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About the Author

Leander Leenders studied Political Science at Ghent University and was a guest student at the Metropolitan University Prague for five months. While writing his Master's thesis in EU Studies, he joined the Permanent Representation of Belgium to the EU for two months, in order to follow the developments in the Council on the Mediterranean region from up close. His unremitting interest in the European Union and international relations led him to the College of Europe, where in 2013 he graduated with an MA in EU International Relations and Diplomacy Studies. This paper is based on his Master's thesis at the College of Europe (Václav Havel Promotion).

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Abstract

This paper examines an instrument which establishes an explicit link between economic power and foreign policy of the European Union (EU): restrictive measures or sanctions. As the EU is increasingly confronted with situations requiring a firm response, sanctions – arguably the EU’s ‘hardest’ tool – have become somewhat of a standard reaction. To what extent are sanctions a relevant tool for EU external action? By looking at several case studies from a set of 47 autonomous EU sanction cases, this paper acknowledges the many internal and external difficulties the EU faces when using the sanctions tool. However, it also shows that despite those challenges, the ‘hard’ and coercive nature of the sanction instrument nevertheless make it a relevant foreign policy tool which allows the EU to react to external crises.

Introduction

Over the years, the European Union (EU) has been called many things. One of the most reiterated as well as debated role conceptions is the one of 'Normative Power Europe' coined by Ian Manners.¹ Multiple points of criticism have been voiced, however, as the EU too often is accused of pursuing material interest over norms and values. Others, including the author, seek to go beyond the normative debate by taking on a 'strategic perspective'.² The reality is that the EU does not – *stricto sensu* – have military capacities at its disposal, and will not any time soon. Then what does the EU have? As the EU is the "biggest player on the global trading scene", the most conclusive answer seems to be: economic power.³

This paper analyses an instrument which links economic power and foreign policy: restrictive measures or sanctions (both are used synonymously here). In light of the recent proliferation in the use of sanctions by the EU, combined with what appears to be a not so successful track record,⁴ the question rises whether sanctions are a relevant foreign policy tool for the EU. Not only the recent proliferation, but also the relatively 'hard' nature of the instrument – quite rare in the EU context – mean that further research is warranted in order to remedy both the current lack of in-depth studies on EU sanctions and the shortage of down-to-earth foreign policy recommendations.⁵

According to the European Commission, "sanctions are an instrument of a diplomatic or economic nature which seek to bring about a change in activities or policies such as violations of international law or human rights, or policies that do not respect the rule of law or democratic principles".⁶ This notion implies various types of measures which are applied in different circumstances, ranging from the absence of rule of law to armed conflict.

Following the example of Portela, this study differentiates between 'formal' and 'informal measures': while formal measures are those that are taken within some sort

¹ I. Manners, "Normative Power Europe: A Contradiction in Terms?", *Journal of Common Market Studies*, vol. 40, no. 2, 2002, pp. 235-258.

² For example S. Biscop & J. Coelmont, *Europe, Strategy and Armed Forces: The Making of a Distinctive Power*, Oxon, Routledge, 2012.

³ European Commission, "EU position in world trade", 24 April 2013; World Trade Organization, *International Trade Statistics 2012*, Geneva, World Trade Organization, 2012, pp. 26-29.

⁴ See dataset of 47 EU sanctions in annex V of L. Leenders, *Restrictive Measures: 'The EU Way To Go'?*, Master's thesis, Bruges, College of Europe, 2013.

⁵ Interview with (former) Member State Official 3, Belgian Ministry of Foreign Affairs, response to the author's questionnaire on *EU and Autonomous Restrictive Measures*, Brussels, 28 April 2013.

⁶ European Commission, "Sanctions or restrictive measures", 2008.

of legal framework, 'informal sanctions' have in common that they have no specific label, "they were adopted in the absence of a CFSP [Common Foreign and Security Policy] act, and outside any contractual bilateral framework".⁷ The relevance of this last category is confirmed by the sanction practices of Russia and China, which use, for example, energy resources and trade potential to nudge third countries in the desired direction without adopting formal measures.⁸

The aim of this paper is to assess the EU as a foreign policy actor. EU sanctions which merely implement resolutions of the UN Security Council (UNSC) are therefore not treated here, because those would distort the assessment. It is, however, not always possible, nor desirable, to separate the EU's autonomous sanctions rigorously from those adopted by the United Nations.

To what extent have sanctions been and are they still a relevant foreign policy tool for the EU? Relevant is seen here as the best act of response given a particular situation within a particular environment.⁹ This is assessed via a study of two classic aspects of sanction theory: effectiveness and coherence which seem to be inextricably linked. 'Effectiveness' refers to the degree to which the immediate effects of the sanctions, for example economic disutility or reputational damage, have translated into the achievement of the sanctioning actor's goals.¹⁰ This variable will be assessed using two sets of indicators: an internal set, referring to the management of the sanction episode by the sanctioner, and an external set, assessing the role of the external environment. In short, the conceptual framework can be summarised as follows:

Internal environment: management

1. Ex-ante: planning and adoption
2. Implementation, enforcement and monitoring compliance
3. Ex-post: responsiveness and flexibility

External environment:

1. Target level: response and domestic situation
2. International level: allies, bystanders and opponents

⁷ C. Portela, *European Union Sanctions and Foreign Policy*, Oxon, Routledge, 2010, p. 102.

⁸ *Ibid.*, pp. 102-126; P. Rutland, "Russia as an Energy Superpower", *New Political Economy*, vol. 13, no. 2, 2008, pp. 203-210; and J. Reilly, "China's Unilateral Sanctions", *The Washington Quarterly*, vol. 34, no. 4, 2012, pp. 121-133.

⁹ European Commission, "Aid Delivery Methods. Volume 1: Project Cycle Management Guidelines", Brussels, EuropeAid Cooperation Office – Development DG, March 2004, p. 144.

¹⁰ European Commission, "Aid Delivery Methods. Volume 1", *op.cit.*, p. 131-133.

Coherence refers to the degree to which the EU acts 'consistently',¹¹ according to its discourse, and in a similar way, when the situation is similar (*mutatis mutandis*).

The research is based on a dataset comprising 47 cases of EU autonomous formal and informal sanction practice.¹² Since informal measures are by nature difficult to track, this dataset should be considered non-exhaustive. By looking at EU practice from its initial stages to this present day, some interesting tendencies can be discerned, which led to the following case selection: First, given the relative density of EU sanctions in Africa and Europe and the presence of no less than three grave chronic cases in the EU's vicinity, the paper focuses on the European neighbourhood. In the southern region, Libya and Syria are two cases which have known volatile relations with the EU: both have faced EU sanctions since 1986, but had their sanctions lifted for 'good behaviour' — until the events of 2011. They thus offer an interesting comparison of relatively more and less successful EU sanctioning. The focus on the EU's southern neighbourhood is further warranted for a number of reasons, such as the important historical ties,¹³ the recent sanction response to the events of the 'Arab Spring' and the absence of such a condemnatory position towards other countries, such as Bahrain and Saudi Arabia.¹⁴ In the eastern neighbourhood the focus is on the chronic case of Belarus. As the two previous cases, the case of Belarus comprises one relatively successful, and one extended episode which has been gradually tightened (and eased) throughout the last decade. Complementing the southern dimension with an eastern angle allows us therefore to compare both good and bad practices of EU sanction practice across the European neighbourhood. Second, the formal-informal distinction deserves attention. More insight into why informal measures in this dataset were seemingly more successful could help identify specific elements that might improve the EU's sanction practice.

The paper will proceed as follows. First, it will provide a brief general overview of the use of the sanctions tool by the EU, identifying the main characteristics and challenges of the EU's sanction practice. Second, the actual EU practice is evaluated in a series of case studies. Finally, the paper concludes by formulating general conclusions and policy recommendations concerning the use of sanctions.

¹¹ C. Gebhard, "Coherence", in C. Hill & M. Smith (eds.), *International Relations and the European Union*, Oxford, Oxford University Press, 2011, pp. 105-106.

¹² Leenders, *op.cit.*, p. 86.

¹³ A.N. Christensen, *The Making of the European Neighbourhood Policy*, Baden-Baden, Nomos, 2011.

