

# Assessing the Effectiveness of EU Sanctions Policy

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## Introduction

While the European Communities (ECs) has applied autonomous sanctions for many years, their character has significantly changed since the 1990s. Such changes may be the result of the transformation of the ECs into the European Union (EU), and to the creation of its second pillar; the Common Foreign and Security Policy (CFSP). On the other hand, the EU's ongoing attempts at gaining increased importance on the international level – promoting itself as a key player in international politics – may also form a key motivation. Finally, the changes to EU sanctions policy may reflect wider international efforts to improve sanctions instruments and to increase the effectiveness of particular sanctions regimes.

An intensive debate on sanctions was invoked among both scholars and practitioners in the second half of the 1990s. Despite that much attention has been paid to the new shape of international sanctions policy, and some scholarly work<sup>2</sup> has dealt with the new European sanctions policy as well, the intensity

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<sup>2</sup> Kreutz 2005, de Vries, Hazelzet 2005, Eriksson 2005, Sick 2001 et al.

and impact of the aforementioned motives has been, thus far, underdeveloped. This work tries to fill the gap in the current state of scholarship in one important aspect: it examines to what extent recent changes in EU sanctions policy interrelate with ongoing international efforts to increase sanctions' effectiveness. It demonstrates that in EU sanctions policy exist processes, which can be assessed as advancements of its effectiveness, although the EU does not set itself such an explicit aim in any of its core documents.

However, the extensiveness and comprehensive character of the recent and contemporary European sanctions policy does not allow full coverage of the topic and hence the scope of this work is limited in two ways. First, the changes to the EU sanctions policy framework are evaluated as a whole; this work does not attempt to evaluate the effectiveness of individual sanctions measures imposed by the EU. Second, it only focuses on economic sanctions<sup>3</sup> which have undergone perhaps the most obvious change in the past years. It does not take into account other types of sanctions measures such as diplomatic, communication, cultural and sporting boycotts, (etc).

To fulfil this aim, this work proceeds as follows: the first section discusses the issue of economic sanctions effectiveness from a theoretical perspective. It introduces key variables determining the impact (success or failure) of concrete international sanctions arrangements. The second section summarises general reform shifts at the level of the United Nations (UN) based on a set of manuals for practitioners presented to the UN Security Council (UNSC) in 2001-2002 and 2006-2009, and their coherence with the key theoretical criteria. In section three the development of EU sanctions policy is summarised. Finally, section four seeks to reflect on the main moves toward increased effectiveness in documents, published in 2004-2006, creating a new form of European sanctions policy. It also deals with additional issues concerning effectiveness, arising after 2006 with the application of the first economic sanctions regimes reformed in the 1990s, and contrasts them with how they are addressed in new reports submitted to the UNSC, and to what extent they are considered in European institutions.

As one of the first contributions to the issue under examination, this work is based on an analysis of primary documents. The overview of the broad international trends in sanctions policies is based, as noted above, on expert reports adopted by a series of international meetings at the UN: Targeted Financial Sanctions: A Manual for Design Implementation (2001), Design and Implementation of Arms Embargoes and Travel and Aviation Related Sanctions: Results of the "Bonn-Berlin Process" (2001), Making Targeted Sanctions Effective: Guidelines for the Implementation of the UN Policy Options (2003),

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<sup>3</sup> Economic sanctions include both trade (embargo, boycott, tariff increase, tariff discrimination, quotas, dumping etc.) and capital measures (freezing of assets, aid suspension, controls on capital movements etc.).

and Strengthening Targeted Sanctions through Fair and Clear Procedures (2006, 2009). The analysis of the shift in European sanctions policy is largely derived from the Basic Principles on the Use of Restrictive Measures (Sanctions) (2004),<sup>4</sup> Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU CFSP (2005),<sup>5</sup> and EU Best Practices for the Effective Implementation of Restrictive Measures (2008).<sup>6</sup> A limited range of theoretical sources are used as a starting point in the initial section of this work.

## Effectiveness of International Economic Sanctions Regimes – A Theoretical Perspective

While the effectiveness, success and/or utility of economic sanctions and their importance among foreign policy tools have been discussed extensively since the times of the US President Woodrow Wilson, neither states nor international organisations or scholars have had an available and clear criteria for the evaluation of imposed economic sanctions so far. This may be attributed to the fact that, among the numerous contributions to sanctions research, studies of a single or a few particular sanctions regimes prevail. Contributions attempting to generalise individual findings are relatively rare. Among the few exceptions, identifying some political and economic factors which improve the chance of positive outcomes of particular sanctions steps, long-term research conducted by the Peterson Institute for International Economics is of special importance. Their research is derived from 174 cases of US economic sanctions targeted at state units between World War I and 2000, further divided into 204 observations. The research is, according to its authors, based on “the most detailed dataset on the global use of sanctions.”<sup>7</sup> After its *first* publication (1985), the final report by the Peterson Institute, entitled “Economic Sanctions Reconsidered: 3<sup>rd</sup> Edition,” initiated a broader debate together with critical examination by other scholars.<sup>8</sup> Subsequent research, and later editions of the report, reflect the major objections, and incorporate them into its conclusions. Thus, the most up-to-date edition (2007) reflects a broader scholarly agreement tested on a representative sample of cases.

