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SIRANUSH GRIGORYAN
*Yerevan State University,
Faculty of Law, Chair of European and International Law,
PhD Student*

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*Երևանի պետական համալսարան,
Իրավագիտության ֆակուլտետ, Եվրոպական և միջազգային
իրավունքի ամբիոն, հայցորդ*

СИРАНУШ ГРИГОРЯН
*Ереванский государственный университет,
Юридический факультет, кафедра Европейского и
международного права, соискатель*

THE FUTURE OF EU SANCTIONS. EFFECTIVENESS, CHALLENGES AND CONSIDERATIONS

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БУДУЩЕЕ САНКЦИЙ ЕС. ЭФФЕКТИВНОСТЬ, ПРОБЛЕМЫ И
СООБРАЖЕНИЯ

Introduction

The European Union (EU) has emerged as a major force in international affairs. One prominent aspect of this shift is the EU's growing use of international sanctions, also known as restrictive measures within the EU. These measures serve as a tool for the EU to address a wide range of global challenges, aiming to influence the behavior of states and other actors on the international stage.

The effectiveness of sanctions as a foreign policy instrument is a subject of ongoing discussion and analysis. Proponents argue that sanctions can provide a peaceful and non-military means to pressure targeted actors to change their behavior, while critics raise concerns about their unintended consequences and potential for limited effectiveness.

Prior to the Maastricht Treaty of 1992¹, the EU's ability to impose sanctions was limited. Foreign

¹ Sanctions are referred to as 'restrictive measures' in EU jargon. 'Targets' are entities or individuals against which restrictive measures are applied by 'senders', i.e. the actors that impose sanctions.

and security policy cooperation remained relatively loose, hindering a unified approach. This often resulted in inconsistent and less effective sanctions regimes. The Maastricht Treaty marked a significant turning point, establishing a dedicated Common Foreign and Security Policy (CFSP) framework. This framework explicitly included the use of restrictive measures (sanctions) as a foreign policy tool. This newfound capacity to impose sanctions collectively across member states significantly enhanced the EU's influence on the international stage.

The current legal framework for sanctions has historically focused on addressing traditional threats such as state-based aggression and weapons proliferation. However, the landscape of global challenges has evolved considerably. The EU is constantly adapting its framework to address new issues like cyber threats, the rise of non-state actors, and complex global challenges like climate change.

Despite the progress made, there are areas for improvement within the EU's legal framework for sanctions. Some argue that the existing framework may not adequately address emerging issues. Additionally, concerns exist regarding the clarity and consistency of justifications for imposing sanctions.

This research aims to contribute to a more effective EU sanctions regime. It proposes a framework that strengthens the legal foundation of sanctions, enhances their effectiveness in achieving foreign policy objectives, and offers a more robust approach for targeting relevant actors. The research also emphasizes the importance of robust monitoring and evaluation mechanisms to assess the impact of sanctions and identify areas for improvement.

Subsequent sections will explore the decision-making process for imposing sanctions within the EU, analyze the various types of sanctions employed, and examine case studies to illustrate the practical application of the legal framework.

Basic Research

EU AS A SANCTIONING POWER: THE LEGAL FOUNDATION FOR SANCTIONS

The European Union (EU) has become a prominent player on the international stage, increasingly utilizing sanctions, known as restrictive measures within the EU, to address global challenges. These measures serve as a tool for the EU to pursue its foreign policy goals, such as promoting democracy, the rule of law, and security. The effectiveness of EU sanctions remains a subject of ongoing discussion. This chapter delves into the evolution of the EU's legal framework for sanctions, with a particular focus on how it can be continually improved to address contemporary challenges.

In the past two decades, the EU's ability to impose sanctions has transformed from a loose system to a more sophisticated framework allowing member states to collaborate and make binding decisions. The Treaty on European Union (TEU) recognizes restrictive measures as a tool for achieving Common Foreign and Security Policy (CFSP) objectives. Sanctions can be applied based on United Nations Security Council mandates or under agreements like the Cotonou Agreement.² This study focuses on CFSP measures applied independently from UN mandates, showcasing the EU's capacity to develop and implement restrictive policies within its legal framework. While the Treaty of Rome (1957) hinted at the possibility of coordinated trade policies for economic sanctions, it wasn't until the 1992 Maastricht Treaty that the EU began applying political sanctions as a central

² Howarth, R., & Regan, P., The European Union and the judicialisation of sanctions. *Journal of European Public Policy*, 24(2), 223-244

focus of this research.