¹⁴ Interview with (former) Member State Official 3, *op.cit.*

The EU and the instrument of restrictive measures

Although the use of sanctions might have proliferated, they are only used by the EU as a measure of last resort. This is reflected by the fact that it was only in 2003¹⁵ and 2004¹⁶ that the Council presented its two main documents on the use and implementation of sanctions. In 2004, the Council explicitly set out the objectives the EU wishes to achieve by adopting sanctions:

The Council will impose autonomous EU sanctions in support of efforts to fight terrorism and the proliferation of weapons of mass destruction and as a restrictive measure to uphold respect for human rights, democracy, the rule of law and good governance.¹⁷

These objectives are usually translated into what the literature calls 'primary goals'.¹⁸ These are relatively straightforward and seek the compliance of the target, for example the reinstatement of democratic rule after a military *coup*. It is, however, largely established that the EU's sanctions often also, or some would say even mostly,¹⁹ pursue 'secondary' or 'tertiary goals', which have to do with, respectively, internal goals (which concern the sender, e.g. to build an image) or external goals (which concern the international scene, e.g. to show support for the United Nations).²⁰

While the situation at hand often requires a swift process, in practice the time span for adoption ranges from "two weeks to long, protracted and complex discussions that can last up to more than three months".²¹ This already indicates that EU Member States' interests play an important role in the EU's sanction practice. As a Member State official put it: "Member States refrain from hurting themselves economically. In many cases that results in a watering down in negotiations"; while "political pressure [...can nevertheless push] Member States beyond their economic self-preservation",²² others argue that the outcome "not always results in effectiveness".²³

¹⁵ 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.

¹⁶ Council of the European Union, "Basic Principles on the Use of Restrictive Measures (Sanctions)", 10198/1/04, Brussels, 7 June 2004 [hereafter, "Basic Principles"].

¹⁷ Council of the European Union, "Basic Principles", *op.cit.*, p. 2.

¹⁸ J. Barber, "Economic Sanctions as a Policy Instrument", *International Affairs*, vol. 55, 1979, pp. 367-84, quoted in Portela, *European Union Sanctions and Foreign Policy*, *op.cit.*, pp. 10-11.

¹⁹ See C. Portela, "The EU's 'Sanctions Paradox'", Berlin, Stiftung Wissenschaft und Politik, October 2007, pp. 6-7.

²⁰ *Ibid.*

²¹ Interview with Member State Official 2, Belgian Ministry of Foreign Affairs, response to the author's questionnaire on *EU and Autonomous Restrictive Measures*, Brussels, 30 April 2013.

²² *Ibid.*

²³ *Ibid.*

If, then, measures are indeed adopted, the EU needs to be able to properly manage them. A great deal of criticism has been voiced concerning this ability,²⁴ which, as mentioned earlier, concerns mainly three aspects: planning, implementation and monitoring, and responsiveness.

In the planning stage, the EU tries to adopt a so-called 'tailored approach'. This means that "as a general rule, sanctions should target as closely as possible the individuals and entities responsible for the undesirable policies and actions, thus minimizing adverse effects on others".²⁵ As significant interests are at stake, the main challenge for the EU, however, lies with the implementation, enforcement and monitoring of the measures in place. In most cases, the Member States are responsible for the enforcement and need to report to the Commission on the implementation of the measures.²⁶ "However, where sanctions are implemented on a national basis [for example arms embargoes or visa bans], monitoring mechanisms are less clear."²⁷

Managing a sanction regime also means being responsive to changes on the ground and reviewing the measures "in order to ensure they are contributing towards their stated objectives".²⁸ While the EU is sometimes criticised for lifting a measure too early, the opposite occurs as well, as a situation of path dependency can result in chronic sanctioning cases.²⁹ It is important to mention that not only the EU's sanction capacities and political will, but also numerous external factors, such as the size of the sanction coalition or the domestic situation of the target determine the degree to which the EU is able to take up the international role to which it aspires.³⁰

Hence, the EU's sanction practice faces several challenges. Leaving external difficulties aside, we could state that these emanate, at their core, from what could be seen as two main difficulties that in turn influence the internal environment in which the sanction tool is used. First, the EU brings together 28 Member States and these inevitably pursue their own particular interests. Second, the EU, often denoted

²⁴ A.W. de Vries & H. Hazelzet, "The EU as a New Actor on the Sanctions Scene", in P. Wallensteen & C. Staibano (eds.), *International Sanctions: Between Words and Wars in the Global System*, Oxon, Frank Cass, 2005, pp. 99-10; Portela, *European Union Sanctions and Foreign Policy*, *op.cit.*, p. 39; K. Gebert, "Shooting in the dark? EU sanctions policies", Brussels, European Council on Foreign Relations (ECFR), 2013, p. 2.

²⁵ European Commission, "Sanctions or restrictive measures", *op.cit.*, p. 6.

²⁶ *Ibid.*, p. 9.

²⁷ de Vries & Hazelzet, *op.cit.*, p. 101.

²⁸ Council of the European Union, "Basic Principles", *op.cit.*, p. 3.

²⁹ S. Lehne, "The Role of Sanctions in EU Foreign Policy", Carnegie Endowment for International Peace, 14 December 2012.

³⁰ Interview with (former) Member State Official 3, *op.cit.*

as a 'soft power',³¹ still lacks military capabilities, but is nevertheless required to respond to its environment and to secure its interests. The instrument of sanctions illustrates the dilemma the EU faces when trying to balance between its 'realist' interests and 'idealist' identity.³²

The EU faces both internal and external challenges with regard to its sanction practice: insufficient solidarity combined with divergent Member State interests, tensions between 'realist' and 'idealist' needs, uncooperative international actors, etc. This paper argues that even though these challenges affect the EU's practice, the 'hard' and coercive nature of the sanction instrument still make it a relevant foreign policy tool for the EU. Given that certain of these challenges can be addressed, the instrument has the potential to become more effective, more coherent and more relevant. The degree to which the EU is able to deal with these internal and external challenges is therefore crucial for the EU's credibility and role as an international actor.

The following section investigates how these challenges appear in the EU's sanction practice, to what degree they affect the relevance of the sanctions tool for the EU, and what lessons could be learned.

The case of the southern neighbourhood: aiming for regime change and balancing values and interests

A significant factor in the recent proliferation of the use of sanctions by the EU has been the popular uprisings in the Arab world starting in 2010-2011. In Tunisia and Egypt, for instance, sanctions were used to prevent ousted leaderships from accessing state funds, whereas a more extensive range of measures was adopted in the case of Libya and Syria.³³

Libya

Libya was confronted with a first and informally adopted EU sanction episode in 1986, when it was accused of being involved in several terrorist attacks such as on a Berlin discothèque.³⁴ In 1999, the Libyan leader Muammar Qaddafi began his

³¹ Nye defines 'soft power' as "the ability to get what you want through attraction rather than coercion or payments. It arises from the attractiveness of a country's culture, political ideas, and policies." Soft power is therefore contrasted with military power or 'hard power'. J. Nye, *Soft Power: The Means to Success in World Politics*, New York, Public Affairs, 2004, pp. x-31.

³² Portela, "The EU's 'Sanctions Paradox'", *op.cit.*, p. 7.

³³ C. Portela, "The EU's Sanctions against Syria: Conflict Management by Other Means", *Egmont Security Policy Brief*, Brussels, September 2012, p. 1 [hereafter, "The EU's Sanctions against Syria"].

³⁴ C. Hill & K.E. Smith (eds.), *European Foreign Policy: Key Documents*, Oxon, Routledge, 2000, p. 323.

attempt to normalise relations with the US and the EU by handing over the two Libyans blamed for the crash of PanAm flight 103 in Lockerbie, Scotland.³⁵ Although the EU's sanction regime was lifted in 2004 (after Qaddafi engaged in several acts of goodwill), this relative success cannot unequivocally be attributed to the EU's sanctions. The episode was largely dominated by the UN which imposed its own sanctions in 1992. EU sanctions remained in place for almost twenty years and a US air raid in 1986 had clearly signalled the military capacities backing the international demands.³⁶

Thus, while the EU's sanction episode arguably caused some economic disutility for Libya, it could be said that its own effect was fairly limited. The fact that Libya's main source of revenue, the oil and gas sector, was only indirectly affected, and that EU-Libya trade was hence not fully halted, partly explains why.³⁷ Moreover, the measures were even said to have had unintended and sometimes even perverse consequences. For example, in an attempt to counter the effects the sanctions were having, Libya started deporting migrant workers in large numbers.³⁸ It is thus no wonder that from the moment Qaddafi complied with the EU's principal demands, the EU was more than willing to resume normal relations, as "this served the political interests of the EU (it could point to a limited success) and its economic interests (there was no need to give up on lucrative trade)".³⁹ The sanctions were therefore lifted even if this meant turning a blind eye to a degree of continuous human rights violations which in Belarus led to a tightening of sanctions.⁴⁰

The violations and repression, which the EU had left unaddressed for six years, suddenly became very visible again in 2010, when a revolutionary movement demanding democratic reform swept through the region. The ensuing repression led to civil war, and following UNSC resolution 1970,⁴¹ the EU adopted its second and fairly comprehensive sanction regime against Libya. This included an arms embargo, visa restrictions, asset freezes, a comprehensive flight ban and several trade

³⁵ K.T. Szabo, "Libya and the EU", Budapest, Center for EU Enlargement Studies, 2006, pp. 14-15.

