

# **Bringing Effectiveness into the Debate: A Guideline to Evaluating the Success of EU Targeted Sanctions**

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The relevance of international sanctions has increased since the end of the Cold War as states and international organisations have resorted to this foreign policy tool more frequently than in the past. The European Union (EU) has contributed to this trend by using sanctions in more than twenty different occasions since the early 1990s and the new form of targeted sanctioning developed in the past fifteen years, which aims at individuals and non-state entities rather than at entire states, has presented legal challenges that were unknown before. In particular, the need of ensuring the right to a due process and effective remedy to listed individuals and companies has attracted much attention from scholars and practitioners. Indeed, a decision taken by the Council of Ministers to prevent the travel or to freeze the assets of EU citizens without proper prosecution and trial might very well violate their freedom of movement or their right to property as granted by Community law. However, although such a debate is extremely important, the overemphasis on these legal challenges appears to have overshadowed other crucial political aspects of the problem, such as the need for a thorough discussion on sanctions' effectiveness.

The objective of this article is to include effectiveness in the debate on the targeted sanctions of the EU. This research acknowledges the several problems in elaborating clear indicators for success and therefore its main goal is to identify general guidelines according to which the effectiveness of targeted sanctions can be assessed. First, sanctions are policy tools that can have specific effects and their success should be decided only after a realistic evaluation of whether they met their expected results. Second, the type of target influences

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what type of sanctions can bring the highest contribution to the overall strategy. Finally, sanctions should be considered as unsuccessful only if an alternative course of action could have yielded better results. Sanctions can coerce, constrain and signal targets in foreign policy, so that different contexts could be best suitable for one or another type of measure. EU sanctions could certainly be better evaluated through the adoption of this taxonomy.

The analysis of the EU sanctioning policy in theory and practice provides us with enough evidence to lay down the foundations for a general approach to measure the effectiveness of sanctions. Indeed, effectiveness is an intricate concept and this analysis intends to enrich this debate by identifying extensive categories of analyses that would allow for comparisons, measurements and the categorisation of sanctions. The tripartite conceptualisation also creates a set of specific and diverse expectations for each type of sanction, so that more precise assessments can be drawn. Criteria to assess the success of targeted sanctions are lacking, and this article's main goal is to contribute to solve this problem.

This article is divided in three sections. The first part presents the foreign policy tool-box of the EU and places sanctions in the overall framework of the Common Foreign and Security Policy (CFSP) by reviewing both the legal bases for what the EU calls "restrictive measures" and the crises wherein sanctions were adopted. The second section introduces the ongoing debates and the legal challenges in European courts after the imposition of targeted sanctions and elaborates on the concepts of effectiveness by outlining both guiding principles to assess success and by creating the tripartite taxonomy to facilitate this task. Finally, the concluding part of the article summarises the main argument and discusses the potential benefits that would be obtained by the adoption of this approach to measuring the effectiveness of EU restrictive measures.

## Foreign Policy Instruments

Since the signing of the Maastricht Treaty, European integration advanced from the idea of a single market to that of a political union.<sup>2</sup> The three pillar structure of the Union ensured that every aspect of a state-like institution would be shaped by EU bodies so that foreign policy could not avoid the process of *brussellisation*, wherein "foreign policy issues are more and more discussed, and decided, by institutions and people based in Brussels rather than in national capitals."<sup>3</sup>

<sup>2</sup> Helen Wallace, William Wallace, and Mark A. Pollak, *Policy-Making in the European Union* (Oxford: Oxford University Press, 2005), 435-438.

<sup>3</sup> Karen E. Smith, *European Union Foreign Policy in a Changing World*, Second Edition (Cambridge; Malden, MA: Polity Press, 2008), 38, who is citing David Allen, "Who Speaks for Europe? The Search for an Effective and Coherent Foreign Policy", in John Peterson and Helene Sjursen, eds, *A Common Foreign Policy for Europe?* (London; Routledge, 1998).

As a purely intergovernmental matter, cooperation between member states took place through common positions and joint actions designed to harmonise foreign actions and to promote coordinated responses to common challenges. The entry into force of the Maastricht Treaty (November 1993) granted the European Council with the power of delineating the strategic objectives of the Union and gave the competence to elaborate policies to act to the Council of Foreign Ministers. Indeed, these innovations and the need to carry out an efficient foreign policy led EU institutions to expand the list of foreign policy options at their disposal in the economic, diplomatic, and military spheres.

The economic sphere of foreign policy-making can be divided into positive and negative measures. Concerning positive economic instruments, the EU has developed a wide range of measures that share the principle of providing certain economic benefits in exchange for deeper or stronger cooperation in areas of mutual interest. For instance, the EU can opt to sign cooperation or association agreements, to provide specific development aid and to grant special exceptions that open EU market areas to poor countries, also known as the General System of Preferences (GPS) program. According to Smith, the EU has created a hierarchy of partners, formed by the closer ones (Turkey, South-East European countries, the Cotonou agreement partners, the Euro-Mediterranean partners and the European Economic Area countries) who are linked by association agreements and others established either through cooperation agreements or by “lighter” associations.<sup>4</sup>

Other forms of economic foreign policy tools are related to development assistance, which is run, since 2001, by EuropeAid (including the European Development Fund, the total budget for EuropeAid Cooperation Office [AIDCO] was EUR 9.3 billion in 2008), and also through the provision of loans to certain countries by the European Investment Bank (only in 2008, the EIB has provided loans to third countries for over EUR 6 billion).<sup>5</sup> Concerning negative measures, aside from the decisions to impose sanctions that will be fully described below, decisions to suspend the above mentioned economic cooperation and aid could be forms of statecraft to be included in the category of negative measures. Notable examples include the suspension of aid flows to signatory states of the Cotonou Agreement that are accused of human rights violations.<sup>6</sup>

Due to these advancements, the EU is now able to embark on a series of diplomatic efforts that strengthen its international *actorness*. With the Amsterdam Treaty, the position of the High Representative for the CFSP was established

<sup>4</sup> Smith, *European Union Foreign Policy in a Changing World*, 58.