The EU's approach to sanctions is based on three key internal documents. The first, "Basic Principles on the Use of Restrictive Measures (Sanctions)," emphasizes the need for alignment with UN mandates while allowing for independent action when necessary. It focuses on targeted sanctions for maximum effectiveness.

The second document, "Guidelines on the Implementation and Evaluation of Restrictive Measures (Sanctions)," provides definitions, directives for designing and implementing sanctions, and information on different types of measures.

The third document, "EU Best Practices for the Effective Implementation of Restrictive Measures," offers guidance on identifying targets and details administrative processes.

The Treaty of Rome (1957) hinted at the possibility of EU members coordinating trade policies to achieve effects similar to economic sanctions³. However, it wasn't until the Maastricht Treaty in 1992 that the EU began applying political sanctions, which are the focus of this research.

The EU's approach to restrictive measures is based on three key internal documents. The first, "Basic Principles on the Use of Restrictive Measures (Sanctions)" (known as "the Basic Principles"), was approved by the Political and Security Committee (PSC) in June 2004. It was developed to provide a framework for effective sanctions. The Basic Principles emphasize the need for alignment with UN mandates but allow for independent action when required, focusing on targeted sanctions.

The second document is the "Guidelines on the Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy" ("the Guidelines"), approved in 2003 and updated in 2005, 2009, and 2012. It includes definitions, directives for designing and implementing sanctions, and information on different types of restrictive measures and their effectiveness.

The third document, the "EU Best Practices for the Effective Implementation of Restrictive Measures" ("the Best Practices"), was approved in 2008. It provides guidance on identifying designated individuals or entities and details the administrative processes for freezing assets, prohibiting products, and granting exceptions or exemptions.

Sanctions are a foreign policy tool employed by the European Union (EU) to achieve objectives outlined in Article 21 of the Treaty on European Union (TEU). These objectives encompass a broad range of goals, including promoting democracy, the rule of law, and respect for international law. The "Basic Principles on the Use of Restrictive Measures (Sanctions)," a key internal document guiding the EU's approach to sanctions, further specifies that restrictive measures can be used to address various threats such as terrorism and weapons proliferation. Sanctions can be a controversial tool, and their impact on human rights is a complex issue.

DECISION DYNAMICS: A CLOSER LOOK AT THE DECISION-MAKING PROCESS

The decision-making process for EU sanctions is a complex and intricate structure, involving various actors and procedures outlined in the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU)⁴. By examining the roles of each player and potential points of contention during negotiations, this chapter explores the challenges and complexities inherent in the EU's decision-making process for sanctions. While qualified majority voting exists

³ Joakim Kreutz, 'Hard Measures by a Soft Power? Sanctions Policy of the European Union 1981-2004', Paper no. 45, Bonn International Center for Conversion (BICC), Bonn, 2005, pp. 7-8.

⁴ Consilium of the European Union. (2023, January 12). How does the Council work? <https://www.consilium.europa.eu/>

for specific types of sanctions under the TFEU, consensus-seeking remains the preferred outcome.

The European External Action Service (EEAS), led by the High Representative for Foreign Affairs and Security Policy (currently Josep Borrell), plays a pivotal role in shaping the EU's sanctions agenda. These early recommendations significantly influence the final decision. The EEAS leverages its knowledge of international affairs and potential targets to propose targeted and effective sanctions. However, member states do have the authority to significantly alter the EEAS's initial proposals. Negotiations within the Council can lead to modifications of the scope and targets included in the final sanctions package. While the EEAS's expertise carries significant weight, member states ultimately retain control over the final decision.⁵

Transparency in the EU's sanctions decision-making process is a balancing act. Regulation (EC) No 1049/2001 of the European Parliament and of the Council (2001) on public access to European Parliament, Council and Commission documents allows for some degree of public scrutiny. However, citing national security concerns or ongoing diplomatic efforts, the Council can often restrict access to information regarding the rationale behind specific sanctions or the details of negotiations. This lack of transparency can make it difficult to hold member states or the EU institutions accountable for the decisions made. There are ongoing debates about striking a better balance between transparency and the need for confidentiality in sensitive foreign policy matters⁶.