The Peterson Institute report suggests that prior to imposing sanctions, the sender should be aware of the vulnerability of the target and its view of costs related to the change of its behaviour; should evaluate long-term sustainability of the sanctions regime and should consider whether sanctions shall succeed if imposed unilaterally or whether a broader coalition of countries is necessary.

<sup>4</sup> Council doc. 10198/1/04.

<sup>5</sup> Council doc. 15114/05.

<sup>6</sup> Council doc. 8666/08.

<sup>7</sup> Hufbauer et al. 2007, p. 3.

<sup>8</sup> Cf. especially Pape 1997, 1998 and Baldwin, Pape 1998.

In addition, the first edition of the report identified nine patterns which should be taken into account by foreign-policy makers when they attempt to improve effectiveness of the entire sanctions framework. In accordance to the outcomes of the following debates, as well as in response to new developments in international politics, they were later reduced to the following seven points:

1. inverse proportionality sanctions – goals:<sup>9</sup> sanctions are more capable of contributing to desired outcome when their goals are more modest;
2. good relations of the sender with the target:<sup>10</sup> effectiveness is higher when sanctions are imposed on a friend-state or a close trading partner;
3. higher compliance of democratic regimes:<sup>11</sup> democratic regimes are more sensitive to economic sanctions than autocratic regimes. Autocratic regimes may be more vulnerable due to their political and economic weakness but empirical evidence of this correlation is limited;
4. direct proportionality of economic cost on part of the target and effectiveness:<sup>12</sup> effectiveness is likely to increase with economic costs to the target;
5. no direct relation between effectiveness and number of senders:<sup>13</sup> effectiveness is not directly proportional to the number of sender countries. Higher numbers of sender countries strengthens political signals and economic threats, but the real impact of sanctions may be limited by compromises when searching for agreement among senders;
6. appropriate use of sanctions:<sup>14</sup> some cases cannot be solved by the use of sanctions and it is necessary to deploy other measures against the target, such as covert action, quasi-military measures or military operations. However, in these cases sanctions may contribute to the overall success of the action;
7. necessity to consider domestic costs:<sup>15</sup> costs imposed on domestic constituencies of the sender must correlate with expected benefits of sanctions so that the sanctions are not undermined by a lack of public support.

Another set of recommendations, of a general nature, were presented by Cortright and Lopez in 2000.<sup>16</sup> They focus on the intensive sanctions activity of the UNSC in the 1990s. Their methodology seems to be “softer” than the approach developed by the Peterson Institute as they compare twelve applied regimes

<sup>9</sup> Originally, the recommendation for policy-makers reads: “Don’t bite off more than you can chew” (Hufbauer et al. 2007, p. 162).

<sup>10</sup> “Friends are more likely to comply than adversaries” (Ibid. p. 163).

<sup>11</sup> “Beware autocratic regimes” (Ibid. p. 166).

<sup>12</sup> “Slam the hammer, don’t turn the screw” (Ibid. p. 168).

<sup>13</sup> “More is not necessarily merrier” (Ibid. p. 172).

<sup>14</sup> “Choose the right tool for the jobs” (Ibid. p. 175).

<sup>15</sup> “Don’t be a cheapskate or a spendthrift” (Ibid. p.176).

<sup>16</sup> Cortright, Lopez 2000.

and follow three criteria: 1) Political effectiveness of UN sanctions (success in pressuring the target; not expressed numerically but rated as high, moderate, low or none); 2) Humanitarian impacts; and 3) Special factors (e.g. restrictive measures applied by regional organisations, military operations). Ultimately, the authors offer 24 policy recommendations, some of which are specifically directed to UN sanctions and the UNSC; some are of general importance and might be relevant for European sanctions policy as well. They include:

1. flexible application of sanctions, within a framework of carrot-and-stick diplomacy designed to resolve conflicts;
2. pressures targeted against decision-making elites responsible for wrongdoing, sanctions designed so that deny assets and resources of value to decision-making elites;
3. avoidance of measures causing unintended humanitarian hardships, conduct of humanitarian assessment reports and streamlining of humanitarian exemption applications;
4. weighing third party impacts;
5. employing more precise technical terms and definitions in documents (the SC resolutions) imposing sanctions;
6. identification of specific policy changes – conditions for lifting the sanctions;
7. enhancement of the transparency of work of sanctions committees.<sup>17</sup>

Regarding other contributions devoted to sanctions effectiveness, most deploy data collected by the Peterson Institute and concentrate on a specific group of sanctions; economic sanctions aimed at state units. Diplomatic sanctions or financial sanctions against non-state actors and individuals are typically excluded. Their attitudes to the issue of sanctions effectiveness differ as they build on different theoretical and methodological bases. Since they use different optics to examine the issue, their results vary. Within the frameworks of political economy<sup>18</sup>, public choice theory<sup>19</sup>, game theory<sup>20</sup> bargaining theory<sup>21</sup> or pure statistics,<sup>22</sup> scholars attempt to assess existing sanctions regimes to find general conclusions concerned with particular conditions influencing the effectiveness of sanctions. Other authors concentrate on the issue of how the

<sup>17</sup> Cortright, Lopez 2000, pp. 221–259; D. Cortright and G. Lopez, together with L. Geber-Stellingwer, E. Fackler, S. Persinger and J. Weaver returned to the topic in November 2009 (Cortright et al. 2009). They summarize the efforts of the UN to improve listing and de-listing procedures.