<sup>5</sup> *EuropeAid Comparative Study of External Aid Implementation Process. Final Report.*, Project No. 2007/145369 - Version 1, edited by HTSPE Limited and GFA Consulting Group (2007), 29.

<sup>6</sup> Stephen R. Hurt, “Co-operation and Coercion? The Cotonou Agreement between the European Union and ACP States and the End of the Lomé Convention”, *Third World Quarterly* 24, no.1 (2003): 171.

and Javier Solana was appointed to the post. Solana represented the EU in the international *fora* and carried out sensitive diplomatic functions in international crises. The Council has also created the roles of Special Envoys and Special Representatives in order to strengthen cooperation with third parties, and assist them with the resolution of crises. The first appointments date back to 1996 when Aldo Ajello was dispatched to the African Great Lakes' region and Miguel Angel Moratinos to the Middle East. Other forms of diplomatic instruments that have been employed by the Council as CFSP measures are those of issuing demarches and diplomatic recognitions, advancing peace proposals, dispatching cease-fire monitors and election observers.<sup>7</sup> Finally, the Amsterdam Treaty allowed the EU to conclude agreements in the area of the former third pillar (police and judicial cooperation in criminal matters), such as counter-terrorism agreements against terrorist financing or readmission agreements with Morocco, Sri Lanka, Macao, Hong Kong, and Albania, among others.

Finally, following the Saint-Malo (1998) declaration, the EU has also developed military instruments with the creation of the ESDP. After the crisis in Kosovo in 1998/1999 that confirmed the EU's inability to act in certain contexts, France and the UK proposed to establish a common rapid reaction force and a contingent of up to 60 thousand soldiers that could be deployed within 60 days by 2003. With the Headline Goals 2010, the EU has reached full capability to carry out both civilian crisis management missions and EU peace missions. Overall, the EU has initiated 23 missions since 2003.<sup>8</sup>

The civilian missions of the EU focus on four priority areas: policing, strengthening the rule of law, strengthening civilian administration and civil protection. For instance, the largest mission it presently manages is EULEX in Kosovo, and its main objective is to sustain the creation of a sustainable and functional rule of law system that includes about 2600 people.<sup>9</sup> The very first ESDP mission was that of the European Union Police Mission (EUPM) in Bosnia and Herzegovina (BiH) in 2003 that supported the creation of policing arrangements under BiH ownership in accordance with best European and international practices.<sup>10</sup> To date, there are eleven ongoing civilian missions run by the EU. Besides its civilian missions, the EU also is involved in military missions, being currently responsible for operations in Bosnia-Herzegovina, Guinea-Bissau, the Democratic Republic of Congo (DRC) and EU NAVFOR, also known as Operation *Atalanta* off the Somali coast.<sup>11</sup>

<sup>7</sup> Smith, *European Union Foreign Policy in a Changing World*, 63.

<sup>8</sup> Giovanni Grevi, Damien Helly, Daniel Keohane, eds., *ESDP: The first 10 years (1999-2009)* (Institute for Security Studies of the European Union, 2009).

<sup>9</sup> Grevi, *ESDP: The first 10 years (1999-2009)*, 353.

<sup>10</sup> *Ibid.*, 161.

<sup>11</sup> Council of the European Union, *European Foreign and Security Policy (ESDP)*. 2008, European Union, 31 January 2010 <<http://www.consilium.europa.eu/showPage.aspx?id=268&lang=EN>>.

A final element worth mentioning in the foreign policy tool-box, is the creation of ad-hoc agencies to assist the EU to achieve CFSP objectives: the European Defense Agency, the EU Institute for Security Studies and the EU Satellite Centre. Combined with the creation of the European Security and Defense College (ESDC) in 2008, the many actions noted above confirms that the EU has invested time and resources to utilise a full range of foreign policy tactics that could be used to pursue the foreign policy objectives indicated in the Treaties. The development of an advanced policy of restrictive measures must also be included in this context.

## Literature Survey: The EU Sanctioning Policy and Practice

The very act of sanctioning is among the oldest foreign policy tools. Since Thucydides described how Athens denied the city of Megara the access to its market in order to force the small city-state to join the Delian League, many studies analysed crises wherein various forms of sanctioning were adopted. The siege on Masada, the Napoleonic embargoes on England, and the restrictions imposed on Italy after its invasion of Ethiopia are all comparable episodes that show how sanctioning has always been an important option in foreign policy. Hence, in the attempt to create a common foreign and security policy, the EU could not avoid to include targeted sanctions in its foreign policy tool-box.

The EU can impose sanctions by receiving UN Security Council resolutions, by enforcing article 96 of the Cotonou Agreement<sup>12</sup> as mentioned above, and through autonomous decisions taken under the CFSP umbrella. Since the early 1980s, the EU has decided for the autonomous adoption, namely without receiving input from the UN, of restrictive measures on more than 40 occasions.<sup>13</sup>

This present analysis focuses on the political relevance of the EU and is limited to the autonomous sanctions that are imposed as CFSP decisions. In reality, the sanctioning practices of the EU could date back to both the Treaty of Rome or to the signing of the “London Report” in 1981 but for the purposes

<sup>12</sup> “Partnership Agreement Between the Members of the African Caribbean and Pacific Groups of States of the One Part, and the European Community and Its Member States, of the Other Part, Signed in [...] on [...] ([...] Agreement),” Art. 96, [Http://Ec.Europa.Eu/Development/Icenter/Repository/Agr01\\_en.Pdf](http://Ec.Europa.Eu/Development/Icenter/Repository/Agr01_en.Pdf) (2000).