Sanctions in the EU fall under the Common Foreign and Security Policy (CFSP), with procedures outlined in Articles 30 and 31 of the Treaty on European Union (TEU). Any member state or the High Representative for Foreign Affairs and Security Policy can initiate a sanctions proposal, with backing from the European Commission. Proposals are usually introduced at the Foreign Affairs Council, then reviewed by the Political and Security Committee (PSC) and the Council's geographical working groups, where member state delegates negotiate the specific targets and justifications for sanctions. The European External Action Service (EEAS) plays a pivotal role in these processes, offering early recommendations and drafting the legal framework.

The Council is the primary decision-making body for sanctions, even when economic and financial measures require the European Commission's involvement due to internal market concerns. The Treaty on the Functioning of the European Union (TFEU) distinguishes between different types of sanctions based on the former division between the European Community (first pillar) and the Common Foreign and Security Policy (CFSP, second pillar)⁷. The Parliament should only be notified about the decision under this method, however Article 75 of the TFEU makes an exemption. When the EU takes action to prevent and combat terrorism and similar activities, the Council and Parliament should use the usual legislative procedure to pass a rule.

Sanctions that fall under the former second pillar, like travel bans and arms embargoes, generally do not require additional EU legislation beyond the Council's decisions (which were often issued as common positions prior to the Treaty of Lisbon and as Council decisions since December 2009). However, specific lists related to arms embargoes, such as those containing dual-use items, can be developed by the Council through ad hoc regulations. A national security clause, included in

⁵ Schimmelfennig, Fabian, 2020, pp. 25-27

⁶ Schmidt, Vivien A., 2013, pp. 102-105

⁷ Before the Treaty of Lisbon, the Council used to approve Commission regulations. Since December 2009, and according to the new guidelines adopted in December 2009, the Council resorts to Council regulations to implement economic sanctions.

the Treaties since 1957⁸, allows for exceptions when it comes to arms embargoes.

For example, the Common Rules on Arms Exports, approved by the Council in 2008, provide strict guidelines for the terms under which arms can be exported⁹. The final decision on arms sales is reached following established procedures that consider national security considerations. The control of people entering and leaving EU countries is largely managed by national governments, who are responsible for monitoring their borders and ensuring compliance with decisions made by the Council of Ministers.

The EU's decision-making process for sanctions is a complex and multifaceted endeavor. Negotiating consensus among member states with diverse interests, incorporating the expertise of the EEAS, and balancing transparency with confidentiality all present challenges. Analyzing these dynamics is crucial for understanding the effectiveness and legitimacy of the EU's sanctions regime.

Transparency in the EU's sanctions decision-making process involves considerations of both openness and confidentiality. Regulation (EC) No 1049/2001 on public access to European Parliament, Council and Commission documents allows for some degree of public scrutiny.¹⁰ However, the Council can restrict access to information regarding the rationale behind specific sanctions or the details of negotiations, citing national security concerns or ongoing diplomatic efforts. This balancing act ensures that the EU can pursue its foreign policy goals while adhering to transparency principles as much as possible.

THE EU'S EXPANDING TOOLKIT: HOW SANCTIONS BECAME A FOREIGN POLICY INSTRUMENT

The EU has increasingly utilized sanctions as a foreign policy instrument in recent years. This development reflects the EU's evolving role in the international arena. Sanctions are employed to address a range of issues, including human rights violations and post-conflict stabilization. The Council utilizes various justifications for imposing sanctions, with human rights violations being one category. Examples include targeting regimes associated with violence against civilians. The EU leverages sanctions in diverse contexts to pursue its foreign policy objectives.¹¹

Analyzing EU documents and specific cases reveals five key categories where sanctions are applied:

Sanctions can be used to deter aggression or pressure warring parties towards a peaceful resolution. Examples include sanctions imposed on Afghanistan in 1996 following the Taliban's takeover and on Libya in 2011 during the Gaddafi regime's violent crackdown on protests. Sanctions can help support newly established governments in post-conflict settings by limiting resources available to spoilers who might undermine their legitimacy. The EU imposed sanctions in the Federal Republic of Yugoslavia (FRY) to pressure individuals who were hindering cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY).