³⁶ Hill & Smith, *op.cit.*; Council of the European Union, "Common Position (1999/261/CFSP) of 16 April 1999 defined by the Council on the basis of Article J.2 of the Treaty on European Union concerning Libya", *Official Journal of the European Communities*, L103, 20 April 1999, pp. 1-2; K.T. Szabo, "Libya and the EU", Budapest, Center for EU Enlargement Studies, 2006, p. 15.

³⁷ T. de Wilde d'Estmael, *La dimension politique des relations économiques extérieures de la Communauté européenne*, Bruxelles, Etablissements Emile Bruylant, 1998, p. 312.

³⁸ *Ibid.*, p. 313.

³⁹ *Ibid.*, p. 7 [author's translation].

⁴⁰ Gebert, *op.cit.*, p. 5.

⁴¹ United Nations Security Council, "Resolution 1970 (2011) Adopted by the Security Council at its 6491st meeting, on 26 February 2011", S/RES/1970(2011), 26 February 2011.

embargoes.⁴² Sanctions were “expanded and continued to be enforced throughout the civil war”,⁴³ and they loosened again following Qaddafi’s death and the rebels’ victory in October 2011.⁴⁴

The situation in 2011 was different from the one in the 1990s. Although both sanction episodes mainly emanated from security concerns, the objectives they aimed to achieve were fundamentally different in nature. While the initial measures in 2011 demanded the “immediate end to the use of force”,⁴⁵ it had quickly become clear that a *de facto* regime change would be necessary to address the grievances of the Libyan people.⁴⁶ This partly explains why Qaddafi showed no sign of reconsidering – on the contrary –,⁴⁷ and military intervention was needed to unseat the dictator: “no regime will commit suicide in order to get sanctions lifted”.⁴⁸ Further sanctions thus perversely hardened the regime’s resolve.

Although this time the EU imposed a more comprehensive oil and gas embargo, it still did not go all-out. The oil and gas sector was affected by an assets freeze on Libya’s oil and gas companies, amongst which also joint ventures with the French firm Total and firms located in the UK or Germany.⁴⁹ The fact that energy interests are never far away, was illustrated by rumours of a promise made by a rebel fraction of “35 per cent of Libya’s crude oil to France” in exchange for its support.⁵⁰ And while a full arms embargo was introduced by the UN and implemented by the EU, both the US and several EU Member States have provided Libyan rebel fractions with “self-defence material”, while there are speculations about covert shipments of other, more lethal weaponry as well.⁵¹

⁴² Council of the European Union, “Council Decision (2011/137/CFSP) of 28 February 2011 concerning restrictive measures in view of the situation in Libya”, *Official Journal of the European Union*, L58, 3 March 2011, pp. 53-62; Gebert, *op.cit.*, p. 5.

⁴³ Gebert, *op.cit.*, p. 6.

⁴⁴ European External Action Service, “Restrictive measures (sanctions) in force”, 21 February 2013.

⁴⁵ Council of the European Union, “Council Decision (2011/137/CFSP) of 28 February 2011 concerning restrictive measures in view of the situation in Libya”, *op.cit.*

⁴⁶ C. Ashton, “Statement by the High Representative following the London Conference on Libya”, Brussels, 29 March 2011.

⁴⁷ V. Walt, “Gaddafi’s Son: Last Gasp of Libya’s Dying Regime?”, *Time Magazine*, 21 February 2011.

⁴⁸ Gebert, *op.cit.*, p. 8.

⁴⁹ Council of the European Union, “Council Implementing Decision (2011/236/CFSP) of 12 April 2011 implementing Decision 2011/137/CFSP concerning restrictive measures in view of the situation in Libya”, *Official Journal of the European Union*, L100, 14 April 2011, pp. 58-71; “EU imposes full oil and gas embargo on Libya”, *Euractiv.com*, 13 April 2011.

⁵⁰ “EU lifts sanctions on Libyan ports; rebels dismiss report they promised France oil”, *Al Arabiya News*, 1 September 2011.

⁵¹ A. Tucker-Jones, “Is Europe covertly arming Libya’s rebels?”, *Public Service Europe*, 12 August 2011; “Libyan Rebels Say Italy Will Provide Weapons”, *Agence France-Presse*, 7 May 2011.

EU sanctions against Libya have not been very effective. While the episode of 1986 was lifted after a relative success, the immediate effects of the measures were arguably not the main reason why the EU's demands were finally met. The combination of flawed planning and the particular domestic situation of the target even caused the sanctions to have unintended and perverse effects. The EU's 2011 sanctions were, however, even less effective. The planned sanction objective became too ambitious, the scope of the measures and the subsequent enforcement was arguably not ambitious enough, and while the domestic opposition was united but yet fragmented at the same time,⁵² Qaddafi's resolve only hardened. Eventually, military intervention was needed to unseat the dictator.

There are also challenges in terms of coherence of the EU's approach over time. To this day, the domestic situation of the country is not under control,⁵³ as a result of which the EU maintains certain measures such as the arms embargo and assets freeze.⁵⁴ It is, however, hard for the EU to further criticise ongoing human rights violations and impose harsher sanctions, given that the EU fully lifted its measures in 2004, when similar facts were occurring under Qaddafi's dictatorship. In other words, doing so would indicate that the EU approves of such a situation under a dictator, but not after a legitimate regime has been installed.⁵⁵

Syria

Often the differences between the Libyan and the Syrian cases are stressed because of the different way in which the international community responded to the respective crises.⁵⁶ However, also certain parallels can be drawn. In 1986, Syria too was implicated in terrorist practices and similarly faced EU informal sanctions. Already then, an arms embargo was adopted. It remained, however, rather symbolic, as it still allowed existing contracts to be honoured.⁵⁷ Nevertheless, from 1987 on, Syria tried to display 'good faith', and after Syria's participation in the anti-

⁵² A. Shadid & K. Fahim, "Opposition in Libya Struggles to Form a United Front", *The New York Times*, 8 March 2011.

⁵³ G. Shennib, "Militiamen briefly storm Libyan parliament to demand vote", *Reuters*, 14 January 2014.

⁵⁴ European External Action Service, "Restrictive measures (sanctions) in force", 31 July 2013; J. Wilson, B. Palmer & N. Belfort, "Status of EU sanctions against Iran, Libya and Syria", 22 May 2012.

⁵⁵ Gebert, *op.cit.*, p. 6.

⁵⁶ See, for instance, R.A. Greene, "Analysis, Syria is not Iraq, or Libya or ...", *CNN International*, 31 August 2013.

⁵⁷ Hill & Smith, *op.cit.*, pp. 327-328; J. Kreutz, "Hard Measures by a Soft Power? Sanctions policy of the European Union 1981-2004", *Bonn International Center for Conversion*, Paper no. 45, 2005, p. 26.

Iraq Gulf War coalition, the EU agreed to lift its sanctions in 1994, even though, as in the case of Libya, Syria's human rights record did not merit reward.⁵⁸

The sanction episode cannot be considered a failure, nor a complete success. Although measures were rather weak, Syria did engage in several acts of goodwill. At the same time, however, the country was still allegedly involved in terrorist practices throughout the 1990s.⁵⁹ Nevertheless, one could say that those sanctions achieved more than the current sanction regime. Yet, their effect was not very sustainable: Syria became more and more isolated in recent years and the brutal repression of democratic uprisings that began in 2011 was widely condemned.⁶⁰ While Russia and China vetoed every proposal for a strong UNSC resolution imposing sanctions on Al-Assad's regime, the EU, together with the US, went ahead and imposed a set of measures in May 2011. They were further tightened in reaction to continuing atrocities and finally comprised almost every measure in the EU's toolbox.⁶¹ These measures, which were adopted with remarkable speed, "are having a noticeable economic impact. Yet, the choice of measures is ill-suited to stop the bloodshed".⁶² As in Libya, it quickly became clear to the EU that the goals previously set out would necessarily imply regime change,⁶³ and so the EU locked itself in the adoption of sanctions, as no political solution was in sight.⁶⁴ Given the lack of agreeable alternatives, the sanctions regime remains the strongest response available to the EU.⁶⁵ Two measures in particular merit further attention.