<sup>13</sup> Joakim Kreutz, “Hard Measures by a Soft Power? Sanctions Policy of the European Union 1981-2004,” *Bonn International Center for Conversion Paper* 45 (2005); Seth. G. Jones, *The Rise of European Security Cooperation* (Cambridge: Cambridge University Press, 2007), 96-135; C. Portela, “The Efficacy of Sanctions of the European Union: When and Why Do They Work?” (PhD diss., European University Institute, 2008).

of this study the second pillar in 1992 is taken here as the starting point of the EU's sanctioning policy.<sup>14</sup>

International restrictive measures are foreign policy decisions that need to be approved unanimously by the Council as established by Chapter 2, Title V, of the Treaty Establishing the European Union (TEU).<sup>15</sup> The list of the types of sanctions that can be imposed by the EU is long,<sup>16</sup> although the most common ones are financial restrictions, commodity and service boycotts, arms embargoes and travel bans.

The treaty assigns different roles to different actors according to the type of measure. Whereas trade and financial sanctions have to be implemented with a Council Regulation according to article 75 (financial restrictions), 215 (economic restrictions), and, at times, 352 of the Treaty on the Functioning of the European Union (TFEU),<sup>17</sup> visa bans and arms embargoes have to be implemented by the adoption of national legislation. In other words, the former are dealt with by the EU, while the latter by its members. Arms embargoes are an exceptional case to article 352 due to a provision on national security that has been part of the Treaties since 1957.<sup>18</sup> In case of financial or economic restrictions, the Commission needs to elaborate a Regulation and the Council has to approve it with a qualified majority.<sup>19</sup>

Restrictive measures can be imposed by the EU under the CFSP umbrella. The President or a member of the Council, assisted by the Council Secretariat or by the Commission, can make a proposal regarding the imposition of restrictive measures. The Treaty of Lisbon provides for the possibility of joint proposals from the Commission and the High Representative as well. The proposal is received by the geographical groups assigned to deal with the target and analysed also by the Foreign Relations Counsellors Working Group (RELEX), and by the Political and Security Committee (PSC). Subsequently, it is the Committee of Permanent Representatives (COREPER II) that has the responsibility of drafting a common position to be submitted to the Council for its final ap-

<sup>14</sup> Kreutz, "Hard Measures by a Soft Power? Sanctions Policy of the European Union 1981-2004," 9.

<sup>15</sup> This information as well as the other references to TEU and TFEU regards the Consolidated Version of the Treaties after the entry into force of the Treaty of Lisbon.

<sup>16</sup> Diplomatic sanctions (expulsion of diplomats, severing of diplomatic ties, suspension of official visits); suspension of cooperation with a third country; boycotts of sport or cultural events; trade sanctions (general or specific trade sanctions, arms embargoes); financial sanctions (freezing of funds or economic resources, prohibition on financial transactions, restrictions on export credits or investment); flight bans; and restrictions on admission.

<sup>17</sup> Please note that the Articles in the Consolidated Version after the Nice Treaty were 60 (now 75 TFEU), 301 (now 215 TFEU) and 208 (now 352 TFEU).

<sup>18</sup> Art. 57 in the Treaty of Rome, now art. 346 of the TFEU.

<sup>19</sup> While the Council had to pass a Council Regulation with unanimity under the previous treaties, the Lisbon Treaty provides for the application of the qualified majority voting even in cases where targets are individuals and non-state entities.

proval. Monitoring is delegated to competent authorities (e.g. Central Banks and Finance Ministries of State members in case of financial restrictions), while the evaluation and eventual modification of ongoing measures are considered by the RELEX, COREPER and the Council.

The sanctioning policy has received growing attention in recent years, and three documents were approved by the Council to improve the mechanisms for deciding whether to adopt and how to implement sanctions. The first document is the “Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy.” Approved on December 2003 and updated on December 2005, the document contains definitions and principles on how to design restrictive measures, important information in regards to the different types of restrictions that can be imposed and on how to measure their effectiveness.<sup>20</sup>

The main principles that inspired the adoption of this foreign policy tool are presented in the second relevant key document of the EU restrictive measures’ policy: the “Basic Principles on the Use of Restrictive Measures (Sanctions)”, which was approved by the Council in June 2004, and maintains that the EU should impose sanctions in accordance with the UN, but also autonomously whenever necessary and appropriate to pursue the objectives of the External Relations of the EU. In any case, the document called for the use of targeted sanctions aiming at both minimising the unintended consequences of comprehensive measures on civilians and maximising the impact on those responsible for misconducts. This was the beginning of the EU’s official adoption of the so-called “smart sanctions.”<sup>21</sup>

Finally, the third document is a text on the implementation of restrictive measures that was initially passed in December 2004 and it is periodically reviewed by the Council. It regards the aspects of the implementation of restrictive measures and the latest version of “The EU Best Practices for the Effective Implementation of Restrictive Measures” was approved in April 2008. This version contains relevant information on how to identify the designated individuals or entities and on the administrative modalities for freezing assets and banning products, including the procedure on how to grant exceptions and exemptions to the measures.<sup>22</sup>

As decisions taken under the CFSP umbrella, EU restrictive measures are adopted in order to achieve the objectives set by article 22 of the TEU. These objectives include but are not limited to: the duty to safeguard its values and

<sup>20</sup> European Union, 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,” 15114/05 (Brussels, 2 December 2005).