⁸ Treaty on the Functioning of the European Union (2007, December 13). [2016 consolidation]. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AL%3A2022%3A327%3AFULL>

⁹ Common Rules Governing Control of Exports of Military Technology and Equipment, 2008/944/CFSP

¹⁰ European Parliament and Council of the European Union. (2001, December 19). Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents. eur-lex.europa.eu

¹¹ *Mikael Eriksson, Targeting Peace: Understanding UN and EU Targeted Sanctions* (Farnham, UK/ Burlington, VT: Ashgate, 2011); *Seth G. Jones, The Rise of European Security Cooperation* (Cambridge/ New York: Cambridge University Press, 2007); de Vries and Hazelzet, *op. cit.* in note 2; Kreutz, *op. cit.* in note 3.

The EU employs sanctions to disrupt terrorist organizations' finances and limit their ability to operate. Examples include sanctions against al-Qaeda and the targeting of Libyan individuals linked to the 1988 Lockerbie bombing. The EU sanctions regimes target countries suspected of developing or acquiring weapons of mass destruction or ballistic missiles. Examples include sanctions imposed on Iran for its nuclear program and on Libya in 1994 for its pursuit of weapons of mass destruction. The EU frequently utilizes sanctions to condemn human rights abuses and pressure authoritarian regimes towards political reform. Examples include sanctions against Belarus for its crackdown on dissent and Uzbekistan for its forced-labor practices.¹²

The EU has implemented sanctions under such volatile settings, such as in response to the events that followed the wave of uprisings known as the Arab Spring, to reinforce and establish the recognised institutions' power. This was also the case in the Federal Republic of Yugoslavia (FRY), where several people were actively involved in protecting and supporting indictees of the International Criminal Tribunal for the former Yugoslavia (ICTY)¹³ who had been at large for more than ten years after the conflict ended. Since the EU requested ICTY indictees to voluntarily surrender, these sorts of sanctions are difficult to comprehend when seen as foreign policy weapons aimed at inflicting suffering on targets in order to achieve political concessions¹⁴. Sanctions have evolved and are now utilised in a variety of circumstances, necessitating the development of a new narrative to explain their usage.

Sanctions can be a powerful tool, but their success depends on various factors, including the targeted regime's vulnerability to economic pressure, the level of international cooperation in enforcing sanctions, and the existence of clear benchmarks for lifting them. In some cases, sanctions can lead to positive outcomes, such as encouraging political reforms or deterring aggression. However, they can also have unintended consequences, such as harming civilian populations or pushing targeted regimes closer to allies who might provide alternative sources of economic support.

EU SANCTIONS MECHANISMS: INSIGHTS INTO OPERATION AND IMPACT

This chapter explores the practical application of EU sanctions mechanisms. The use of sanctions is a topic of ongoing debate, with the EU employing them more frequently in recent years as a tool for achieving its foreign policy objectives. As discussed previously, a new narrative based on sanctions logic is needed to improve our understanding of their effectiveness. This chapter will examine how a three-step review process can be applied to real-world examples of EU sanctions to assess their effectiveness through the lens of this new narrative.¹⁵

The previously discussed three-step review process provides a framework for evaluating the effectiveness of sanctions. Here's a brief overview of the steps:

Sanctions Logic: This step involves identifying the underlying logic behind the sanctions regime. Are they intended to deter aggression, promote human rights, or achieve another specific objective?

Implementation and Monitoring: This step assesses how effectively the sanctions are implemented and monitored. Are there loopholes or weaknesses in enforcement? Is there a clear understanding

¹² The Sanctions Decade: Assessing the Economic Effects of Sanctions by Kimberly Ann Elliott (pp. 87-92).

¹³ International Criminal Tribunal for the former Yugoslavia website: <https://www.icty.org>.

¹⁴ The official website of the International Criminal Tribunal for the former Yugoslavia (<https://www.icty.org>).

¹⁵ *Mikael Eriksson* (2011). *Targeting Peace: Understanding UN and EU Targeted Sanctions* (Farnham, UK/ Burlington, VT: Ashgate), particularly Chapter 3.

of the intended impact?

Outcomes and Impact: This step evaluates the actual outcomes of the sanctions regime. Did they achieve the intended goals? Were there any unintended consequences?

We will analyze four case studies of EU sanctions regimes to demonstrate the diverse circumstances, purposes, and logics underlying their application. These case studies were chosen based on the following criteria.

