reuters.com/article/usa-russia-sanctions/factbox-the-sanctions-bill-from-hell-against-russia-makes-a-comeback-idUKL5N20F58G>, accessed 17 March 2020.
- Rose, M., 'France wants progress in Ukraine before Russia returns to G7', *Reuters*, World News, 21 August 2019, <https://www.reuters.com/article/us-g7-summit-france-russia/france-wants-progress-in-ukraine-before-russia-returns-to-g7-idUSKCN1VB0SA>, accessed 17 March 2020.
- Rosenberg, E., 'The EU can't avoid U.S. sanctions on Iran', *Foreign Affairs*, Europe, 10 October 2018, <https://www.foreignaffairs.com/articles/europe/2018-10-10/eu-cant-avoid-us-sanctions-iran>, accessed 12 March 2020.
- Russell, M., 'EU sanctions: A key foreign and security policy instrument', *European Parliamentary Research Service, Briefing*, May 2018, http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI%282018%29621870, accessed 4 November 2019.
- Rutte, M., 'The EU: From the power of principles towards principles and power', *Churchill lecture*, Europa Institute of the University of Zurich, 13 February 2019, <https://www.government.nl/documents/speeches/2019/02/13/churchill-lecture-by-prime-minister-mark-rutte-europa-institut-at-the-university-of-zurich>, accessed 30 March 2020.
- Ryngaert, C., 'Extraterritorial Export Controls (Secondary Boycotts)', *Chinese Journal of International Law*, vol. 7, no. 3, 2008, 625-658.
- Sandhu, M., 'Europe First: taking on the dominance of the US dollar', *Financial Times*, 5 December 2019, <https://www.ft.com/content/3165c19c-0ba0-11ea-bb52-34c8d9dc6d84>, accessed 18 March 2020.
- Schneider-Petsinger, M., 'US - EU Trade Relations in the Trump Era Which Way Forward?', *Chatham House Research Paper*, 8 March 2019, <https://www.chathamhouse.org/publication/us-eu-trade-relations-trump-era-which-way-forward>, accessed 16 March 2020.
- Scholvin, S. & Wigell, M., 'Geo-Economics as Concept and Practice in International Relations: Surveying the State of the Art', *FIIA Working Paper*, no. 102, 16 April 2018, <https://www.fiaa.fi/en/publication/geo-economics-as-concept-and-practice-in-international-relations>, accessed 18 March 2020.
- Schuetz, L., 'Should the EU make foreign policy decisions by majority voting?', *Center for European Reform*, 2019, https://www.cer.eu/sites/default/files/pbrief_qmv_15.5.19_1.pdf, accessed 29 November 2019.
- Sevastopulo, D., Buck, T. & Foy, H., 'US Senate Committee Backs Nord Stream 2 Sanctions', *The Financial Times*, 31 July 2019, <https://www.ft.com/content/9268b396-b3b7-11e9-bec9-fdcab53d6959>, accessed 16 March 2020.
- Shagina, M., 'Friend or Foe? Mapping the positions of EU Member States on Russia sanctions', *ELN Commentary*, 28 June 2017, <https://www.europeanleadershipnetwork.org/commentary/friend-or-foe-mapping-the-positions-of-eu-member-states-on-russia-sanctions/>, accessed 4 November 2019.
- Shazan, G., 'US envoy defends Nord Stream 2 sanctions as "pro-European"', *The Financial Times*, 22 December 2019, <https://www.ft.com/content/21535ebe-23dc-11ea-9a4f-963f0ec7e134>, accessed 16 March 2020.
- Siddi, M., 'EU-Russia energy relations', in M. Knodt & J. Kemmerzell eds., *Handbook of Energy Governance in Europe*, Springer, Cham, 2020, pp. 11-14.
- *National Identities and Foreign Policy in the European Union: The Russia Policy of Germany, Poland, and Finland*, ECPR Press/Rowman and Littlefield, New York & London, 2017.
- Sinkkonen, V., 'Contextualizing the "Trump Doctrine": Realism, Transactionalism and the Civilizational Agenda', *FIIA Analysis*, no. 10, 5 November 2018, <https://www.fiaa.fi/en/publication/contextualizing-the-trump-doctrine>, accessed 13 March 2020.
- Sjursen, H. & Rosen, G., 'Arguing sanctions. On the EU's response to the crisis in Ukraine', *Journal of Common Market Studies*, vol. 55, no. 1, 2017, pp. 20-36.