According to Portela, the arms embargo is not expected to have major effects, since the EU did not have a significant arms trade with Syria anymore. In fact, Syria's top weapons suppliers were Russia, Iran, Belarus and North Korea, and Russian arms exports continued into 2012.⁶⁶ This was even exacerbated by a lax EU Member State implementation, exemplified by Cyprus, which allowed "Syrian allies to traffick arms to Assad via its waters".⁶⁷

⁵⁸ "Case Studies in Sanctions and Terrorism", Peterson Institute for International Economics, retrieved 25 April 2014, <http://www.piie.com/research/topics/sanctions/syria.cfm>.

⁵⁹ *Ibid.*

⁶⁰ "Syria profile", *BBC News*, 25 March 2013.

⁶¹ Council of the European Union, "Council Decision (2011/782CFSP) of 1 December 2011 concerning restrictive measures against Syria and repealing Decision 2011/273/CFSP", *Official Journal of the European Union*, L319, 2 December 2011, p. 56.

⁶² Portela, "The EU's Sanctions Against Syria", *op.cit.*, pp. 1-2.

⁶³ European External Action Service, "Frequently Asked Questions on EU restrictive measures against the Syrian regime", 13 September 2011, p. 1.

⁶⁴ Interview with (former) Member State Official 3, *op.cit.*

⁶⁵ Portela, "The EU's Sanctions Against Syria", *op.cit.*, pp. 1-2.

⁶⁶ *Ibid.*, p. 3.

⁶⁷ S. Ryness, "Ashton on Syria: 'Don't accuse us of inactivity... if it was easy, we would have done it by now'", *European Jewish Press*, 13 September 2012.

The energy embargo on Syria, on the other hand, proved more effective. It is of a rare kind, given that this level of comprehensiveness is not often agreed to “in the absence of a UNSC mandate”,⁶⁸ and furthermore in stark contrast with the oil embargo imposed on Libya. The embargo prompted Dutch-British Shell and French Total to “cease activities in Syria”.⁶⁹ While some see this as an example of the subordination of economic self-preservation in the face of political pressure,⁷⁰ others remark that, ironically, it might have been the regime change in Libya, which “made it likely that oil from Libya will be able to flow to Europe again soon,” which freed “European hands to sanction Syria” more comprehensively.⁷¹ Syrian supplies furthermore only accounted for 1.5% of the EU’s total crude oil imports of 2010.⁷² However, a comprehensive regime such as in Syria is all but targeted and thus affects the entire population.⁷³ This also implies ‘collateral damage’. Not only did Al-Assad’s resolve harden, businesspeople with ties to the regime were seen to profit from the situation by “buying up real estate at bargain prices and selling natural gas and diesel”, even though EU sanctions were designed to affect this very group.⁷⁴

The EU has nevertheless tried to be responsive to changes on the ground. Under pressure from the UK and France, the EU finally decided in May 2013 to drop the arms embargo, so that the opposition could be armed.⁷⁵ The EU had *de facto* chosen sides which also became clear from the easing of the oil embargo.⁷⁶ This would “allow the Syrian National Coalition [SNC] to take advantage of the oil and gas reserves under its control”, yet “without an interim government, nothing can be done now,” said Al-Qadi, a member of the SNC.⁷⁷ The EU, however, could to some extent benefit from this amendment, given that European companies could resume trade in gas and oil – officially on condition that “the cash goes to the rebels”.⁷⁸ Monitoring this exemption could, however, prove difficult, given the unstable situation on the ground.⁷⁹

⁶⁸ Portela, “The EU’s Sanctions Against Syria”, *op.cit.*, p. 2.

⁶⁹ “Shell to quit Syria after EU sanctions”, *EUobserver*, 5 December 2011.

⁷⁰ Interview with Member State Official 2, *op.cit.*

⁷¹ J. Denselow, “Will Smart Sanctions on Syria work?”, *Middle East News and Commentary*, 2011.

⁷² F. Giumelli & P. Ivan, “The Effectiveness of EU sanctions: An analysis of Iran, Belarus, Syria and Myanmar (Burma)”, *EPC Issue Paper*, no. 76, November 2013, p. 24.

⁷³ Interview with (former) Member State Official 3, *op.cit.*

⁷⁴ N. Bitar, “When Sanctions Backfire: Syrian War Profiteers Cash In on Insurgency”, *Der Spiegel*, 6 June 2012.

⁷⁵ Giumelli & Ivan, *op.cit.*, 22.

⁷⁶ Interview with Member State Official 1, via email, Brussels, 4 March 2013.

⁷⁷ “EU eases Syria oil sanctions to assist rebels”, *Russia Today*, 23 April 2013.

⁷⁸ J. Kerry, “EU eases Syria oil sanctions to help rebels”, *Euractiv.com*, 23 April 2013; Interview with Member State Official 1, *op.cit.*; Portela, “The EU’s Sanctions against Syria”, *op.cit.*, p. 2.

⁷⁹ Kerry, *op.cit.*

While the lack of results in the face of these measures confirms that sanctions are not always fit to achieve certain goals, the case of Syria above all illustrates the importance of the external environment. This has been shown firstly by the organisation of the domestic opposition forces, or lack thereof, since the opposition remains, as in Libya, united but fragmented at the same time, even after the SNC was internationally recognised.⁸⁰

Secondly, the international context of Syria is very different from the one in the Libyan case, and might constitute the most important cause of ineffectiveness. Although the sanctioning coalition comprises the US, the League of Arab States and multiple countries which have aligned themselves with the EU's measures,⁸¹ the active support for Syria from Iran and especially Russia (and the passive stance of the other BRICS countries) seriously offset all efforts.⁸² It was only when the Syrian government was accused of using chemical weapons, and a military intervention by the United States was imminent, that a strong UNSC Resolution 2118, demanding the "expeditious and verifiable destruction" of those weapons, was adopted.⁸³ Thus, only when the military means backing the demand of the whole international community became explicit did Al-Assad decide to comply – on that front at least.

Both in the Libyan and in the Syrian cases, we could thus see the limits of the sanction instrument. It has become clear that sanctions are not fit to induce regime change, but can lead to some results when used for more modest and less threatening objectives such as the extradition of terrorist suspects. This has further been made explicit by the fact that a credible threat to use military means was needed for some degree of change to materialise. Rather unsurprisingly, the effectiveness of trade measures also depends on the trade relations at hand. While the comprehensive oil ban on Syria is said to have showed that "security interest [can in fact] trump commercial advantage", we have to point out that in 2010, the share of Libyan oil constituted 10.5% of the EU's oil total oil imports, while the Syrian supplies accounted for a mere 1.5%.⁸⁴ Moreover, when concrete interests do not determine the design of a measure, they can still feature in the implementation and enforcement stage.

⁸⁰ J. Samaan, "Syria's Fragmented Opposition", *Al Monitor*, 19 April 2013.

⁸¹ Council of the European Union, "Declaration by the High Representative on behalf of the EU on the alignment of certain third countries with the Council Decision 2012/634/CFSP amending Council Decision 2011/782/CFSP and Council Implementing Regulation (EU) No 944/2012 concerning restrictive measures against Syria", Brussels, 1 November 2012.

⁸² Portela, "The EU's Sanctions Against Syria", *op.cit.*, p. 5-6.

⁸³ "Security Council Requires Scheduled Destruction of Syria's Chemical Weapons, Unanimously Adopting Resolution 2118 (2013)", New York, United Nations Security Council, 27 September 2013.

⁸⁴ European Commission, "Monthly and cumulated Crude Oil Imports (volumes and prices) by EU and non EU country", DG Energy Market Observatory and Statistics, 2013.

Given the situation in Syria today, the EU's sanctions towards the Al-Assad regime cannot be deemed a success. While a comprehensive set of measures was adopted, the arms embargo, for example, was not fit to have major effects in the Syrian case – especially if the monitoring of the embargo was said to be questionable. Although a comprehensive energy ban was adopted, and the EU was responsive in its management by easing the oil embargo, Al-Assad only decided to partly comply when a credible military threat was issued. And as in Libya, even perverse effects arose.

The main reasons for this ineffectiveness are however situated in the external environment. While on the domestic front the Syrian opposition still struggles with fragmentation, internationally, Russia, as one of Syria's main allies, has proven to be the key obstacle to effective sanctioning.

Although both the Syrian and Libyan cases result in a rather negative assessment, the conclusion concerning the EU's sanctioning does not necessarily need to be completely negative. The EU can only be as effective as the international community allows it to be. Secondary and tertiary goals furthermore need to be factored in, as in the Syria case, where sanctions allowed the EU to profile itself internally and externally as an active international actor whom other countries follow.⁸⁵ However, in this endeavour, the EU has ironically also aligned "itself with the regional powers that resist the spread of democracy in the Middle East, such as Qatar and especially Saudi-Arabia".⁸⁶

EU policy in the Gulf

To complement the above with an assessment of the coherence of the EU's sanctions in the neighbourhood, the focus is shifted briefly to several countries not far removed from Libya and Syria. After more than two years of sanctioning in the southern neighbourhood, the following question can be raised: why did the EU not impose sanctions on the Gulf region?