<sup>18</sup> Seiglie 1997, Chul 2005, Kryvoi 2007.

<sup>19</sup> Kaempfer, Lowenberg 1988, Kaempfer, Lowenberg 1989, 1999.

<sup>20</sup> Morgan 2005, Tsebelis 1990.

<sup>21</sup> Morgan, Schwebach 1997.

<sup>22</sup> Dashti-Gibson et al. 1997.

success of sanctions regime depends on particular circumstances, re: on institutional structures of a targeted state,<sup>23</sup> the duration and conclusion of sanctions<sup>24</sup> the interception of salience of sanctions in sending and targeted states,<sup>25</sup> or compare the effectiveness of unilateral and multilateral sanctions.<sup>26</sup> In addition to the theoretical advancements introduced in this initial section, international economic sanctions practice (sanctions policies, regimes) has changed substantially since the mid-1990s. The most remarkable points in the development of sanctions are studied in the following section.

## Reforms of International Sanctions Regimes: A Practical Perspective

In the 1990s, international society, responding to difficulties with applying classical economic sanctions instruments, struggled to develop new sanctions designs. The process moved from case-specific innovation to a general trend of imposing so-called smart (targeted) sanctions.<sup>27</sup> The new tendencies were remarkable as far as embargoes and boycotts are concerned. In their new form, embargoes and boycotts are intended to limit the *needs* of the wealthiest social strata and of political elites. Therefore, they aim at arms and other military goods, articles of luxury or other commodities, the absence of which does not affect common people in the target country. Simultaneously, the use of smart sanctions enables international society to better respond to new types of conflicts – internal rather than international – and, in addition to the legitimate establishment, it hits unofficial military and paramilitary groups which are often the guiltiest of violent operations. When using targeted sanctions, imposing states expect that the administrative burden connected with the sanctions regime observance control is reduced. The supervision of smaller range of commodities is simpler, cheaper and more acceptable to the general public.

Unlike trade sanctions, financial measures such as accounts freezing, investment bans or debiting charges are targeted in their very nature. However, new requirements have recently appeared in a close relation to the phenomenon of international terrorism. Like embargoes and boycotts, also financial measures have to be imposed on non-state groups and persons suspected of propagation and support of terrorist activities. From a territorial point of view, one can distinguish between blanket sanctions (imposed on a whole country, some of them

<sup>23</sup> Lektzian, Sprecher 2007.

<sup>24</sup> Dorussen, Mo 2001.

<sup>25</sup> Ang, Peksen 2007.

<sup>26</sup> Bapat, Morgan 2009.

<sup>27</sup> Weiss 1999, Cortright, Lopez 2002, Staibano 2005.

aimed at concrete regions of a target country or at specific subjects) and global sanctions (imposed on certain groups or persons whatever their locale).<sup>28</sup>

There are several new legal and administrative demands on states when imposing such enhanced sanctions. According to Biersteker (et al.), the new practice of targeting requires that states:

possess the legal authority to implement the UN Security Council resolutions; designate an administrative agency to oversee implementation; disseminate information to those affected by sanctions; undertake compliance activities; decide upon exemptions and exceptions as appropriate; administer frozen assets; and pursue enforcement actions where sanctions are breached.<sup>29</sup>

These requirements may be considered general aspects of targeted sanctions implementation at the national level; there are also several sector-specific ones, such as administration of frozen assets by financial measures.

Both the general and specific requirements for targeted sanctions were discussed and specified at a series of international expert meetings in Switzerland and Germany between 1998 and 2000.<sup>30</sup> The seminars in Interlaeken, Switzerland in March 1998 and 1999 focused primarily on financial sanctions, and led to the drafting of the so-called Interlaeken Report, *Targeted Financial Sanctions: A Manual for Design Implementation*. The report was presented to the UNSC in October 2001.

Despite the fact that the report has a single aim – to promote fast, full and consistent implementation of UN-authorized financial sanctions across UN member states – it includes two packages of recommendations. One is devoted to the UN as the creator of individual sanctions regimes which should develop its sanctions policy in a consistent and the simplest manner possible. Particularly, it suggests common definitions of core terms and standardised texts of sanctions resolutions from preamble, through objectives of sanctions, exemptions and exceptions, participation of other international organisations, creation of sanctions committees, petitions for removal from list of targets, reporting, monitoring, appeals to states, non-liability for compliance with sanctions, to sunset clause. The other package addresses the major obstacles to effective sanctions implementation at the national level – a lack of legal authority necessary to implement the requirements of the UNSC resolutions in many UN member states, and a great variation among implementation and enforcement. It suggests several steps for improvement in the legal framework, designation of an administering agency or agencies, development and dissemination of

<sup>28</sup> Anthony 2002.