- Slavin, B., 'Iran and Europe play nuclear chicken', *Atlantic Council*, 13 November 2019, <https://www.atlanticcouncil.org/blogs/iransource/iran-and-europe-play-nuclear-chicken/>, accessed 16 March 2020.
- Sultoon, S. & Walker, J., 'Secondary sanctions' implications and the transatlantic relationship', *Atlantic Council & UK Finance*, September 2019, https://www.atlanticcouncil.org/wp-content/uploads/2019/09/SecondarySanctions_Final.pdf, accessed 17 March 2020.
- Szép, V., 'New intergovernmentalism meets EU sanctions policy: The European Council orchestrates the restrictive measures imposed against Russia', *Journal of European Integration* [online], 6 November 2019, <https://www.tandfonline.com/doi/abs/10.1080/07036337.2019.1688316>, accessed 6 May 2020, pp. 1-17.
- Tabrizi, A.B. & Santini, R.H., 'EU Sanctions against Iran: new wine in old bottles?', *ISPI Analysis* 97, March 2012, https://www.ispionline.it/it/documents/Analysis_97_2012.pdf, accessed 10 December 2019.
- Tama, J., 'So Congress Is Challenging the President about Sanctions? That Has a Long History', *The Washington Post*, Analysis, 16 June 2017, https://www.washingtonpost.com/news/monkey-cage/wp/2017/06/16/so-congress-is-challenging-the-president-about-sanctions-that-has-a-long-history/?utm_term=.20aeef8d3c3e, accessed 16 March 2020.
- Tama, J., 'Bipartisanship in a Polarized Age: The U.S. Congress and Foreign Policy Sanctions', *American University School of International Service Working Paper Series*, no. 2, 2015, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2553401, accessed 16 March 2020.
- Taylor, B., *Sanctions as Grand Strategy*, IISS, London, 2010.
- Trump, D.J., 'National Security Strategy of the United States of America', *White House*, December 2017, <https://www.whitehouse.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf>, accessed 13 March 2020.
- Tzogopoulos G.N., 'View from Athens: Walking the line between Europe and Russia', *ECFR Commentary*, 6 April 2015, https://www.ecfr.eu/article/commentary_view_from_athens_walking_the_line_between_europe_and_russia31161, accessed 4 November 2019.
- Uimonen, R., *Sauli Niinistö - tasavallan presidentti*, WSOY, Helsinki, 2018.
- UK Government, *Enforcement of financial sanctions: Actions by OFSI to enforce financial sanction*, 25 February 2019, https://www.gov.uk/government/collections/enforcement-of-financial-sanctions?utm_source=c9daf843-0354-41ad-9475-1af9f0310d65&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate, accessed 17 March 2020.
- *Sanctions and Anti-Money Laundering Act*, 23 May 2018, <http://www.legislation.gov.uk/ukpga/2018/13/contents/enacted>, accessed 16 March 2020.
- UK House of Commons Foreign Affairs Committee, *Moscow's Gold: Russian corruption in the UK*, 21 May 2018, <https://publications.parliament.uk/pa/cm201719/cmselect/cmfaif/932/932.pdf>, accessed 16 March 2020.
- *Fragmented and incoherent: the UK's sanctions policy*, 12 June 2019, <https://publications.parliament.uk/pa/cm201719/cmselect/cmfaif/1703/170302.htm>, accessed 16 March 2020.
- *Fragmented and incoherent: the UK's sanctions policy: Government Response to the Committee's Seventeenth Report*, 9 September 2019, <https://publications.parliament.uk/pa/cm201719/cmselect/cmfaif/2642/2642.pdf>, accessed 16 March 2020.
- UK House of Lords Economic Affairs Committee, *Reply by Deputy Director of DG External Relations, European Commission, Mr Karel Kovanda, to Q268*, 17 October 2006, <https://publications.parliament.uk/pa/ld200607/ldselect/ldeconaf/96/6101705.htm>, accessed 15 April 2020.
- UK House of Lords, European Union Committee, *Brexit: Sanctions policy*, 17 December 2017, <https://publications.parliament.uk/pa/ld201719/ldselect/ldecom/50/50.pdf>, accessed 16 March 2020.
- *The legality of EU sanctions: 11th Report of Session 201617*, 2 February 2017, <https://publications.parliament.uk/pa/ld201617/ldselect/ldecom/102/102.pdf>, accessed 13 March 2020.
- *Inquiry on European Union restrictive measures*, evidence session no. 1, Witnesses Philip Moser and Maya Lester, 6 February 2014, <https://www.parliament.uk/documents/lords-committees/eu-sub-com-c/Restrictive%20Measures/cEUC060214ev1.pdf>, accessed 13 March 2020.