<sup>21</sup> David Cortright and George A. Lopez, *Smart Sanctions: Targeting Economic Statecraft* (Lanham, MD: Rowman & Littlefield Publishers, 2002).

<sup>22</sup> European Union, Council of the European Union, “Update of the EU Best Practices for the Effective Implementation of Restrictive,” 8666/1/08 (Brussels, 24 April 2008).

security; to consolidate and support democracy; to preserve peace; to foster the social development of developing countries; and to promote good governance in the international system.

According to the Basic Principles, EU restrictive measures should be adopted 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.”<sup>23</sup> On the same matter, the “Guidelines” remind us that “the restrictive measures do not have an economic motivation.”<sup>24</sup>

The categorisation of the Basic Principles is a good starting point to present the EU’s adoption of sanctions. In the timeframe considered, the EU imposed restrictive measures in cases of human rights promotion, crisis management, the fight against terrorism and non-proliferation of nuclear weapons. In general, the most frequent imposition of restrictive measures was in response to human rights violations or to counter attempts at undermining democratisation processes, further confirming that the EU behaves as a normative power using normative means (i.e. targeted measures are employed to minimise the humanitarian consequences) towards normative ends (i.e. promote democracy and human rights).<sup>25</sup> The second most frequent context wherein the EU has decided to adopt sanctions is that of crisis management. It is important to note that this category includes the compensatory measures imposed on the US and Libya to protect European companies from the possible consequences of the Helms-Burton Act and UN Security Council Resolution 883. The following table offers the details for both concluded and ongoing EU restrictive measures.

EU Restrictive Measures by Crisis*				
	Human Rights	Crisis Management	Non-proliferation	Terrorism
ONGOING				
Belarus	X			
US		X		
Libya		X		
Moldova		X		

<sup>23</sup> European Union, Council of the European Union, “Basic Principles on the Use of Restrictive Measures (Sanctions),” 10198/1/04 (Brussels, 7 June 2004), 2.

<sup>24</sup> European Union, “Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy,” 4.

<sup>25</sup> Ian Manners, “Normative Power Europe: A Contradiction in Terms?” *Journal of Common Market Studies* 20, no. 2 (2002): 235-58; Nathalie Tocci, ed., *Who Is a Normative Foreign Policy Actor?* (Brussels: Centre for European Policy Studies, 2008).

Zimbabwe	X			
Iran			X	
Ex-Yugoslavia		X		
Macedonia		X		
Terrorist List				X
Burma/Myanmar	X			
China	X			
Uzbekistan	X			
TOTAL	5	5	1	1
CONCLUDED				
Indonesia		X		
Comoros	X			
Afghanistan				X
Azerbaijan		X		
DRC	X			
Nigeria	X			
Sudan (1)				X
Sudan (2)	X			
Libya				X
CONCL.	4	2	0	3
TOTAL	9	7	1	4

*\*Own elaboration.*

The current situation confirms the trend of the past seventeen years since the EU is presently adopting five sanctions regimes due to human rights protection, five to manage crises, and only two based on issues of counter terrorism and the proliferation of nuclear weapons.

“Sanctions *a la carte*” could be a catchy label to describe how the EU has recurred to the different types of restrictive measures in the multiplicity of crises. Since the end of the Cold War, the Council has decided autonomously to impose 14 arms embargoes, 10 asset freezes, 7 commodity and service boycotts, and 14 travel bans. However, the figures on ongoing regimes limit the strength of this finding as they show a more balanced picture with the EU currently handling 6 arms embargoes, 7 assets freezes, 6 commodity and service boycotts, and 8 travel bans as summarised in the following table.

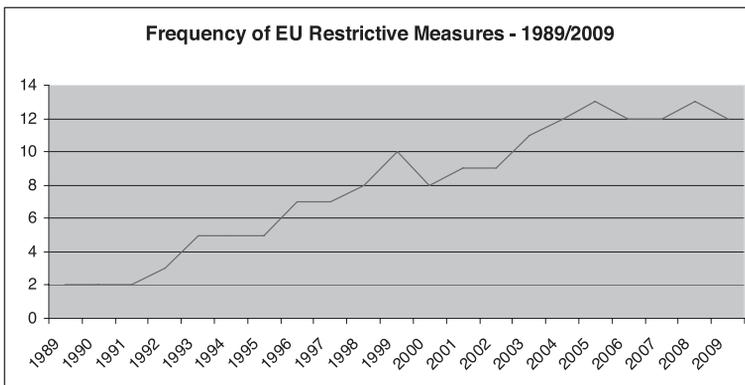
EU Restrictive Measures by Type*				
	Arms Embargo	Freezing of Funds	Comm. or Serv. Boyc.	Travel Ban
ONGOING				
Belarus		X		X
US			X	
Libya			X	
Moldova				X
Zimbabwe	X	X	X	X
Iran	X	X	X	X
Ex-Yugoslavia		X		X
Macedonia		X		X
Terrorist List	X	X	X	X
Burma/Myanmar	X	X	X	X
China	X			
Uzbekistan	X			
TOTAL	6	7	6	8
CONCLUDED				
<i>Belarus</i>				X
<i>Indonesia</i>	X		X	
<i>Comoros</i>		X		X
<i>Afghanistan</i>	X	X		X
<i>Azerbaijan</i>	X			
<i>DRC</i>	X	X		X
<i>Nigeria</i>	X			X
<i>Sudan (1)</i>	X			
<i>Sudan (2)</i>	X			
<i>Libya</i>	X			X
CONCL.	8	3	1	6
TOTAL	14	10	7	14

\*Own elaboration.