<sup>29</sup> Biersteker et al. 2005b, p. 58.

<sup>30</sup> The sessions brought together representatives of governments, the UN and other international organisations, as well as scholars.



information, compliance initiatives, consideration of exemptions, administration of assets, and enforcement efforts.<sup>31</sup>

The subsequent meetings in Bonn (November 1999) and Berlin (December 2000) paid attention to arms embargoes, travel bans and aviation sanctions. They established four Expert Working Groups which elaborated the report Design and Implementation of Arms Embargoes and Travel and Aviation Related Sanctions: Results of the “Bonn-Berlin Process.” The report was presented to the UNSC together with the Interlaeken Report. It consists of similar packages of recommendations, such as the Interlaeken Report, with some specialists deriving a different nature for the sanctions measures it deals with.<sup>32</sup>

A third step in the sanctions reform process was an initiative of the Swedish government to launch a series of different types of international meetings in 2002-2003 to deal with the implementation of targeted sanctions. During the Swedish meetings, more than 120 experts created the report Making Targeted Sanctions Effective: Guidelines for the Implementation of the UN Policy Options, submitted to the UNSC in February 2003.<sup>33</sup> The report was also presented by the head of the expert team, Peter Wallensteen, to the EU’s Committee for the Common Defence and Security Policy two months later.<sup>34</sup> The report consists of a series of detailed recommendations to the UNSC and the UN Secretariat aimed at better communication and coordination between particular actors participating in sanctions creation, and more effective monitoring of sanctions implementation. However, there are also numerous conclusions relevant for states. Especially Part III, entitled: Supporting Member State Capacity to Implement Targeted Sanctions, stresses the importance of capacity-building and training programs at the level of states, and suggests that the implementation of sanctions could be enhanced by model law, as well as best practices comparison.<sup>35</sup>

Since then, new challenges emerged in a close connection to the implementation of new counter-terrorist measures. They were particularly related to the rights of targeted individuals, an issue not considered when targeted sanctions were first being introduced. Thus, the governments of Switzerland, Germany and Sweden supported further research on smart sanctions, crowned in 2006 with the emergence of a so-called Watson Report entitled: Strengthening

<sup>31</sup> Biersteker, Eckert, Halegua, Romaniuk 2001, 2005a.

<sup>32</sup> Biersteker, Eckert, Halegua, Romaniuk 2005a, Wallensteen, Staibano, Ericsson 2003.

<sup>33</sup> Wallensteen, Staibano, Eriksson, Mikael 2003.

<sup>34</sup> The *Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy* (Council doc. 15114/05) reflect this ongoing search for reaching an increased effectiveness in Art. 16: “In designing and implementing its legal instruments, the EU can draw on its own experience in designing and implementing restrictive measures regimes and on the work carried forward in other fora, e.g. the Interlaeken, Bonn – Berlin and Stockholm processes, as well as the experiences of the UN in this field.”

<sup>35</sup> Wallensteen, Staibano, Eriksson 2003, *About the Stockholm Process* (S.1.), Biersteker, Eckert, Halegua, Romaniuk 2005a.



Targeted Sanctions through Fair and Clear Procedures. The report searched for improvements regarding four principal aspects of the due process: notification, access, fair hearing and effective remedy.

In 2009, the Watson Institute – where the 2006 report was prepared – published its updated version. Instead of recommending further reform steps, it contended a balance of positives and negatives to possible new improvement measures. As far as implementation of UN sanctions regimes is concerned, the updated version of the report concentrated on: national reviews of the lists of target groups and persons before sanctions are adopted at national level; conduct of retrospective hearings at national level, with a statement of case made available to designated individual(s) and the state proposing the listing given opportunity to respond; and national- or regional-level designations in lieu of UN listings.<sup>36</sup> Both reports paid significant attention to judicial review of UN sanctions in UN member states and before European Courts (besides the European Court for Human Rights, also the decisions of the Court of First Instance and the European Court of Justice were mentioned<sup>37</sup>). The following sections will, in a similar vein, focus on the practice of EU sanctions policy.

## Basic Features of EU Sanctions Policy

EU sanctions policy has its root in the EU's founding treaties, representing exemptions from the principles of the common market (when implementing UNSC sanctions). The main feature of the European sanctions policy, until the 1990s, was its reactive character, as it mainly implemented UN sanctions, on both the Community and national legislative levels. Several types of sanctions were covered by existing national legislations (re: arms embargoes and travel sanctions),<sup>38</sup> however, by the end of the 1980s, new advancements in integration policies, as well as new trends in sanctions regimes induced changes to the direction of EU legislation.