- UK House of Lords External Affairs Sub-Committee, *Corrected oral evidence: Brexit: sanctions policy*, 20 July 2017, <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/eu-external-affairs-subcommittee/brexit-sanctions-policy/oral/69307.html>, accessed 16 March 2020.
- UK Parliament, *Written evidence from the Foreign and Commonwealth Office (FSP0015)*, 15 January 2019, <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/foreign-affairs-committee/global-britain-the-future-of-uk-sanctions-policy/written/94581.html>, accessed 18 December 2019.
- United Nations General Assembly, *Sixty-eighth session: 38th plenary meeting*, (UNGA/68/PV.38), New York, 29 October 2013, <https://undocs.org/en/A/68/PV.38>, accessed 12 March 2020.
- United Nations General Assembly Security Council, *Sixty-ninth session: Agenda item 115: Follow-up to the outcome of the Millennium Summit*, (A/69/941-S/2015/432), 12 June 2015, <https://undocs.org/A/69/941>, accessed 12 March 2020.
- US Congress, *Countering America's Adversaries Through Sanctions Act*, (H.R.3364), 2 August 2017, <https://www.congress.gov/115/plaws/publ44/PLAW-115publ44.pdf>, accessed 16 March 2020.
- US Department of Defense, *Summary of the 2018 National Defense Strategy of the United States of America*, 2018, <https://www.defense.gov/Portals/1/Documents/pubs/2018-National-Defense-Strategy-Summary.pdf>, accessed 13 March 2020.
- US Department of the Treasury, *OFAC FAQs: Iran Sanctions*, 2019, https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_iran.aspx#601, accessed 16 March 2020.
- *Office of Foreign Assets Control (OFAC)*, 2019, <https://www.treasury.gov/about/organizational-structure/offices/pages/office-of-foreign-assets-control.aspx>, accessed 13 March 2020.
- *Countering America's Adversaries Through Sanctions Act*, 2017, <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/caatsa.aspx>, accessed 17 March 2020.
- *Specially Designated Nationals And Blocked Persons List (SDN)*, 2019, <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/archive.aspx>, accessed 13 March 2020.
- Walker, J., *Study on humanitarian impact of Syria-related unilateral coercive measures*, UNESCWA, Beirut, 2016.
- Wigell, M., 'Hybrid Interference as a Wedge Strategy: A Theory of External Interference in Liberal Democracy', *International Affairs*, vol. 95, no. 2, 2019, pp. 255-275.
- 'Conceptualizing Regional Powers' Geoeconomic Strategies: Neoliberalism, Neomercantilism, Hegemony and Liberal Institutionalism', *Asia Europe Journal*, vol. 14, no. 2, 2016, pp. 135-151.
- Wigell, M. & Vihma, A., 'Geopolitics versus geoeconomics: the case of Russia's geostrategy and its effects on the EU', *International Affairs*, vol. 92, no. 3, 2016, pp. 605-627.
- Vines, A., 'The effectiveness of UN and EU sanctions: Lessons for the twenty-first century', *International Affairs*, vol. 88, no. 4, 2012, pp. 867-877.
- Von der Leyen, U., 'State of Europe', speech at the *Allianz Forum*, 8 November 2019, https://ec.europa.eu/commission/presscorner/detail/en/speech_19_6248, accessed 27 April 2020.
- *speech at therom Der Spiegel*] - 'Mission letter to Valdis Dombrovskis, Executive Vice-President-designate for An Economy that Works for People', *European Commission*, 10 September 2019, https://ec.europa.eu/commission/sites/beta-political/files/mission-letter-valdis-dombrovskis-2019_en.pdf, accessed 29 October 2019.
- *speech at therom Der Spiegel*] - 'Mission letter to Kadri Simson, Commissioner-designate for Energy', *European Commission*, 10 September 2019, https://ec.europa.eu/commission/sites/beta-political/files/mission-letter-kadri-simson_en.pdf, accessed 18 March 2020.
- *speech at therom Der Spiegel*] - *A Union that strives for more: My agenda for Europe: Political guidelines for the next European Commission 2019-2024*, Brussels, 16 July 2019, https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf, accessed 17 March 2020.
- Yle, 'Russian oligarch files service violation lawsuit against Finnish banks', *Yle News*, 21 October 2018, https://yle.fi/uutiset/osasto/news/russian_oligarch_files_service_violation_lawsuit_against_finnish_banks/10467870, accessed 17 March 2020.
- Zangerler P. & Knolle K., 'U.S. Senate committee backs Russia energy bills, delays vote on sanctions "from hell"', *Reuters*, World News, 11 December 2019, <https://www.reuters.com/article/us-usa-russia-sanctions/us-senate-committee-backs-russia-energy-bills-delays-vote-on-sanctions-from-hell-idUSKBN1YF2DP>, accessed 16 March 2020.
- Zoffer, J.P., 'The Dollar and the United States' Exorbitant Power to Sanction', *AJIL Unbound*, vol. 113, 2019, pp. 152-156.