This evidence leads to a further generalisation on EU sanctioning, as the Council seems to prefer arms embargoes and travel bans to asset freezes and

commodity and service boycotts. In part, this could be related to the fact that arms embargoes and travel bans look “softer” in comparison to other forms of sanctioning, as confirmed by an EU official who had the impression that the EU was inclined to adopt assets’ freeze and commodity boycotts only in extreme conditions or in the presence of serious violations of international obligations.<sup>26</sup>

The development of a sanctioning policy is one of the elements that contributed to the growing importance of the EU as an international actor in the past decade.<sup>27</sup> Following a similar trend to the one experienced by the UN in the 1990s,<sup>28</sup> the frequency in the adoption of sanctions has increased over time, in particular since the end of the Cold War. Indeed, the figure went from a mere 2 cases in 1989 to the current number of 12 cases as seen in the following graph\*:



\*Own elaboration.

Sanctions have been adopted by the Council for a variety of reasons and in a variety of contexts. The EU has imposed restrictive measures on targets in North America, Europe, Asia and Africa, while only the Latin American peninsula is the only region that was not targeted by the EU’s sanctioning policy under article 15 of the Treaty. This wide adoption notwithstanding, the effectiveness of the restrictive measures was neglected by the debate, which focused on other important but less political matters as illustrated in the following paragraph.

<sup>26</sup> EU official in discussion with the author, April 2008.

<sup>27</sup> Anthonius W. de Vries and Hadewych Hazelzet, “The EU as a New Actor on the Sanctions Scene,” in *International Sanctions: Between Words and Wars in the Global System*, ed. Peter Wallensteen and Carina Staibano (London, New York, NY: Frank Cass, 2005), 95-107.

<sup>28</sup> David Cortright and George A. Lopez, *The Sanctions Decade: Assessing UN Strategies in the 1990s* (Boulder, CO: Lynne Reiner Publishers, 2000).

## Ongoing Debates on EU Targeted Measures

Despite the wide adoption of EU restrictive measures demonstrates its growing importance in the organisation's CFSP goals, the debate carried out both by practitioners and scholars seems to focus on procedural matters rather than on their effectiveness.<sup>29</sup>

Certainly, the evolution from comprehensive to targeted sanctions presents serious legal challenges to both international and domestic legal systems. On one hand, the decision to harm individuals in foreign states stands in clear contradiction to the international system's nonintervention principle. On the other hand, the decision to penalise individuals might prevent the fulfillment of certain rights granted by domestic or regional legal systems.

While the former has not been taken up by the literature of sanctions, the domestic implications of targeted sanctions has instead monopolised the debate in the recent years. The most prominent example of this trend is the report published by the Watson Institute for International Studies at Brown University on legal challenges related to the adoption of targeted sanctions.<sup>30</sup> This last report is a brilliant and extensive review of the most important legal implications that regional and national courts have recently faced. Among the actors considered in the report, the EU receive much attention since many cases have been brought up before the Court of First Instance (ECFI) and the European Court of Justice (ECJ). Indeed, individuals have the right to ask for the annulment of EU decisions that violate due process, the right to a hearing and effective remedy principles. Initially, since the ECFI tended to deny *all* requests by claiming its lack of competence or authority, the EU did not intensify efforts to modify and establish clear procedures to uphold the rights to a due process and effective remedy. However, this trend has changed and the Courts have posed fundamental challenges to the contemporary practice of targeted sanctions.

One of the most well-known cases in this regards is the Kadi and Al Barakaat decision of the Court of Justice, delivered in September 2008. Yassin Abdullah Kadi from Saudi Arabia and the Al Barakaat foundation, located in Sweden, were included in the UN's counter-terrorist list and their financial assets were frozen. Kadi and Al Barakaat appealed against the EU regulation that implemented the resolution of the Security Council by claiming their right to property and right to defense. After the case was rejected, as it was considered inappropriate by the ECFI since it was not empowered to question matters of *jus cogens* (i.e. UN Security Council resolutions), the ECJ upheld the appeal and annulled the regulation that froze the assets of the applicants on the basis of

<sup>29</sup> Only Portela, "The Efficacy of Sanctions of the European Union: When and Why Do They Work?" goes to this direction.

<sup>30</sup> Thomas J. Biersteker and Sue E. Eckert, *Addressing Challenges to Targeted Sanctions. An Updated of the "Watson Report"* (Providence, RI: Watson Institute for International Studies, 2009).

patent violation of the rights of the defense and the right to be heard, including the right to have access to the motivation of the listing. Thus, the ECJ decided that the assets of Kadi and Al Barakaat were to be unfrozen within 3 months had the Council not acted to solve such procedural irregularities.<sup>31</sup> To date, the names of Kadi and Al Barakaat are still on the UN's counter-terrorist list even though they brought their case up before the ECFI again. The crucial aspect of this case law is that the ECJ established the principle that even the resolutions of the Security Council can be reviewed by European courts in case they contrast with Community law.