Since the 1990s, significant change has occurred to EU sanctions policy, with the Maastricht Treaty establishing the CFSP and providing an impetus for a more uniquely EU direction in international affairs. Since then, the EU has applied autonomous sanctions much more frequently; outnumbering instances of UN and Organisation for Security and Cooperation in Europe (OSCE) sanctions (cf. Figure 1). Therefore some authors consider the EU a new actor on the sanctions scene<sup>39</sup> or point out to the shift from soft power to hard power.<sup>40</sup>

<sup>36</sup> Biersteker, Eckert 2009.

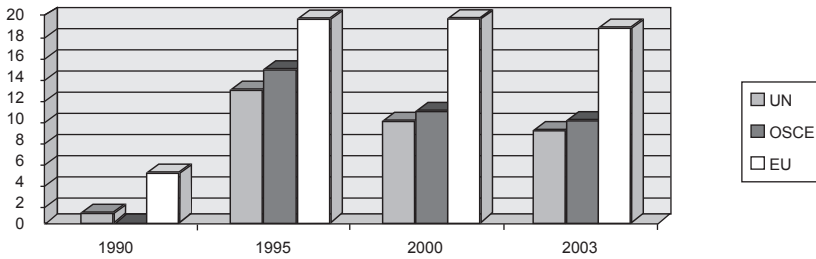
<sup>37</sup> Especially three “pilot” cases are examined closely: Kadi (T-315/01, C-402/05, T-85/09), Al Barakaat (T-306/01, C-412/05, T-45/09) and PMOI – People’s Mojahedin Organisation of Iran (T-228/02, T-256/07, T-284/08).

<sup>38</sup> Wallenstein, Staibano 2005.

<sup>39</sup> De Vries, Hazelzet 2005.

<sup>40</sup> Kreutz 2005.

Figure 1: Sanctions imposed by the UN / OSCE / EU in 1980–2003



Source: Kreutz, Joakim. 2005. *Hard Measures by a Soft Power? Sanctions Policy of the European Union*. Bonn: Bonn International Center for Conversion, Paper 45, p. 15.

Currently, the EU is able to apply almost all types of sanctions:<sup>41</sup> diplomatic sanctions (i.e. expulsion of diplomats, severing of diplomatic ties, suspension of official visits); suspension of cooperation with a third country; trade sanctions (i.e. general or specific trade sanctions, arms embargoes); financial sanctions (i.e. freezing of funds or economic resources, prohibition on financial transactions, restrictions on export credits or investment); flight bans; and restrictions on admission. Compared to national legislations, the EU legislation bears several advantages – it minimises the risk of different interpretations among member states and impedes distortions of competition in a market without internal borders.<sup>42</sup> However, in applying boycotts of sporting or cultural events, the EU has no exclusive competence; here it may act as a coordinator at best.

Generally speaking, sanctions are an instrument of a diplomatic and/or economic nature, which seeks to bring about a change in activities and/or policies such as violations of international law or human rights, or policies that do not respect the rule of law or democratic principles.<sup>43</sup> According to the Treaty on the European Union (TEU), the objectives of EU sanctions policy within the CFSP framework were (ex Article 11 TEU)<sup>44</sup>: (re: these were the objectives of the CFSP not a particular EU sanctions policy)

1. to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter;

<sup>41</sup> Nevertheless, the Union's official terminology uses the term *restrictive measures* instead of sanctions, as "many players within the EU have not been too keen to use sanctions as an instrument of foreign policy." De Vries, Hazelzet 2005, p. 96.

<sup>42</sup> De Vries, Hazelzet 2005, p. 96.

<sup>43</sup> *Sanctions or restrictive measures* 2009.

<sup>44</sup> This paragraph was not adopted into the new Article 24 of the Treaty of Lisbon (TL) which replaced the Article 11 of the original TEU.

2. to strengthen the security of the Union in all ways;
3. to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter and the Helsinki Final Act, and the objectives of the Paris Charter, including those on external borders;
4. to promote international cooperation;
5. to develop and consolidate democracy and the rule of law and respect for human rights and fundamental freedoms.

There are several legal instruments which enable the EU to implement autonomous sanctions – Common Positions and Joint Actions at the Union level, and Regulations at the Community level. Common Positions are adopted under ex Article 15 of the TEU (now Article 29 TEU), requiring unanimity from EU member states in the Council. If a Common Position provides for a reduction or interruption of economic relations with a third country, i.e. introduces economic and/or financial sanctions, implementation at the Community level is governed by ex Article 301 (now Article 215 of the Treaty on the Functioning of the European Union; TFEU) and, where financial restrictions are concerned, ex Article 60 of the Treaty Establishing the European Community (TEC; now Article 75 TFEU) applies. In these cases, the Commission is required to make a proposal for a Council Regulation which the Council can adopt by qualified majority.

In the last decade, the most dynamic aspect of EU sanctions policy has been in the area of economic and financial sanctions, and most are targeted (smart) sanctions. Targeting is usually imposed on governments of third countries, or non-state entities and individuals (re: terrorist groups and individual terrorists).<sup>45</sup> This trend in sanctioning reflects the Treaty of Lisbon (TL) which institutes external measures against natural or legal persons, or groups, or non-state entities (Article 188 TL), together with the introduction of judicial review of decisions (by the Court of Justice of the ECs) subjecting an individual or entity to restrictive measures (Declaration 25 LT).