CONTRIBUTORS

Ilari Aula is a researcher on global value chains. He has worked as a visiting research fellow at the Finnish Institute of International Affairs and as a senior project manager at the National Emergency Supply Agency. He holds a PhD in International Relations from the London School of Economics and Political Science.

Niklas Helwig is a Leading Researcher at the Finnish Institute of International Affairs in the European Union research programme. His main areas of expertise are the institutional development of EU foreign policy, as well as Germany's role in the Union's foreign policy. He holds a PhD from the University of Edinburgh and the University of Cologne.

Juha Jokela is the Programme Director of the European Union research programme at the Finnish Institute of International Affairs. His current research interests include the political implications of Brexit and differentiated integration (in the EU's external relations), and the EMU reforms. He holds a PhD from the University of Bristol.

Matti Pesu is a Senior Research Fellow at the Finnish Institute of International Affairs, where he works with the European Union research programme. He also participates in FIIA's Finnish foreign and security policy project. His research interests are Finnish foreign, security and defence policy, and Northern European and Euro-Atlantic security. He obtained his PhD from the University of Tampere.

Clara Portela is a professor at the University of Valencia and formerly a Visiting Professor at the College of Europe. Her research focuses on multilateral sanctions, EU foreign policy, and arms control. She was a Visiting Senior Fellow at the Finnish Institute of International Affairs in the "Development of EU sanctions policy" project.

Ville Sinkkonen is a Research Fellow at the Center on US Politics and Power at the Finnish Institute of International Affairs. His research focuses on the foreign policy of the United States, hegemony, normative power and the politics of trust in international relations. He holds a Master of Social Sciences degree (Political Science) from the University of Turku.