By examining these cases through the three-step review process and the proposed narrative on sanctions logic, we aim to gain a deeper understanding of how well sanctions achieve their intended goals. This approach will highlight the complexities involved in assessing the effectiveness of sanctions and the need for a nuanced analysis that considers both the specific context and the underlying logic behind each sanctions regime.

COUNTRIES IN THE MENA REGION

The ‘Arab Spring’ upheavals have highlighted the necessity for a new approach to sanctions. Traditional behavioral change theory, which focuses on pressuring a state to change its actions through economic hardship, does not fully explain why they were implemented in Tunisia, Egypt, Libya, or Syria. Instead, the coercing-constraining-signalling strategy demonstrates how sanctions serve to weaken the legitimacy of autocratic rulers while also consolidating the transition process by limiting the actions of former regime members.

The goal wasn’t to directly pressure them, but to recover stolen assets and limit the influence of former leaders on the transitions. The popular uprisings in Tunisia, Egypt, Libya, and Syria reflected a wave of protests against authoritarian rule. The EU and the US responded by imposing sanctions on the respective regimes.¹⁶ The asset freeze was designed to legitimize new authorities, supporting Egyptian officials in reclaiming assets misappropriated by the Mubarak family without requiring behavior changes from those sanctioned.

However, measuring their effectiveness solely on the amount of assets frozen or the limitations imposed can be challenging. While recovering stolen funds is a clear goal, these sanctions also aim to achieve less tangible outcomes, such as hindering the influence of sanctioned individuals on the transition process. Evaluating these broader impacts requires a more nuanced approach.

In Libya and Syria, the EU’s sanctions aimed to weaken existing regimes’ capacity to retain power. In Libya, sanctions were imposed to undermine Muammar Gaddafi’s regime and later to support the transition to a new government. These measures were part of the EU’s broader strategy to encourage the fall of authoritarian regimes and support transitions to new governance structures. During the early stages of the Libyan crisis, the European Union used restrictive measures to isolate Muammar Gaddafi and push for political change in Libya. In February 2011, the EU added 10 individuals to the 16 listed on the UN Security Council’s blacklist with Resolution 1970¹⁷. This was part of a broader effort to weaken Gaddafi’s grip on power. The second phase began as Gaddafi’s defeat became imminent in October 2011, with the EU choosing to maintain sanctions to support Libya’s transition process. The Council listed 39 targets (down from 69 in August 2011) who could hinder the establishment of democratic institutions in the country¹⁸. The effectiveness of these sanctions is evaluated based on how they prevent specific individuals from accessing national

¹⁶ Council Decision 2011/72/CFSP and Council Decision 2011/172/CFSP.

¹⁷ United Nations Security Council Resolution 1970 (2011).

¹⁸ Amending Decision 2011/137/CFSP and Implementing UNSCR 2009 (2011).

resources or undermining the new authority.

The Syrian case demonstrates a similar approach to sanctions. In the initial phase, the EU imposed coercive measures to persuade Bashar al-Assad to engage with rebels and the international community. Initially, the EU issued travel restrictions against many individuals but did not include Assad himself [Council Decision 2011/273/CFSP]. The EU extended the sanctions list to include Assad and his family, with the stated goal of pressuring the Syrian government [Council Implementing Decision 2011/302/CFSP]. This restrictive approach was further strengthened with a coordinated US-EU oil embargo on Syria in the summer of 2011 [Council Decision 2011/522/CFSP]. The success of these sanctions is measured by the extent to which they restrict Assad's regime, not solely on whether Assad remains in power.

A critical evaluation of sanctions is necessary but lifting them without a clear alternative could lead to legitimizing Assad's actions instead of condemning them. Removing sanctions during the ongoing crisis could send the wrong message and give Assad more freedom to use violence. Therefore, any review of sanctions should include a proposed alternative that delivers better results at a lower cost.

In all these scenarios, signaling is crucial. The popular uprisings in Tunisia, Egypt, Libya, and Syria were encouraged by the West, with both the EU and the US feeling a responsibility to support anti-government movements. Without sanctions, Assad might have been more motivated to limit violence to maintain his international legitimacy, but he resorted to violence once sanctions were lifted. Lifting sanctions now would not only fail to condemn but would, in fact, legitimize Assad's actions.