Another case took place in January 2009, when the Council delisted the People's Mojahedin Organisation of Iran (PMOI). This case was slightly different from the aforementioned since the PMOI appealed because their rights of information were violated and because the national courts of the proposing state decided to remove PMOI from the terrorist list. A first ruling of the ECFI annulled the decision of the Council that failed to inform PMOI about the reasons motivating its listing, but the organisation remained targeted because the Council was given the opportunity to remedy. Following a decision of the UK government to de-list PMOI, the Council based the motivation to deny delisting based on the decision of a French prosecutor to open an investigation against PMOI. Nevertheless, when the French government failed to provide the classified information to the ECFI, the Council decided to remove the Iranian organisation from the list.<sup>32</sup>

A further delisting case regards Jose Maria Sison, founder of the Communist Party of the Philippines (CPP) and its armed wing, the New People's Army (NPA). The CPP and NPA were included in the list in 2001, and Sison appealed against the freezing of his funds in the forms of savings and social benefits at first in 2005, but the ECFI did not annul the council regulation. Subsequently, Sison appealed against the decision of the European Union to base the listing on previous rulings of Dutch courts that condemned Sison for crimes linked to his political militancy. In fact, the Court rulings were not based on terrorist accusations, and therefore they could not be used by the EU to justify his name's presence on the counter-terrorist list. Thus, the ECFI annulled the Council's decisions insofar as they regard Sison.<sup>33</sup>

Whereas some of these challenges took the legislators by surprise, a wide set of legal concerns were already included in the decisions in order to adopt sanctions. For instance, the EU is well aware of the consequences of violating

<sup>31</sup> *Yassin Abdullah Kadi and Al Barakaat International Foundation Vs. Council of the European Union*, No. Joined Cases C-402/05 and C-415/05 P (Court of Justice 3 September 2008).

<sup>32</sup> Philippa Runner, "EU Ministers Drop Iran Group from Terror List," *Euobserver.Com*, 26 January 2008.

<sup>33</sup> *Jose Maria Sison Vs. Council of the European Union*, No. Case T-341/07 (Court of First Instance of the European Communities (Seventh Chamber) 30 November 2009)

the World Trade Organisation (WTO) or trade agreements, therefore sanctions are not decided in contrast to previously signed international treaties.

The EU also acknowledges that the imposition of sanctions might have a counter-productive effects and it has therefore contemplated the possibility to grant exception and exemptions in case there is a direct humanitarian consequence on targeted individuals and when the measure does not allow targeted individuals to meet international obligations.<sup>34</sup>

For instance, if a targeted individual is in need of medical assistance in the European Union, then the Council can grant exceptions and allow their entry even in the presence of a travel ban, as verified in the case of Germany opening its borders to Zakirjon Almatov, the Uzbek interior minister.<sup>35</sup> Another exception is the granting of visas in case listed individuals have to attend international meetings that are held by EU members as part of their duties as government officials.<sup>36</sup> This exception was applied when Transnistrian officials who needed to attend meetings in Europe were allowed to participate in the negotiation of the peace process with Moldova at the OSCE headquarters in Vienna.

Each exception has to be assessed on a case-by-case basis and the competent authorities are requested to do so in accordance with the overall spirit of the restrictive measure. The guidelines underline that if ‘there are grounds to grant an exemption from one restrictive measure (e.g. financial restrictions) this does not by default justify granting an exemption from another measure (e.g. restrictions on admission) which affects the person or entity concerned.’<sup>37</sup>

The “Best Practices” specify another instance when exemptions can be granted, namely the legal obligation of targeted individuals or entities to satisfy creditors. Under request either by the target or by the interested parties, the competent authorities can provide access to frozen funds although there must be a legal obligation that links the creditor with the targeted individual or entity, an evaluation of the existence of any risk of circumvention (i.e. if creditor’s links with the designated person or entity are such as to raise suspicions), and a verification that the request was not presented in multiple countries.<sup>38</sup>

These decisions combined with the growing concern of further legal problems have created a tension between the need of improving the sanctioning practices so to avoid legal challenges and the discomfort created by the use of

<sup>34</sup> European Union, “Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy,” 9.

<sup>35</sup> “Uzbekistan Surprised by EU Move to Extend Sanction,” *EurorAsianet.Org*, 14 November 2006.

<sup>36</sup> European Union, “Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy,” 6.

<sup>37</sup> European Union, “Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy,” 9.

<sup>38</sup> European Union, “Update of the EU Best Practices for the Effective Implementation of Restrictive,” 22.

a foreign policy tool of doubtful efficacy and complex implementation. On the one hand, the EU has responded to the judgements of the Courts in a proactive way. For instance, the right to be heard and the right of proper communications have been granted to the applicants who felt these rights were denied to them. Furthermore, the sole right to appeal against Council's decisions at the Court of First Instance and the European Court of Justice in Luxembourg is a fundamental step taken to guarantee the possibility to an effective remedy and to be de-listed in case of wrongful listing. Nevertheless, the EU has been reluctant to impose restrictive measures also due to low degree of attention over the discussion regarding the criteria to determine their success. This article attempts to bridge this gap.

## Are Sanctions Effective? Bringing Politics into the Debate

The quick explanation for the very few contributions on whether EU sanctions work could be found in the complexity of the problem. Indeed, measuring the effectiveness of foreign policy tools has always been a difficult task as seen in the past debate on whether sanctions work.<sup>39</sup> However, the lack of clear indicators for success/failure does not have to prevent the debate from starting. When political science demonstrates its limits of "soft science" and it is accepted that clear indicators for success are not likely to be delineated, the elaboration of general principles and guidelines should be the basis for any evaluation.