PREVIOUSLY PUBLISHED IN THE SERIES

- Ryhor Nizhnikau, Arkady Moshes (eds.)**
Ukraine and its regions: Societal trends and policy implications, FIIA Report 62 (2020)
- Emma Hakala, Harri Mikkola, Juha Käpylä, Matti Pesu & Mika Aaltola**
Suomen huoltovarmuus ja Baltian alue: Tiivistyvät yhteydet muuttuvassa turvallisuusympäristössä, FIIA Report 61 (2019)
- Leo Michel & Matti Pesu**
Strategic deterrence redux: Nuclear weapons and European security, FIIA Report 60 (2019)
- Katja Creutz, Tuomas Iso-Markku, Kristi Raik and Teija Tiilikainen**
The changing global order and its implications for the EU, FIIA Report 59 (2019)
- Arkady Moshes, András Rácz (eds.)**
What has remained of the USSR: Exploring the erosion of the post-Soviet space, FIIA Report 58 (2019)
- Marcin Kaczmarski, Mark N. Katz and Teija Tiilikainen**
The Sino-Russian and US-Russian relationships: Current developments and future trends, FIIA Report 57 (2018)
- Kristi Raik, Mika Aaltola, Jyrki Kallio and Katri Pynnöniemi**
The security strategies of the US, China, Russia and the EU: Living in different worlds, FIIA Report 56 (2018)
- Harri Mikkola, Mika Aaltola, Mikael Wigell, Tapio Juntunen ja Antto Vihma**
Hybridivaikuttaminen ja demokratian resilienssi: ulkoisen häirinnän mahdollisuudet ja torjuntakyky liberaaleissa demokratioissa, FIIA Report 55 (2018)
- Mika Aaltola, Charly Salonius-Pasternak, Juha Käpylä and Ville Sinkkonen (eds.)**
Between change and continuity: Making sense of America's evolving global engagement, FIIA Report 54 (2018)
- Marco Siddi (ed.)**
EU member states and Russia: national and European debates in an evolving international environment, FIIA Report 53 (2018)
- Elina Sinkkonen (ed.)**
The North Korean Conundrum: International responses and future challenges, FIIA Report 52 (2017)
- Mika Aaltola and Bart Gaens (eds.)**
Managing Unpredictability
Transatlantic relations in the Trump era, FIIA Report 51 (2017)
- Tuomas Iso-Markku, Juha Jokela, Kristi Raik, Teija Tiilikainen, and Eeva Innola (eds.)**
The EU's Choice
Perspectives on deepening and differentiation, FIIA Report 50 (2017)
- Mika Aaltola, Christian Fjäder, Eeva Innola, Juha Käpylä, Harri Mikkola**
Huoltovarmuus muutoksessa: Kansallisen varautumisen haasteet kansainvälisessä toimintaympäristössä, FIIA Report 49 (2016)
- Juha Pyykönen**
Nordic Partners of NATO: How similar are Finland and Sweden within NATO cooperation? FIIA Report 48 (2016)
- Kristi Raik & Sinikukka Saari (eds.)**
Key Actors in the EU's Eastern Neighbourhood: Competing perspectives on geostrategic tensions, FIIA Report 47 (2016)
- Toivo Martikainen, Katri Pynnöniemi, Sinikukka Saari & Ulkopoliittisen instituutin työryhmä**
Venäjän muuttuva rooli Suomen lähialueilla: Valtioneuvoston selvitys- ja tutkimustoiminnan raportti
- Mika Aaltola & Anna Kronlund (eds.)**
After Rebalance: Visions for the future of US foreign policy and global role beyond 2016, FIIA Report 46 (2016)
- Katri Pynnöniemi & András Rácz (eds.)**
Fog of Falsehood: Russian Strategy of Deception and the Conflict in Ukraine, FIIA Report 45 (2016)
- Niklas Helwig (ed.)**
Europe's New Political Engine: Germany's role in the EU's foreign and security policy, FIIA Report 44 (2016)