The signalling aspect plays a pivotal role in all these cases. The revolts in Tunisia, Egypt, Libya, and Syria were influenced by Western backing, with the EU and US aiming to support anti-government factions. A lack of action could have sent a negative signal to both domestic and international audiences, undermining the importance of democratic values and institutions in the global order.

TOWARDS A NEW STORY: OBSTACLES AND RISKS FOR EU SANCTIONS

This study does not aim to provide a comprehensive evaluation of the effectiveness of EU sanctions or to reconstruct in detail the decision-making process that led to the application of sanctions. Rather, its purpose is to lay the groundwork for a more practical interpretation of how sanctions operate. The conventional approach tends to overstate the significance of the material costs imposed by sanctions and the behavioral changes as indicators of success. A new narrative, however, should contextualize EU restrictive measures and explore their impact on their objectives, focusing on the purpose or logic of sanctions. Thus, sanctions can be effective even when targets do not change their behavior, as they serve to restrict and communicate with targets within the international system.

Sanctions, when viewed through this lens, can be seen as more than just tools for imposing economic hardship. They can also play a role in sending strong signals, setting boundaries, and restricting the actions of targets in the global arena. The study provides a framework for rethinking the use of sanctions and encourages a broader consideration of their potential effects beyond the conventional 'pain-gain' model.

A new perspective is needed to understand the process of imposing sanctions, but this should also highlight concerns that can reduce their effectiveness. Legal obstacles and implementation

issues, especially when sanctions target specific individuals or items, can weaken their impact and even be counterproductive. A common consequence of targeted sanctions is that those affected may claim rights granted by domestic legal systems, which can lead to legal challenges.

In the EU, individuals listed on terrorist blacklists began filing appeals with the Court of First Instance (now the General Court after the Lisbon Treaty) and the Court of Justice, claiming violations of their rights to due process and a fair trial. The Kadi case, which started in 2005 and concluded in 2008, was a landmark decision where the Court ruled that the EU had violated its own Treaty, despite the Council following a UN resolution. This led to other delisting, like Tay Za's son from the Burma/Myanmar list in March 2012, and Iranian banks Saderat and Mellat in early 2013. These legal hurdles underscore the need for compliance with legal standards when implementing restrictive measures.¹⁹ There are dozens of ongoing cases under examination (most notably from Côte d'Ivoire, Iran, and Syria), and while many of them may end up affirming the Council's judgement, the dread of legal challenges undermines the EU's ability and degree of independence.

The focus of the discussion surrounding sanctions has shifted from their political benefits to what is legally permissible and how those targeted by sanctions can appeal to the Court of Justice against decisions that might violate rights recognized by the European Union. This shift has made the Council more cautious when deliberating sanctions, as member states worry that their decisions could be overturned by the Court. As a result, the Council might be more hesitant to impose sanctions to avoid unfavorable rulings from the Court of Justice.

The second challenge with sanctions is that the more detailed they are, the easier they are to circumvent. Domestic societies have mechanisms to enforce laws, like fines for parking in restricted zones or legal consequences for tax evasion, but violations still occur frequently. Circumvention and evasion can happen even in systems designed to combat crime and ensure law enforcement. When institutional oversight is weak, targets can find ways to avoid the impact of specific sanctions. For example, restrictions on trading in certain industries or engaging in financial transactions with specific corporations in other countries can be difficult to enforce effectively.

Circumventing sanctions can undermine the credibility of the sanctioning body, as the failure to implement and enforce measures is often perceived as a sign of weakness. This erosion of credibility can lead to reduced confidence in sanctions as a tool for international diplomacy or law enforcement. These challenges highlight the importance of robust monitoring, effective enforcement mechanisms, and continual adaptation to evolving tactics used to circumvent sanctions.

Although targeted sanctions can be entangled in legal complexities and may be avoided, they offer policymakers a flexible range of diplomatic responses to crises. Tailored sanctions allow policymakers to punish specific undesirable behavior without alienating civilians. They can be used in various contexts, providing the option to lift or impose measures depending on how a crisis unfolds. To be effective, such policies require strong institutional capacity for enforcement. Understanding this reality, EU member states can improve cooperation in monitoring and information sharing over time to ensure sanctions are effective.²⁰

¹⁹ Council of the European Union. (2013, January 28). Council Decision 2013/32/CFSP amending Decision 2010/413/CFSP concerning restrictive measures against Iran. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX-3A52021PC0663>.