In Bahrain, "bloggers and youth activists [...] are being arrested",⁸⁷ and anti-government protestors are sentenced to prison for life.⁸⁸ While the "Bahrain National Dialogue" between regime and opposition has been re-launched multiple times – most recently in January 2014 – and a "Ministry for Human Rights" has been set up,

⁸⁵ Council of the European Union, "Declaration by the High Representative on behalf of the EU on the alignment of certain third countries with the Council Decision 2012/634/CFSP amending Council Decision 2011/782/CFSP and Council Implementing Regulation (EU) No 944/2012 concerning restrictive measures against Syria", *op.cit.*

⁸⁶ Portela, "The EU's Sanctions against Syria", *op.cit.*, p. 5.

⁸⁷ M. Schaake, "European Parliament calls for EU sanctions against Bahrain", 17 January 2013.

⁸⁸ "Bahrain gives death penalty to Shia protesters", *The Guardian*, 28 April 2011.

not much has improved.⁸⁹ The European Parliament has strongly criticised “the lack of an EU response to the ongoing situation [...] and calls on the VP/HR to [...] impose restrictive measures”.⁹⁰ But besides statements and Council Conclusions regretting further violations and encouraging renewed dialogue, the EU has not adopted an active stance on the matter.⁹¹

Saudi Arabia faces similar demands for reform,⁹² and while people get arrested for “unlawfully protesting”,⁹³ or even executed in public,⁹⁴ no strong condemnation was issued by the HR/VP.⁹⁵ Qatar still keeps a “tight control” over the country – a fact exemplified last year by the sentence of life imprisonment for a poet who allegedly insulted the Emir.⁹⁶ Despite widespread “criticism over serious abuses of migrant workers [...] building infrastructure for the 2022 FIFA World Cup”, Qatar keeps ignoring calls for reform.⁹⁷ Geostrategic interests thus seem to trump human rights concerns.⁹⁸ Again, the EU has energy interests in the region,⁹⁹ and during 2013 France, Germany and the United Kingdom were still looking to close lucrative (arms) deals in Saudi Arabia, Qatar and the United Arab Emirates.¹⁰⁰ On top of that, the EU’s ally, the US, has its fifth navy fleet stationed in Bahrain.¹⁰¹

⁸⁹ European Parliament, *European Parliament resolution in the human rights situation in Bahrain*, (2013/2830(RSP)), Strasbourg, 11 September 2013; H. Toumi, “Bahrain National Dialogue to resume”, *gulfnews.com*, 16 January 2014; “Talks on Bahrain crisis begin”, *The Telegraph*, 11 February 2013.

⁹⁰ European Parliament, *European Parliament resolution on the human rights situation in Bahrain*, *op.cit.*

⁹¹ C. Ashton, “Statement by the spokesperson of EU High Representative Catherine Ashton on recent political developments in Bahrain”, 140116/04, Brussels, 16 January 2014; Council of the European Union, “Council conclusions on Bahrain: 3091st Foreign Council meeting”, Brussels, 23 May 2011; C. Ashton, “Statement by the EU High Representative Catherine Ashton, on the decision of the Bahraini Court of Appeal on the cases of Mr Abdulhadi Al Khawaja and nineteen other individuals”, A393/12, Brussels, 5 September 2012.

⁹² E. Al Nafjan, “Saudi Arabia’s day of little rage”, *The Guardian*, 12 March 2011.

⁹³ A. Fitzgerald, “Why won’t the west call out Saudi Arabia for persecution of democratic activists?”, *The Guardian*, 29 December 2013; M. Jamjoom, “161 arrested in Saudi Arabia protest over detentions”, *CNN*, 2 March 2013.

⁹⁴ R. Spencer, “Last-ditch plea to stop crucifixion of jewellery thief in Saudi Arabia”, *The Telegraph*, 5 March 2013.

⁹⁵ C. Ashton, *Statement by the EU High Representative Catherine Ashton, on the execution of seven young Saudi citizens convicted for armed robbery*, A135/13, Brussels, 13 March 2013.

⁹⁶ S. Kerr, “Qatari sheikh advocates region’s reform”, *Financial Times*, 10 December 2012.

⁹⁷ Human Rights Watch: “Qatar: Serious Migrant Worker Abuses”, 21 January 2014.

⁹⁸ D. Murphy, “Sanctions for Syria. But in Bahrain, it’s bring on the Grand Prix!”, *The Christian Science Monitor*, 8 June 2011; G. Greenwald, “Cameron’s attack on George Galloway reflects the west’s self-delusions”, *The Guardian*, 31 January 2013.

⁹⁹ European Commission, “Monthly and cumulated Crude Oil Imports (volumes and prices) by EU and non EU country”, *op.cit.*

¹⁰⁰ Greenwald, *op.cit.*

¹⁰¹ “Bahrain gives death penalty to Shia protesters”, *The Guardian*, *op.cit.*

The display of what some might call “double standards”,¹⁰² has both direct and indirect and short and long-term consequences for the EU. First, demands made with the use of restrictive measures, such as in Syria, become far less legitimate,¹⁰³ entailing obvious consequences for the EU’s attempts to persuade, for example, the BRICS countries to support a stronger condemnation of Al-Assad.¹⁰⁴ Second, the fact that these Gulf countries were not sanctioned, inter alia resulted in a massive spread of weapons in the direction of conflict zones such as Libya and Syria, as well as Mali. In a sense, this incoherence in sanctioning countries (closing arms deals instead of imposing an arms embargo) could thus result in the indirect armament of forces that European countries are fighting – for example in Mali. Third, the EU loses its credibility as an international actor in general, which can become an issue for an actor that has constructed its entire international image around values and principles. Fourth, by adopting a mild stance towards the Gulf countries, the EU not only loses face, it also allows them to engage in an exercise of regional power shifting; exploiting instability in one country, while trying to contain their own population. Finally, not only does this idle by-standing have negative consequences for EU (and US) principles, EU geostrategic interests in the region also advocate a longer term approach considerate of what is actually going on, since ignoring the “popular resentment in Bahrain and elsewhere in the changing Middle East is bound to backfire against [...the EU’s] long-term and strategic interests in the region”.¹⁰⁵

The case of Belarus: balancing positive and negative conditionality

While also located in the EU’s neighbourhood, Belarus represents a very different case, as Belarus’ eastern proximity seems to bring a lot more sensitivities into play. This case does furthermore not implicate immediate security concerns for the EU, but is primarily about upholding respect for human rights and the principles of democracy.

EU-Belarus relations have been characterised by a back and forth between crisis and political thaw. The EU’s sanction regime against Belarus goes back to 1997, when it was still informal and consisted, for example, of a freeze of the TACIS programme. These initial measures were a reaction to unfair elections and violent repression in 1995 and 1996. While over the course of the following years further measures were taken and then lifted again, a formal sanction regime was adopted by the EU in 2004 for Minsk’s continued lack of respect for human rights and the

¹⁰² H. Amirahmadi & K. Afrasiabi, “The west’s silence over Bahrain smacks of double standards”, *The Guardian*, 29 April 2011.

¹⁰³ *Ibid.*

¹⁰⁴ Interview with (former) Member State Official 3, *op.cit.*

¹⁰⁵ Amirahmadi & Afrasiabi, *op.cit.*

principles of democracy.¹⁰⁶ In the subsequent years, asset freezes and a withdrawal of the Generalised System of Preferences (GSP) were added. In 2007 some measures were lifted again to induce further positive developments, only to be imposed and expanded again with an arms embargo and asset freezes when the regime cracked down on protesters criticising the rigged elections of 2010.¹⁰⁷

Two things stand out compared to the cases from the EU's southern neighbourhood: the main body of the sanction regime is firstly very targeted and, secondly, managed quite responsively. This is because the EU has tried to engage in 'dual-track diplomacy': while it targets the leadership, it at the same time tries to foster a stronger domestic civil society and avoid harm to the larger population as much as possible.¹⁰⁸ While the suspension of the EU's GSP seems to be rather counterproductive in that last regard, no serious damage was to be expected as "only 12 per cent of Belarusian exports to the EU were covered by the GSP".¹⁰⁹ The violations of the GSP criteria and subsequent complaints by several international trade unions and the International Labour Organisation were furthermore hard to ignore.