- András Rácz**
Russia's Hybrid War in Ukraine: Breaking the Enemy's Ability to Resist, FIIA Report 43 (2015)
- Katri Pynnöniemi, James Mashiri**
Venäjän sotilasdoktriinit vertailussa: Nykyinen versio viritettiin kriisijän taajuudelle, FIIA Report 42 (2015)
- Andrei Yeliseyev**
Keeping the door ajar: Local border traffic regimes on the EU's eastern borders, FIIA Report 41 (2014)
- Mika Aaltola, Juha Käpylä, Harri Mikkola, Timo Behr**
Towards the Geopolitics of Flows: Implications for Finland, FIIA Report 40 (2014)
- Juha Jokela, Markku Kotilainen, Teija Tiilikainen, Vesa Vihriälä**
EU:n suunta: Kuinka tiivis liitto? FIIA Report 39 (2014)
- Juha Jokela (ed.)**
Multi-speed Europe? Differentiated integration in the external relations of the European Union, FIIA Report 38 (2013)
- Sean Roberts**
Russia as an international actor: The view from Europe and the US, FIIA Report 37 (2013)
- Rosa Balfour, Kristi Raik**
Equipping the European Union for the 21st century: National diplomacies, the European External Action Service and the making of EU foreign policy, FIIA Report 36 (2013)
- Katri Pynnöniemi (ed.)**
Russian critical infrastructures: Vulnerabilities and policies, FIIA Report 35 (2012)
- Tanja Tamminen (ed.)**
Strengthening the EU's peace mediation capacities: Leveraging for peace through new ideas and thinking, FIIA Report 34 (2012)
- Harri Mikkola, Jukka Anteroinen, Ville Lauttamäki (eds.)**
Uhka vai mahdollisuus? Suomi ja Euroopan puolustus- ja turvallisuusmarkkinoiden muutos, FIIA Report 33 (2012)
- Touko Piiparinen & Ville Brummer (eds.)**
Global networks of mediation: Prospects and avenues for Finland as a peacemaker, FIIA Report 32 (2012)
- Mia Pihlajamäki & Nina Tynkkynen (eds.)**
Governing the blue-green Baltic Sea: Societal challenges of marine eutrophication prevention, FIIA Report 31 (2011)
- Arkady Moshes & Matti Nojonen (eds.)**
Russia-China relations: Current state, alternative futures, and implications for the West, FIIA Report 30 (2011)
- Teija Tiilikainen & Kaisa Korhonen (eds.)**
Norden – Making a Difference? Possibilities for enhanced Nordic cooperation in international affairs, FIIA Report 29 (2011)
- Timo Behr (ed.)**
Hard Choices: The EU's options in a changing Middle East, FIIA Report 28 (2011)
- Jyrki Kallio**
Tradition in Chinese politics: The Party-state's reinvention of the past and the critical response from public intellectuals, FIIA Report 27 (2011)
- Steven Parham**
Controlling borderlands? New perspectives on state peripheries in southern Central Asia and northern Afghanistan, FIIA Report 26 (2010)
- Mari Luomi**
Managing Blue Gold: New Perspectives on Water Security in the Levantine Middle East, FIIA Report 25 (2010)
- Tapani Paavonen**
A New World Economic Order: Overhauling the Global Economic Governance as a Result of the Financial Crisis, 2008–2009, FIIA Report 24 (2010)
- Toby Archer, Timo Behr, Tuulia Nieminen (eds)**
Why the EU fails – Learning from past experiences to succeed better next time, FIIA Report 23 (2010)
- Louise Wiuff Moe**
Addressing state fragility in Africa: A need to challenge the established 'wisdom'? FIIA Report 22 (2010)
- Tarja Cronberg**
Nuclear-Free Security: Refocusing Nuclear Disarmament and the Review of the Nuclear Non-Proliferation Treaty, FIIA Report 21 (2010)
- Kristian Kurki (ed.)**
The Great Regression? Financial Crisis in an Age of Global Interdependence, FIIA Report 20 (2009)
- Anna Korppoo & Alex Luta (ed.)**
Towards a new climate regime? Views of China, India, Japan, Russia and the United States on the road to Copenhagen, FIIA Report 19 (2009)
- Minna-Mari Salminen & Arkady Moshes**
Practise what you preach – The prospects for visa freedom in Russia-EU relations, FIIA Report 18 (2009)
- Charly Saloniemi-Pasternak (ed.)**
From Protecting Some to Securing many: Nato's Journey from a Military Alliance to a Security Manager, FIIA Report 17 (2007)
- Toby Archer & Tihomir Popovic**
The Trans-Saharan Counter-Terrorism Initiative: The US War on Terrorism in Northwest Africa, FIIA Report 16 (2007)

SHARPENING EU SANCTIONS POLICY

CHALLENGES AND RESPONSES IN A GEOPOLITICAL ERA

The European Union increasingly uses sanctions in order to respond to breaches of international norms and adverse security developments in its neighbourhood and beyond. This report provides a comprehensive analysis of the current state of EU sanctions and discusses options on how to maintain them as an effective tool.

The study identifies the withdrawal of the UK as one of main architects of the instrument and an increasingly unilateral and unpredictable US sanctions policy as key challenges. In addition, the EU's machinery for planning, deciding, implementing and enforcing sanctions exposes vulnerabilities in an increasingly geopolitical environment.

The current shifts in international relations constitute an opportunity to clarify the strategic nature of EU sanctions and to fine-tune the sanctions machinery. EU unity and a joint diplomatic approach to international crises are vital for the success of the policy tool. Consequently, the efforts to improve the instrument need to ensure member states' ownership of EU sanctions policy. /