The first set of considerations to understand success should regard the expected impact of sanctions since each kind of restrictive measure has different effects.<sup>40</sup> Travel bans are mostly related to individuals and they are likely to have two types of impacts. The first effect is to create personal discomfort to targeted individuals as they usually belong to the social group who can afford to travel to Paris and London or can take advantage of long weekends in Rome or Madrid. Furthermore, when government officials are forbidden to carry out official visits or are prevented from having bilateral negotiations with

<sup>39</sup> David A. Baldwin, *Economic Statecraft* (Princeton, NJ: Princeton University Press, 1985); Gary C. Hufbauer, Jeffrey J. Schott, and Kimberly Ann Elliott, *Economic Sanctions Reconsidered: History and Current Policy*, 2d ed. (Washington, DC, Uppsala: Institute for International Economics, 1990); Robert A. Pape, "Why Economic Sanctions Do Not Work," *International Security* 22, no. 2 (Autumn 1997): 90-136; Robert A. Pape, "Why Economic Sanctions Still Do Not Work," *International Security* 23, no. 1 (Summer 1998): 66-77; David A. Baldwin, "The Sanctions Debate and the Logic of Choice," *International Security* 24, no. 3 (Winter 1999/2000): 80-107; and Gary C. Hufbauer et al., *Economic Sanctions Reconsidered: History and Current Policy*, 3d ed. (Washington, DC: Peterson Institute for International Economics, 2007).

<sup>40</sup> Impact and effect are treated as synonyms here. See below for the difference between impact/effect and effectiveness/success.

their foreign counterparts, they are also denied the possibility of concluding international agreements that may strengthen their domestic positions.

The freezing of one's assets can also have a twofold impact. Just like any personal measure, the freezing of foreign accounts may create a private discomfort to the daily routine of targeted individuals and families. The assumption is that listed individuals would comply with the demands in order to have their benefits back, but this of course depends on the demand and on the benefits that these individuals would acquire by not complying with them. The second effect is to undermine the operational capacity so to slow down the activities of targets. Under this perspective, even the concept of effectiveness could be influenced since the temporal difference between what happens and when it should have happened makes a good indicator for success.

Differently, the impact of arms embargoes is emboldened in the reduction of the flow of weapons to affected regions. The rationale is based on both ethic and practical grounds since it would be morally questionable to provide the means that indirectly cause civilian casualties. On the other hand, the lesser number of weapons flow into one region, the lower will be the military capacity to launch and sustain any operations and the lower will be the number of human rights violations. Thus, the impact of reducing the number of weapons in a crisis might not always translate into an effective adoption of restrictive measures. For instance, at the onset of any situation of a conflict, the warring parties already have a certain endowment of weapons at their disposal, and it is plausible to assume that the aggressor has a larger quantity of arms since it was already preparing for an attack. In such situation, an arms embargo may facilitate the aggression by maintain a given power equilibrium and, in fact, favor the "bad side."

Finally, the decision to boycott a certain commodity or a service can affect the power distribution within a society or, in the most extreme conditions, the economic sustainability of governments and societies. The impact has to be adequately distinguished from effectiveness even in this case, since the halting of trade in certain sectors could also increase the likelihood of failing states or could favor the emergence of other elites who could trigger an internal struggle for power, situations that would be more likely to lead to higher economic, political and human costs. The boycotting of goods and services aim at "making the life of the bad guys harder" through the denial of products and knowledge that would allow them to achieve their objectives timely.

This analysis is useful in distinguishing the concept of impact from that of effectiveness. While the former pictures the direct consequences of a restrictive measure against its targets, effectiveness refers to the potential positive contribution to the overall strategy goals that sanctions can have if they are properly used under favorable circumstances. The concept of effectiveness is wider than the one of impact because the former encompasses direct and indirect, tangible and intangible consequences. This differentiation implies that

policy-makers should run a pre-assessment analysis before using sanctions for an accurate projection of what contexts are likely to emerge, although knowing that the desired impact does not guarantee effectiveness.

Once the desired impact is determined, then policy makers in Brussels should concentrate on the analysis of whether sanctions will strengthen or weaken both themselves and their targets. The literature offers numerous contributions that define sanctions as cheap talk and, therefore, damaging for the reputation of senders. In other words, if the discourse on the adoption of sanctions points at imposing restrictive measures instead of committing ground troops because the crisis is not salient enough to the senders, then its credibility would be profoundly damaged. On the other side, a simple modification to the sanctions regime such as adding people to the list might strengthen the target instead of weaken it.

Finally, a last level of evaluation should consider the “comparative utility” of sanctions.<sup>41</sup> Sanctions are often criticised because they are not effective in changing the behavior of targets, although the same detractors frequently fail to come up with better alternatives to sanctions. This consideration is of a fundamental importance to assess the success of EU restrictive measures because it is not sufficient to criticise the fallacies of one policy unless it is not clear what other decisions could have led to a better *status quo ex post*.

A way of integrating these considerations is to define effectiveness by looking at the contribution of sanctions to foreign policy objectives. This method assumes that foreign policy actors, namely the EU in this case, almost never attempt to achieve foreign policy objectives without adopting a multiplicity of tools simultaneously. Under this perspective, a restrictive measure would not be the sole determinant for success as stated in the *Guidelines*: “In general terms, restrictive measures are imposed by the EU to bring about a change in policy or activity by the target country, part of country, government, entities or individuals, in line with the objectives set out in the Common Position.”<sup>42</sup> Thus, a more appropriate analytical analysis would not limit the scope of sanctions to the sole behavioral change of targets, but in fact it should assume that restrictive measures can, at least, serve three different purposes.

First, sanctions can coerce and they are imposed with the objective of making a target’s behavioural change more likely through the imposition of a bearable cost in exchange of political compliance. Second, there are constraining sanctions that aim at limiting the capabilities of a target in order to prevent it from achieving its goals or, in other words, they intend to make the life of

<sup>41</sup> David A. Baldwin, “The Sanctions Debate and the Logic of Choice,” *International Security* 24, no. 3 (Winter 1999/2000): 80-107; Meghan O’Sullivan, *Shrewd Sanctions: Statecraft and State Sponsors of Terrorism* (Washington, DC, Upssala: Brookings Institution Press, 2003).