Interestingly, there even was a "significant increase in trade with the EU over the last years — Belarus effectively doubled exports to Europe compared to 2010".¹¹⁰ Again, energy interests seem to play a role. A member of the Belarusian opposition stated that 50% of Belarus' trade today was with the EU, a large share of which involved trade in oil products with entities "connected to the Lukashenko family".¹¹¹ While this might be seen by some as an obvious cause of ineffectiveness, others point out that it was never the EU's intention to disrupt all trade.¹¹²

According to the President of Belarus, the EU even "need[s] Belarus".¹¹³ It seems like the geographical proximity make Member States' divergent interests all the more explicit. Even though the cost for the EU as a whole is marginal,¹¹⁴ several Member

¹⁰⁶ Kreutz, *op.cit.*, p. 38; Portela, *European Union Sanctions and Foreign Policy*, *op.cit.*, p. 89.

¹⁰⁷ Gebert, *op.cit.*, p. 2; Council of the European Union, "Council Decision (2012/642/CFSP) of 15 October 2012 concerning restrictive measures against Belarus", *Official Journal of the European Union*, L285, 17 October 2012, pp. 1-52.

¹⁰⁸ Giumelli & Ivan, *op.cit.*, p. 34.

¹⁰⁹ Portela, *European Union Sanctions and Foreign Policy*, *op.cit.*, pp. 93, 156-157; Council of the European Union, "Council Regulation EC No 1933/2006 of 21 December 2006 temporarily withdrawing access to the generalised tariff preferences from the Republic of Belarus", *Official Journal of the European Union*, L405, 30 December 2006, pp. 35-40.

¹¹⁰ N. Nielsen, "EU billions flow to Lukashenko despite sanctions", *EUobserver*, 30 March 2012.

¹¹¹ *Ibid.*

¹¹² For example, Giumelli & Ivan, *op.cit.*, pp. 34-35.

¹¹³ "Lukashenko believes EU understands that sanctions have no prospects", *KyivPost*, 26 April 2012.

¹¹⁴ Giumelli & Ivan, *op.cit.*, p. 36.

States such as Slovenia or Latvia openly opposed the adoption of certain measure. For example, "Slovenian company Riko Group was heavily involved in a €100 million hotel venture with Belarus tycoon Yuri Chizh, one of the three businessmen close to Lukashenko who were to be blacklisted".¹¹⁵ Moreover, the fact that the situation in Belarus resembles more a protracted (political) struggle than all-out civil war, could help explain the absence of a more scrupulous reaction. If we combine the Latvian reluctance to jeopardise the €500 million (or 2-3% of its GDP) it earns from the transit of Belarusian goods a year, with the fact that the country "does not have a system for monitoring compliance" with EU measures, we may understand that also the Member States' *ex-post* monitoring might not be very rigorous.¹¹⁶

The continuous tightening and easing of sanctions nevertheless indicates that the Council adopted a rather responsive strategy with regard to Belarus.¹¹⁷ However, there is a fine line between responsiveness and incoherence, as the EU (all too) often resorted to positive conditionality. An example is the invitation of Belarus to the Eastern Partnership, while in 2006, in a non-paper presented by the Commission, participation in the ENP was made conditional upon certain reforms and other demands, which had not been met.¹¹⁸ Bargaining the lifting of sanctions might be a smart pragmatic choice according to some,¹¹⁹ but making concessions while getting little in return does not exactly sound like a bargain. Instead of inducing change, the EU's sporadic shifts towards positive conditionality have rather "signalled the little leverage the EU has", and thus diminish the EU's credibility.¹²⁰

As in Libya and Syria, sanctions might even have been counterproductive, as Lukashenko sees them as a challenge. He even used them to create what Galtung called a 'rally around the flag effect',¹²¹ as "the leadership capitalized on Western condemnation, portraying the country as being 'under siege'".¹²² One of the biggest causes for ineffectiveness is, however, situated on the international level, as Russia's position has been a crucial determinant in Lukashenko's calculus.¹²³ This also means that every sign of deterioration in Belarus' relations with Russia could create a window of opportunity for the EU. The energy crisis of January 2007 constituted such

¹¹⁵ Gebert, *op.cit.*, p. 3.

¹¹⁶ T. Muravska, "Latvia counts the cost of tightening EU sanctions against Belarus", Riga, *Europe's World*, summer 2012; Gebert, *op.cit.*, p. 3.

¹¹⁷ Gebert, *op.cit.*, p. 2.

¹¹⁸ Portela, *European Union Sanctions and Foreign Policy*, *op.cit.*, pp. 90-91.

¹¹⁹ O. Ditrych, "The EU needs to adopt a more pragmatic policy towards Belarus based on cooperation rather than sanctions", The London School of Economics and Political Science, 2 April 2013.

¹²⁰ "Lukashenko believes EU understands that sanctions have no prospects", *op.cit.*

¹²¹ J. Galtung, "On the Effects of International Economic Sanctions: With Examples from the Case of Rhodesia", *World Politics*, vol. 19, n°3, 1967, pp. 388-391.

¹²² Portela, *European Union Sanctions and Foreign Policy*, *op.cit.*, p. 92.

¹²³ Giumelli, *op.cit.*, p. 128.

a moment.¹²⁴ However, while this prompted Belarus to seek an opening with the EU and to partly accommodate the EU's demands, this very move also provided Lukashenko with a bargaining chip to use in its talks with Russia. That way, he could, for example, negotiate better energy prices in return for its membership of the Russian sphere of influence.¹²⁵

Therefore, even though the EU's demands could be regarded as feasible for the regime, the latter can weigh out options and make a simple cost-benefit analysis before selecting which sanctions it wants to be lifted. Given, for example, that Belarus virtually does not make use of the EU's GSP, the regime did not think it worth it to prevent the suspension of its trade preferences, even though the procedure preceding such a decision provides for numerous occasions to do so.¹²⁶

All in all, the case of Belarus has illustrated again that both EU Member States' interests and the actions of other global players shape the EU's sanction practice. As a result, the sanctions imposed on Belarus have not had much impact so far.¹²⁷ To begin with, several Member States tried to water down sanctions. Trade between the EU and Belarus continued significantly, and also proper enforcement and monitoring of the measures in place was not guaranteed. On the external front, it is clear that Russia's behaviour has not been furthering the EU's goals, but also the lack of a "clear and unanimous opposition constituency inside the country that supports the sanctions policy" is not conducive to change.¹²⁸

As mentioned earlier, the back and forth of tightening and easing sanctions has not only been ineffective so far, it also risks creating an incoherent practice. Belarus is furthermore "the only country in the region to suffer from EU sanctions", even though for example Azerbaijan's policies are not much friendlier.¹²⁹

But also this case has shown some good practices: the EU is designing tailored and responsive sanction strategies. When the opportunity arose in 2007, it was partly due to the Commission's non-paper, stipulating concrete conditions for lifting, that the "EU-Belarus confrontational course" was reversed.¹³⁰ Relations between Belarus and

¹²⁴ Portela, *European Union Sanctions and Foreign Policy*, *op.cit.*, p. 90.

¹²⁵ *Ibid.*, p. 93; Giumelli & Ivan, *op.cit.*, p. 33.

¹²⁶ Portela, *European Union Sanctions and Foreign Policy*, *op.cit.*, pp. 156-157; Council of the European Union, "Council Regulation EC No 1933/2006 of 21 December 2006 temporarily withdrawing access to the generalised tariff preferences from the Republic of Belarus", *Official Journal of the European Union*, L405, 30 December 2006, pp. 35-40.

¹²⁷ Human Rights Watch, "Human Rights in Belarus", 2014; Giumelli & Ivan, *op.cit.*, p. 37.

¹²⁸ Gebert, *op.cit.*, p. 3.

¹²⁹ Giumelli & Ivan, *op.cit.*, p. 35.

¹³⁰ Portela, *European Union Sanctions and Foreign Policy*, *op.cit.*, p. 94; Giumelli, *op.cit.*, p. 129.

Russia might have recovered, but Belarus is aware of its structural problems. According to Ditych, this fact, together with the increasing trade between Belarus and the EU, means that the EU should adopt a more pragmatic approach, bargaining the lifting of one sanction after the other, and while doing so moving towards cooperation – whilst, of course, maintaining strict conditions.¹³¹ This means that the EU faces a difficult balancing exercise on multiple fronts: it needs to signal disapproval while formulating “a sanctions goal policy that would not be [completely] unacceptable to the regime [or harm] or alienate the opposition”, as the first would push Belarus towards Russia, and the latter could turn the opposition against the EU.¹³² A response that is too weak would on the other hand equally damage the EU’s credibility. One way to simplify the exercise would be to try to find common ground with Russia, and thus weaken Belarus’ bargaining position. But, interestingly, Russia too has not been exempt from the EU’s sanction practice. While the Crimean crisis of March 2014 has even triggered formal EU sanctions against Russia, the EU’s sanction practice against global powers remains characterised by the use of informal sanctions.