## Effectiveness in EU Sanctions Policy

At this point, it is necessary to present the key documents which have recently shaped European sanctions policy (Basic Principles 2004, Guidelines 2005, Best Practices 2008), and evaluate if any moves towards enhanced sanctions effectiveness can be traced within their framework. The evaluation will take the form of figures comparing recommendations, both theoretical and practical, both on sanctions creation/adoption and implementation, and

<sup>45</sup> Where sanctions target persons, groups and entities which are not directly linked to the regime of a third country, Art. 60, 301 and 308 TEC have been relied upon. In such cases, adoption of a Regulation by the Council requires unanimity and prior consultation with the European Parliament.

their reflection in the respective EU documents. The reflections, are further commented on at the end of this section, as well as in the conclusion of this work.

The Basic Principles on the Use of Restrictive Measures (2004)<sup>46</sup> established autonomous EU sanctions which should be implemented, above all, to support the fight against terrorism, increase the respect for human rights, democracy, law, and good governance. The document is brief (only 10 articles) and – in contrast to Guidelines and Best Practices – has not yet been modified. The Council should try to enlist the support of other actors for EU autonomous sanctions (Article 4). In any case, the autonomous sanctions represents a decision of the EU and their implementation cannot be strictly bound to other states or UN support. Restrictive measures are presented as a foreign-policy instrument. The possibility of use of coercive measures under the UN Charter is mentioned as a next step after restrictive measures (Article 5). Targeted sanctions should affect responsible elites and avoid negative consequences for common people (Article 6). Sanctions should be applied flexibly (Article 8) and should be regularly reviewed (Article 9).

The Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU CFSP (2005)<sup>47</sup> provide guidance on common issues concerning the imposition of sanctions. The first version of the Guidelines was adopted in 2003.<sup>48</sup> Introductory provisions of the Guidelines (Article 1) remind about important characteristics of EU sanctions policy: The Guidelines form a formal framework for the implementation of sanctions. However, they may be applied only *after* a political decision was made and it was decided on the imposition of sanctions. This first decision – whether to apply the sanctions or not – is of a strictly political nature and is not governed by the Guidelines.

The comprehensive part II of the Guidelines deals with basic principles: Objectives of sanctions (Article 4), targeting of sanctions (Articles 14-16), the creation of sanctions lists, exemptions (Articles 24 and 25) and the implementation of UN resolutions (Articles 33-39). The last, brief sentence of the provision of Article 9 contains a general statement that measures imposed must be proportionate to their objective. The Guidelines mention listing procedure as a formal issue: they recall the need to respect fundamental rights (Article 17) but, further, they are particularly concerned with identifying information (Articles 20-23). De-listing is not touched upon at all. Article 26 emphasises the need for an exchange of relevant information concerning the implementation and application of restrictive measures between member states.

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<sup>46</sup> Council doc. 10198/1/04.

<sup>47</sup> Council doc. 15114/05.

<sup>48</sup> Council doc. 15579/03.

In part III, the document presents standard wording and common definitions which may be used within the CFSP, hand in hand with legal instruments (Regulations, Common Positions) when implementing restrictive measures (sanctions). Part IV – Monitoring and Evaluation of Restrictive Measures – defines the mandate of the Sanctions Formation of Foreign Relations Counsellor Working Party (RELEX/Sanctions) established in 2004.<sup>49</sup>

The EU Best Practices for the Effective Implementation of Restrictive Measures (2008),<sup>50</sup> provides practical guidance and recommendations on issues arising in the implementation of financial sanctions which appeared to be used intensively since the 1990s. The first version of the Best Practices appeared in 2006,<sup>51</sup> it was updated in 2007,<sup>52</sup> and the current text was adopted in 2008.<sup>53</sup> The Best Practices are to be considered non-exhaustive recommendations of general nature (Article 3). They are kept under constant review (Article 2), they supplement the Guidelines and focus on key elements in the implementation of sanctions (Article 4). In Part A, they deal with targeted restrictive measures (Articles 5-16), including the de-listing, although only generally (Article 17). Parts B, C and D are devoted to freezing of funds and economic resources (Articles 18-53), humanitarian exemptions (Articles 54-61), and prohibitions on the provisions of goods and services (Article 62). Finally, Part E presents a vision of ideal coordination and cooperation among member states, EU institutions and expertise groups (Articles 63-78). The different recommendations on sanctions adoption and implementation in the Guidelines, Basic Principles and Best Practices reflect Figures 2 and 3.

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<sup>49</sup> Council doc. 5603/04.

<sup>50</sup> Council doc. 8666/08.

<sup>51</sup> Council doc. 10533/06.

<sup>52</sup> Council doc. 11679/07.

<sup>53</sup> Council doc. 8666/08.