<sup>42</sup> European Union, “Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy,” 4.

targets “more difficult.” Finally, the third category is the one of signalling sanctions, which are designed to send messages to audiences, whether domestic or international, spanning from strong condemnation, to support or simply to symbolic consideration.<sup>43</sup>

These three sanctions’ purposes have mainly an analytical value, but in the real world the same case of restrictive measures can play the three functions with a different intensity in different moments in time. Although their analytical value is clear, this categorisation emphasises the differences of EU sanctioning cases from which designing and implementation could greatly benefit. The consistent adoption of restrictive measures is shown in the database below, where the twenty-two autonomous sanctions that the EU has imposed since the end of the Cold War are classified by purpose.

EU Sanctions episodes since the end of the Cold War to 2008 classified per purpose (Giumelli, “Coercing, Constraining and Signaling. Explaining UN and EU Sanctions after the Cold War”, 179.)		
<i>Coercion</i>	<i>Constrain</i>	<i>Signal</i>
Belarus US Libya (2)	Indonesia Moldova Zimbabwe Iran Ex-Yugoslavia Macedonia Comoros Terrorist List	Afghanistan Azerbaijan Belarus Burma China DRC Libya (1) Nigeria Sudan (1) Sudan (2) Uzbekistan
3	8	11

This categorisation looks at the purpose of restrictive measures defined as in what ways the target(s) is (are) influenced<sup>44</sup> and this approach is very useful as defining what success is becomes an easier task. Under this light, sanction’s effectiveness should be defined as the degree of achievement of their purpose. This method solves two problems at once. First, it eliminates the dichotomy success/failure of sanctions that could not be evaluated otherwise but looking at the behavioral change of the target and, second, it brings into the picture the

<sup>43</sup> Please note that signaling sanctions can also change the behavior of the target, but the causal link is not based on the material loss undergone by the target. For a full description of the three categories, see Francesco Giumelli, “Coercing, Constraining and Signaling: Explaining UN and EU Sanctions After the Cold War” (Ph. D. diss., University of Florence, 2009).

<sup>44</sup> Robert J. Art, “To What Ends Military Power?” *International Security* 4, no. 4 (Spring 1980): 13.

potential alternatives that the EU could deploy either together or in alternative to the imposition of targeted measures.

## Conclusion

The EU's sixtieth anniversary was celebrated with the entry into force of the Lisbon Treaty, which marks a level of integration that certainly has exceeded most expectations envisioned in the creation of the Coal and Steel Community and in the signing of the Treaty of Rome. Especially since the EU's political union in 1992, the process of integration has included also the creation of a common foreign policy, which greatly contributes to the strengthening of the EU's presence in the international stage as a unitary actor.

It is within this present context that the establishment of a common foreign policy tool-box is enriched by targeted sanctions, which could be crucial in a world of growing disorder, rising costs of military missions and fundamental changes in the structural characteristics of the international system. The EU's increasing adoption of sanctions and its efforts in establishing clear procedures for designing, imposing, enforcing and lifting the so called "restrictive measures" deserve to be further studied and discussed. The targeted measures adopted by the EU such as travel bans, arms embargoes, assets freeze, commodity and services boycotts are used to deal with a multiplicity of crises and with different goals, proving their great utility as foreign policy instrument.

For reasons that go beyond the purposes of this article, the wide adoption of EU restrictive measures has not sparked a debate on their effectiveness, which has rather focused on the procedural matters and legal consequences of imposing targeted sanctions on individuals and non-state entities. Although these issues are worth investigating, this article wants to bring the attention to the effectiveness of sanctions, especially since political decisions must be able to identify whether they do accomplish their overall goals.

Determining the success of sanctions is a difficult matter as precise indicators may be either too specific for useful generalisations or the number of factors influencing the events may be too high. However, there are three main principles that should be part of any discussion attempt on this matter. First, a specific analysis of the impact of sanctions would contribute to bridge the gap between expectations and consequences of restrictive measures. Second, a target analysis should precede the imposition of measures that could, in fact, strengthen targets and weaken the senders. Third, any decision is good or bad only according to its alternatives and therefore any evaluation of the success of sanctions cannot avoid the scrutiny of what could have happened without sanctions and of which foreign policy tool could have yielded better results. This article outlines a system of classification of sanctions that can sustain the EU efforts to develop a coherent common and foreign security policy through the gradual acquisition of the conventional state's foreign policy tool-box.

Once the EU has identified both the type of crisis and the targets of its policy, restrictive measures could then be imposed to signal, constrain or coerce states as well as non-state entities and individuals. When the purpose of restrictive measures is clear, then their evaluation becomes an easier task. For instance, the cases of Zimbabwe or Iran shall be considered at least partially successful since international pressures have had important effects pertaining to power sharing agreements in the Southern African country and in regards to the street protests in Teheran. A clearer understanding of what sanctions can and cannot achieve is useful also because their design could substantially improve. Indeed, if a target analysis shows that coercive sanctions are not likely to bear fruit, the best cost/effective measure would be of a signaling type. Such move would provide the EU with a lever on targets without the exposition to criticisms claiming lack of resolve. The discussion over sanctions' success is still far from being over and it is thanks to the ongoing discussion that sanctions will change and improve. Under this light, the EU surely cannot disregard the debate over effectiveness since it is by far the most politically relevant of all.