The case of informal sanctions: from flexible measures against small countries to signalling disapproval to global powers

This section looks at a particular category that encompasses measures that were not adopted in a formal sanction framework. These informal measures can, however, consist of just the same types of sanctions. In the case of Cuba, for example, a number of diplomatic measures were agreed, but via Council Conclusions instead of a legal document.¹³³ Interestingly, the dataset of 47 EU sanction cases seemed to indicate that informal episodes could be more successful than formal ones.¹³⁴ Given the challenges emanating from the EU’s internal set-up, informal measures might indeed be a useful alternative to the more difficult CFSP procedure. In the case of Pakistan and India, for example, the instrument of informal sanctions allowed the EU to react even when there was no consensus in the Council.¹³⁵ However, while a swift response is desirable, it is not likely to be very effective without strong content, and thus the sanctions against Pakistan and India were not very successful in achieving their initial goal – to halt nuclear tests and get both countries to sign the Non-Proliferation Treaty (NPT). Ironically, the informal nature of the measures then also allowed the EU to easily retreat from its “condemnatory position” and even refrain

¹³¹ Ditych, *op.cit.*

¹³² Gebert, *op.cit.*, p. 3.

¹³³ Council of the European Union, “Declaration by the Presidency, on behalf of the European Union, on Cuba”, 9961/03 (Presse 157), Brussels, 5 June 2003.

¹³⁴ Leenders, *op.cit.*, pp. 15-16.

¹³⁵ Portela, *European Union Sanctions and Foreign Policy, op.cit.*, p. 117.

from following through “its threat to suspend the GSP preferences”.¹³⁶ In other words, while the flexibility in the absence of a legal framework allows for a swift adoption, it equally implies some flexibility with regard to the lifting of the regime. Several informal sanction cases further reveal that other factors might have been more instrumental in the achievement of their goals. In the case of Serbia and Turkey, for example, their application for EU membership puts the success of EU informal sanctions in perspective.¹³⁷ The case of Cuba further illustrates that effectiveness also depends on leaders’ sensitivity to the symbolic weight of sanctions, as Cuba over the past decade was looking for international recognition, not isolation.¹³⁸ And in the case of Guatemala, it was more likely the US aid suspension and domestic pressure that caused the quick compliance with EU and US demands.¹³⁹

The success of informal measures is thus relative, and they can even be counterproductive. When the EU suspended aid to the Palestinian Authority (PA), the measure in fact hit the PA’s labour force the most, and is considered to have countered the development of democracy and governance and even “discredited the legitimacy of Western policies and enhanced Hamas’ image of resistance in the eyes of the Palestinian population”.¹⁴⁰

It is clear that informal sanctions do not offer a magic solution to the EU’s sanction challenges, let alone a worthy alternative to CFSP measures. Using informal measures might come in handy if Member States do not want to be tied down by legal decisions, or if disagreement impedes an EU reaction, but they do not seem fit to pursue an effective and coherent sanction strategy.¹⁴¹ Not only does their undefined nature create problems in terms of enforcement, it also complicates the management of the measures. This is because the absence of a formal procedure for lifting informal measures can imply flexibility, but can sometimes also result in chronic cases, as no “timetable for renewal” is foreseen.¹⁴² The absence of a fixed legal framework furthermore means that not only the Council, but also the Commission and even the Parliament become EU sanction actors. Informal measures do, however, fulfil a particular role: they allow the EU to signal disapproval, while not inflicting too much harm on strategic relationships. Various EU sanction cases involving relatively small to medium powers have shown that it is not always easy for the EU to balance its commercial or geostrategic interests with its normative interest

¹³⁶ *Ibid.*

¹³⁷ “Timeline, Serbia’s troubled path to EU accession talks”, *Reuters*, 22 April 2013; Portela, *European Union Sanctions and Foreign Policy*, *op.cit.*, p. 124.

¹³⁸ Portela, *European Union Sanctions and Foreign Policy*, *op.cit.*, p. 112.

¹³⁹ *Ibid.*, p. 119.

¹⁴⁰ *Ibid.*, p. 116.

¹⁴¹ *Ibid.*, p. 126.

¹⁴² *Ibid.*, p. 112.

to uphold the values it defends. This balancing exercise is all the more challenging when facing a global power. While up until now this paper spoke about China and Russia as significant external factors in the effectiveness of EU sanction episodes towards third countries, China and Russia, too, constitute the target of EU sanctions.

China

Informal sanctions usually do not entail heavy measures such as embargoes, but the arms embargo against China is a notable exception. The measure was adopted following the violent repression of demonstrations on the Tiananmen Square in 1989, and given the extensive relations – including military cooperation – , the sanction regime can be seen as “an anomaly”.¹⁴³ The division within the Council on this contentious subject in the absence of “an expiry date, or ‘exit-clause’”, has furthermore created a “sanction trap” from which the EU cannot easily escape.¹⁴⁴

While the informal nature normally would give the Council some leeway to decide on the lifting of its measures, protest from the European Parliament, civil society organisations and not the least the US, prevented the tentative moves to lift the embargo in 2004.¹⁴⁵ The motives to lift the embargo were in any case not connected to a substantial change of the initial situation that triggered the measure.¹⁴⁶ According to Human Rights Watch, “China continues to be an authoritarian one-party state that imposes sharp curbs on freedom of expression, [...] openly rejects judicial independence and press freedom, and arbitrarily restricts and suppresses human rights defenders”.¹⁴⁷ Despite the fact that EU Member States “interpret the embargo on sales of arms to China in different ways”,¹⁴⁸ and that existing contracts were not influenced, there is a “general restraint” to conclude new deals with China.¹⁴⁹ However, apart from a certain symbolic reputational damage,¹⁵⁰ the measure clearly does not seem to have much effect, and commercial interests weaken Member States’ resolve.¹⁵¹

¹⁴³ *Ibid.*, p. 104; European Union External Action Service, “China”.

¹⁴⁴ Portela, *European Union Sanctions and Foreign Policy*, *op.cit.*, p. 105.

¹⁴⁵ *Ibid.*, p. 106.

¹⁴⁶ M. Stumbaum, *The European Union and China: decision making in the EU foreign and security policy towards the People’s Republic of China*, Baden-Baden, Nomos, p. 170, quoted in S. Duhamel, *L’usage des mesures restrictives autonomes de l’Union européenne: deux poids deux mesures ou des mesures de poids?*, Master’s thesis, Bruges, College of Europe, 2012, p. 29.

¹⁴⁷ Human Rights Watch, “World Report 2012: China”, 2012.

¹⁴⁸ Council of the European Union, “EU Arms and Dual Use Exports Policy and EU Embargo on China”, EU Council Secretariat Background, 2005.

¹⁴⁹ Portela, *European Union Sanctions and Foreign Policy*, *op.cit.*, pp. 105-107.

¹⁵⁰ C. Patten, *Not Quite the Diplomat*, London, Penguin, quoted in Portela, *European Union Sanctions and Foreign Policy*, *op.cit.*, p. 105.

¹⁵¹ A. Rettman, “China keen to scale down EU human rights talks”, *EUobserver*, 14 June 2012; Portela, *European Union Sanctions and Foreign Policy*, *op.cit.*, p. 107.

Russia

China is not the only global power facing EU sanctions. The EU's sanctions against Russia go back to 1994 and formed a response to four military interventions in the context of three conflicts: the military campaigns in Chechnya in 1994 and 1999, the Russian invasion of Georgia in 2008 and the annexation of the Crimean Peninsula from Ukraine in 2014. However, once it was clear that the response to the second Chechnya campaign had not yielded any result, TACIS funding was reactivated and an Action Plan for relations with Russia was drafted.¹⁵² When Russia invaded Georgia, a similar story unfolded: negotiations on the new Partnership Agreement were postponed,¹⁵³ but even though Russia did not comply with the EU's demands, talks were resumed two months later.¹⁵⁴

The sanctions against Russia from 1994 to 2008 confirm that geostrategic interests of the EU in continued cooperation with the global power can outweigh the EU's 'moral responsibility' to impose harsh sanctions. Even though measures such as the suspension of the Most-Favoured Nation (MFN) treatment under the PCA or the GSP privileges were considered, they were not adopted. According to Portela, this sign of "half-heartedness [...] may [even] have encouraged Russia to disregard" the EU's reaction completely.¹⁵⁵

However, the current EU sanctions against Russia for its involvement in the pro-Russian protests in Crimea and Russia's subsequent annexation of the Crimean Peninsula on 18 March 2014 add a new dimension to this story. On 6 March 2014, after the Crimean Parliament voted to join Russia and scheduled a referendum, the EU again adopted informal sanctions, suspending talks with Russia on closer economic cooperation and deciding with other world leaders to have a G7 meeting in Brussels instead of a G8 meeting in Russia in June 2014.¹⁵⁶ However, on 17 March 2014, after the illegal Crimean referendum to join Russia, the EU added asset freezes and visa bans targeted against those Russians and Crimeans (amongst which the Prime Minister) implicated.¹⁵⁷ These measures can be regarded as the first formal EU

¹⁵² Portela, *European Union Sanctions and Foreign Policy*, *op.cit.*, p. 114.