*Figure 2: Reflection of Theoretical Recommendations in EU Documents*

Sanctions creation / adoption (Hufbauer et al. 2007, Cortright - Lopez 2000)	Reflection in the EU documents (Basic Principles 2004, Guidelines 2005, Best Practices 2008)	Sanctions implementation (Cortright - Lopez 2000)	Reflection in the EU documents (Basic Principles 2004, Guidelines 2005, Best Practices 2008)
Inverse proportionality sanctions—goals	NO, in fact (aims are overreaching, e.g. restore international peace etc.)	Flexible application of sanctions	YES (Basic Principles: Art. 8)
Good relations sender—target	NOT solved, actually	Targeted pressures	YES (Basic Principles: Art. 6)
Democratic regimes more likely to comply	NOT solved, actually	Conduct of humanitarian assessment reports and third party assessment studies	NOT solved, actually
Proportionality costs for the target—effectiveness	Generally, YES (Guidelines: Art. 9 in fine mentions the “proportionality of measures”), NOT for particular sanctions regimes	Streamlining of humanitarian exemption applications	YES (Guidelines: Art. 24, Basic Principles: Art. 6, Best Practices Art. 54-61)
No direct relation effectiveness—number of sending countries	NO, in fact (Basic Principles: Art. 4)		
Appropriateness of sanctions	NOT solved, actually		
More precise technical terms and definitions	YES (Guidelines: section III)		
Identification of the specific policy changes for sanctions to be lifted	Only on a general level (general statement), not for particular sanctions regimes (Guidelines: Art. 4)		

Figure 3: Reflection of practical recommendations in EU documents

Sanctions creation / adoption (Interlaeken, Bonn-Berlin, Stockholm, Watson)	Reflection in the EU documents (Basic Principles 2004, Guidelines 2005, Best Practices 2008)	Sanctions implementation (Interlaeken, Bonn-Berlin, Stockholm)	Reflection in the EU documents (Basic Principles 2004, Guidelines 2005, Best Practices 2008)
Common language (definitions of key terms)	YES (Guidelines: Section III)	Appropriate legal framework (model law)	YES (especially in Guidelines)
Standardised design of sanctions resolutions	YES (Guidelines: Section III)	Administering agency (agencies)	YES (Council, RELEX/ Sanctions)
Consideration of exemptions and exceptions	YES (Guidelines: Art. 24, 25, Best Practices: Art. 54-61)	Development and dissemination of information	YES (Guidelines: Art. 26, Part IV, Best Practices: Part E)
Financial sanctions targeting also elites and their supporters	YES (Guidelines: Art. 14)	Enforcement efforts	More or less, YES (Basic Principles: Art. 5)
Listing and procedures of de-listing	YES (Listing: Guidelines: Art. 17, De-listing: Council 0826/1/07 REV 1, Best Practices: Art. 17)	Compliance initiatives	YES (Guidelines: Art. 4)
		Best practices comparison	NO
		Better communication and coordination between actors involved in sanctions policy	YES (Guidelines: Art. 26, Best Practices: Art. 62-77, Art. 35)
		More effective monitoring of sanctions implementation	Generally, YES (Basic Principles: Art. 9, Guidelines: Part IV, Best Practices: Art. 66)

Source: Biersteker, Thomas J., Eckert, Sue E., Halegua, Aron, Romaniuk, Peter, Reid, Natalie. 2001. *Targeted Financial Sanctions: A Manual for Design and Implementation. The Swiss Confederation in cooperation with the United Nations Secretariat and the Watson Institute of International Studies*, Wallenstein, Peter, Staibano, Carina, Eriksson, Mikael (Eds.). 2003. *Making Targeted Sanctions Effective. Guidelines for the Implementation of the UN Policy Options*. Uppsala: Uppsala University, Department of Peace and Conflict Research. Available at: [http://www.reliefweb.int/rw/lib.nsf/db900sid/LGEL-5KEE3/\\$file/upp-sanction-2007.pdf](http://www.reliefweb.int/rw/lib.nsf/db900sid/LGEL-5KEE3/$file/upp-sanction-2007.pdf) [25-1-2010],



Hufbauer, Gary Clyde – Schott, Jeffrey J., Elliott, Kimberley Ann, Oegg, Barbara. 2007. *Economic Sanctions Reconsidered*, 3rd edition. Peterson Institute for International Economics: Washington, Biersteker, Thomas J., Eckert, Sue E. (Eds.). 2006. *Strengthening Sanctions through Fair and Clear Procedures*, White Paper Prepared by the Watson Institute Targeted Sanctions Project. Providence: Watson Institute of International Studies, Brown University. Available at: [http://watsoninstitute.org/pub/Strengthening\\_Targeted\\_Sanctions.pdf](http://watsoninstitute.org/pub/Strengthening_Targeted_Sanctions.pdf) [19-1-2010], Cortright, David, Lopez, George A. 2000. *The Sanctions Decade: Assessing UN Strategies in the 1990s*. Boulder – London: Lynne Rienner Publishers., *Basic Principles on the Use of Restrictive Measures (Sanctions)* (Council doc. 10198/1/04), *Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy* (Council doc. 15114/05) and *EU Best Practices for the effective implementation of restrictive measures* (Council doc. 8666/08)

As seen in Figure 2, most theoretical, i.e. those which appeared in scholarly debates dealing with sanctions (policy) effectiveness, recommendations regarding sanctions creation/adoption have not yet been reflected in European sanctions policies (relevant documents). The only exception is the need for more precise technical terms and definitions touched upon in the Guidelines, section III. Recommendations on sanctions implementation have been more successful in this regard, with the only exception of humanitarian/third party assessment of sanctions.<sup>54</sup> In contrast, more practical experiences, in the form of recommendations by expert meetings (their conclusions and reports), initiated by some governments (namely by Germany, Sweden and Switzerland), has had a much more substantial impact on sanctions policies as seen in Figure 3. The only recommendation which seems not to have been incorporated into the sanctions documents is the requirement for best practices comparison.

Here it is necessary to highlight, even if inconsistent with the aims of this work, that it seems that EU sanctions policy not only reflects, to a certain extent, theoretical and practical standards but it can be a source of inspiration for others at the same time. This is confirmed by the scholarly attention devoted to the decisions of the European Court of Justice and the Court of First Instance regarding the de-listing (off sanctions lists) processes (cf. note 36<sup>55</sup>). Another point of inspiration may be the formal de-listing procedure introduced by the UN following the EU: in 2006 the UN founded a contact office for accepting the de-listing requests (Focal Point for De-listing),<sup>56</sup> in December 2009 unanimously created the post of an Ombudsperson to handle de-listing issues.<sup>57</sup>

<sup>54</sup> A common-sense explanation for the difference could be that virtually no political entity (neither the EU, nor the UN) shall voluntarily set conditions for its own political decision-making. There can be a stricter framework for sanctions implementation but not for the decision about their adoption.

<sup>55</sup> The cases presented are just the first three decisions which have been followed by other.

<sup>56</sup> Resolution 1730 (2006).

<sup>57</sup> Resolution 1904 (2009).

## Conclusion

The evidence provided throughout the paper suggests that there have been some moves and processes which can be assessed as advancements of the EU's sanctions policy effectiveness. However, the EU does not set itself the aim explicitly – sanctions effectiveness as such is not treated in any of its relevant documents. There are also evident differences between the success of theoretical recommendations, presented in scholarly writings, and more practical ones, resulting from expert meetings supported by some governments. It is also a question as to what extent the EU reflects the overall effort for sanctions effectiveness on the international scene and how much the EU shapes the international agenda in the area.

The evaluation contained in the previous section suggests that quite a gap exists between theoretical recommendations on sanctions effectiveness and the respective European sanctions policy, especially at the moment of “sanctions creation/adoption.” Except for the vast study carried out by the Peterson Institute for International Economics,<sup>58</sup> whose final political recommendations act as a starting point for this work, dozens of other studies and articles mostly representing theoretical contributions to the issue.<sup>59</sup> Policy recommendations contained in the Peterson Institute's study give political decision-makers a hint about whether or not to apply sanctions. In fact, such political processes cannot be bound by exhaustive criteria, and no-one can expect that any sanctioning state or organisation would define exact terms for its own decision-making process. On the EU level, the Basic Principles (2004) provide general limitations for autonomous EU sanctions. “Wide-open” and “soft” formulations and universal provisions do not create any real restrictions for EU sanctions policy.

A different situation occurs after a decision is taken and sanctions are imposed. The stage of “sanctions implementation” attracts intensive attention from scholars and official institutions. They build on an observation that states, the UN, the EU and other sanctioning actors tend to use targeted sanctions. That is why they have formulated recommendations pertaining to the creation of sanctions lists, listing and de-listing procedures, humanitarian exemptions, cooperation, monitoring of sanctions, and defining of a clear legal frame, (etc). The analysis of the key EU documents on sanctions shows that EU sanctions policy largely responds to conclusions formulated during the Interlaken, Bonn-Berlin and Stockholm processes as well as generally corresponding to the recommendations directed to UN sanctions regimes.<sup>60</sup>

To conclude, this work suggests that the development of EU sanctions policy obviously reflects the past, practical experience and perhaps there is

<sup>58</sup> Hufbauer et al. 2007.

<sup>59</sup> E.g. Mayall 1984, Lektzian, Sprecher 2007, Kaempfer, Lowenberg 1988, Kaempfer, Lowenberg 1989, Kaempfer, Lowenberg 1999.

<sup>60</sup> Laid down by Cortright, Lopez 2000 and Biersteker, Eckert 2006.

some political learning process, even if implicit, leading to increased effectiveness of the policy underway. Simultaneously, a substantially wider gap exists between scholarly knowledge and EU policy in the respective field. Why this is so and what the consequences are for both, European sanctions effectiveness and the respective theory is an issue for further research. Also the question how the development of European sanctions policy influences international standards, namely the UN sanctions framework, remains open.

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