¹⁵³ Council of the European Union, "Extraordinary European Council, Brussels 1 September 2008 Presidency Conclusions", *op.cit.*, p. 4.

¹⁵⁴ I. Traynor, "New EU talks bring Russia in from cold after Georgia protest", *Brussels, The Guardian*, 11 November 2008.

¹⁵⁵ Portela, *European Union Sanctions and Foreign Policy*, *op.cit.*, pp. 114.

¹⁵⁶ "Sanctions, What could be the next move?", *BBC News*, 21 March 2014.

¹⁵⁷ Council of the European Union, "Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine", *Official Journal of the European Union*, L78, 17 March 2014, pp. 6-15.

sanctions against Russia,¹⁵⁸ but also these measures did not yield significant results so far.¹⁵⁹

It is often said that “Russia and China are two countries that largely divide the EU”, and they know how to play this to their advantage”.¹⁶⁰ This explains why most of the time only informal measures were taken: they are easier to adopt, less visible and, most importantly, they do not bind the Member States. The Crimean case shows that the EU is prepared to take a firm stance when the territorial sovereignty of a close neighbour is violated. Nevertheless, it is said that also the sanctions following the Crimean crisis are surrounded by a great deal of weariness on the part of certain EU Member States, as for example Cyprus and several EU companies expect severe (economic) consequences.¹⁶¹ At the same time, Russia and China have reportedly been seen to “forge closer ties”, jointly building a gas pipeline and even a deep water port in Crimea.¹⁶²

It is therefore not a surprise that the EU usually opts for informal measures when sanctioning these global powers, as the most important function of informal measures is to signal the EU’s disapproval without compromising further engagement with these powerful players.¹⁶³ However, given the EU’s rather incoherent practice using informal sanctions, it should be careful not to signal instead that the EU takes up a position of dependency.

Both the influence of Member States’ interests and of the EU’s external sanction environment have been confirmed by the EU’s sanction practice against China and Russia. Whenever sanctions were adopted, they were usually informal and did not have much effect. In the case of China, the arms embargo has become somewhat void of meaning, while in Russia, cooperation was often resumed, even if none of the goals had been reached. This is not responsive management, but simply an incoherent practice. It is therefore clear that the sanctions against China and Russia have not been effective – at least in the strict primary sense.

To dismiss the informal sanction episodes as utterly ineffective would miss the point that they were not devised to jeopardise cooperation in the first place. It can thus be

¹⁵⁸ In 1982, the EEC imposed a formal partial trade embargo against the USSR for having a hand in the imposition of martial law in Poland; Hill & Smith, *op.cit.*, p. 263.

¹⁵⁹ M. Tsvetkova, “Dozens die in Odessa, rebels down Ukraine helicopters”, *EUobserver*, 2 May 2014.

¹⁶⁰ Interview with (former) Member State Official 3, *op.cit.*

¹⁶¹ A. Rettman, “Russia and China forge closer ties while EU explores sanctions”, *EUobserver*, 17 April 2014.

¹⁶² *Ibid.*

¹⁶³ Portela, *European Union Sanctions and Foreign Policy*, *op.cit.*, pp. 125-126.

concluded that even if the EU's sanction practice is greatly defined by challenges emanating from both its internal and external environment, even if the problem at hand would ideally require other means, the instrument of sanctions nevertheless allows the EU to react, and to be seen to pursue both its geostrategic and its normative interests.

Conclusion

This paper set out to look at the EU's sanction tool from a pragmatic perspective in order to provide some practical insights into EU foreign policy. Although the EU's sanction practice is far from perfect, the case studies above support the hypothesis that sanctions have been and are indeed still a relevant foreign policy tool for the EU. Given the EU's set-up as mainly an economic power (lacking true military means), the instrument of sanctions allowed the EU to respond to various crises, and thus has proven its utility.¹⁶⁴

The EU's sanction practice is flawed, but looking at multiple sanction cases helps identify how the underlying factors play a role: The external environment can, for example, greatly diminish the EU's sanction potential, as seen especially in the cases of Syria and Belarus. Other than that, all cases have shown that the nature of the concerns, the urgency of the situation and the links to the target – together with the material interests involved – will influence whether sanctions are adopted at all, and if so, whether they will be given real content. Interestingly, the comparison of cases within the EU's neighbourhood has suggested that the geographical proximity influences the sensitivity of the political process of adopting sanctions. The cases of China and Russia have illustrated that, if relations are important enough, no harsh sanctions will be taken, no matter the geographical distance. On the other hand, it can be argued, with reference of the Syrian case, that a situation involving immediate security concerns can create enough political pressure to push states to put aside their economic self-preservation.¹⁶⁵ The limited share of Syria's oil in EU imports could, however, also help explain the EU's ability to make this apparent sacrifice.

It has been shown that these factors play a role not only in the design and adoption phase, but also when implementing, monitoring and managing the sanction regimes. Often the 'naming and shaming' principle underlying the infringement procedure does not really work. As every Member State will see its interests at stake by a certain measure one day – risking not properly enforcing it – , they are not keen

¹⁶⁴ Giumelli and Ivan, *op.cit.*, p. 11.

¹⁶⁵ Interview with Member State Official 2, *op.cit.*

to install a tradition of quick reporting.¹⁶⁶ Failures to properly enforce EU sanctions are, however, not necessarily intentional, and may be due to insufficient administrative capacity in certain Member States.¹⁶⁷ The fact that there is a lack of information sharing between Member States only adds to the problem.¹⁶⁸

When it comes to managing a sanction regime after its adoption, there is “a difficult balance to strike between encouraging a government in further reforms, and rewarding it for past reforms”.¹⁶⁹ Nonetheless, the EU should be careful not to be perceived as incoherent, or even dependent or weak, as this could significantly affect both its credibility and effectiveness.

All this appears to be in line with the challenge mentioned earlier, and which is a constant across many EU foreign policy fields: the EU seems to be caught in a balancing exercise between the its ‘realist’ and ‘idealist’ interests, as both internal and external expectations lead it to defend its norms and values, while its geostrategic and commercial interests could require doing the opposite.

Nevertheless, looking at the Gulf region has made painfully clear that inaction is not a better alternative to sanctions. If aiming for primary goals, modest and practical objectives have proven most effective. However, EU sanctions have often served more secondary and tertiary goals, and with success. In the Syrian case, for example, the EU took a firm stance in absence of a UNSC resolution. Syria has moreover revealed that, if necessary, every measure in the sanction toolbox can be adopted over a short period of time. Belarus has shown that the EU sanction strategy is rather unique in its tailored approach, leaving room for dual-track diplomacy and constructive engagement if need be. The EU’s practice towards China and Russia has exemplified that when dealing with important states, the disruption of all (trade) relations is not always the main objective.

The sanction tool remains, in other words, a relevant foreign policy instrument, and could become even more so if several short- to medium-term (EU-focused) recommendations following from this brief study would be taken into account. Firstly, it is often reiterated that the EU should develop its sanction capacities, as the institutions in place are often overburdened, a tendency which is worsening due to the growing complexity of sanctioning. This could involve a reinforcement of the Council’s Relex Working Group, and the setting up of mechanisms to enhance coordination between Member States and monitoring. A second recommendation

¹⁶⁶ Interview with (former) Member State Official 3, *op.cit.*

¹⁶⁷ de Vries & Hazelzet, *op.cit.*, p. 99.

¹⁶⁸ Interview with (former) Member State Official 3, *op.cit.*

¹⁶⁹ Interview with Member State Official 2, *op.cit.*

follows the observation that measures do not have effect if they aim too high. Therefore, the adoption of a more pragmatic sanctioning approach both in design as well as in management, setting several partial and realistic goals and engaging constructively with the target, whilst communicating openly to the international community about all choices made, could benefit effectiveness, coherence and credibility. In the medium term, a burden-sharing mechanism could help to even out the costs incurred by every Member State, and thereby alleviate tensions in the adoption phase. Unfortunately, this suggestion could be seen as wishful thinking as such developments require a general long-term evolution towards more solidarity and political convergence.

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