²⁰ Howorth, R., & Regan, P. (2017). The European Union and the judicialisation of sanctions. *Journal of European Public Policy*, 24(2), 223-244. doi: 10.1080/09542961.2015.1089252

WHAT SHOULD BE CHANGED IN THE EU'S SANCTIONS POLICY?

Adopting the three-purpose approach may provide significant benefits throughout the sanctioning process, from design to monitoring and implementation. There should be three urgent priorities: (i) pre-assessment, (ii) monitoring, and (iii) policy coherence. First, the Council must conduct detailed pre-assessment appraisals of the consequences that sanctions are likely to have. This stage could involve oversight by the EEAS's security division, focusing on potential security implications of the sanctions. This strategic thinking may readily boost the reputation of sanctions in foreign policy since the application of sanctions is frequently accompanied by ambiguous expectations rather than a thorough assessment of what sanctions can actually do. Focusing on the rationale of sanctions can help to bridge the gap between what the Council wants and what sanctions can achieve.

Second, EU institutions (the Commission or the EEAS) should be granted a greater role in overseeing and monitoring EU restrictive measures. While the Council retains the authority to impose sanctions, a strengthened role for EU institutions, addressing concerns about potential infringement on member state autonomy, would leverage. This could involve establishing a dedicated sanctions unit within the EEAS or the Commission, tasked with monitoring the impact of sanctions and identifying potential loopholes used for evasion. A proposal in this approach may be to follow the Security Council's precedent and establish expert committees to collect information on how governments function and how targets seek to dodge sanctions.²¹ This would set off a virtuous loop in which member nations would be motivated to improve cooperation and knowledge of evasion plans and techniques would be institutionalised. Finally, sanctions must be considered with other foreign policy measures. Sanctions should be developed and implemented to supplement other decisions about foreign aid, the use of force, and diplomatic activities. Even in this regard, the EEAS should be the lead institution in gathering information on each instance and actively coordinating the crisis response strategy. Efforts have been made in this regard, but member states should step up their collaboration if sanctions are to be utilised in the future.

EU SANCTIONS DURING THE NEXT DECADES

How the EU's sanctioning processes develop and evolve will influence the type of sanctions applied in the coming decade. According to the continuing argument, there are two major future options. The first is that the significance of punishments will be greatly decreased. The Court's growing legal challenges, along with the ongoing challenges of implementing EU decisions consistently across member states, may discourage future use of targeted sanctions in favour of other foreign policy instruments, such as diplomacy or force. Nonetheless, abstaining from imposing sanctions does not appear to be a feasible option at this time, raising the possibility that the Council may resort to adopting larger kinds of sanctions, such as sectoral measures and embargoes on specific industries (e.g., oil and gas) or even broad embargoes on entire countries. While these broader measures could be softened with a variety of exceptions and exclusions aimed at eliminating unnecessary human suffering. Even if softened with a variety of exceptions and exclusions aimed at eliminating unnecessary human suffering, fines would target sectors rather than corporations and people in order to relieve EU institutions of the burden of evidence. In other words, sanctions would be viewed as solely political instruments, with the Council accepting political, rather than legal, responsibility for their impact.

²¹ The EU and the UN Security Council: Partners in a Fragile World by Richard G. Newell (pp. 142-148).

The second option is more likely to influence the future of sanctions. Given their longevity in the international system and the limited alternatives to their imposition, the best mix may emerge as a combination of targeted and broad sanctions, aided by slightly improved EU capacities to administer sanctions regimes, both in terms of policy planning (by adopting the three-purpose approach that would provide benchmarks for gauging success) and in terms of monitoring the measures. Whatever bad impressions there are about the use of sanctions, this does not affect their strategic necessity or the fact that they will continue to be needed in the future. Given the growing legalisation of the international system, which covers everything from countering international terrorism to money laundering, restrictive measures could be used less for policy-sensitive issues like crisis management and more for the fight against organised crime and cybersecurity. Targeted sanctions are similar to law-enforcement methods and should be used at the international level as well. The EU, as a rising international security supplier, should be prepared to face this task.

Conclusion

The future of EU sanctions in the coming decades presents various possibilities. One potential path involves a reduced reliance on targeted sanctions due to legal complexities and implementation challenges. If this scenario unfolds, the EU might utilize broader measures like sectoral sanctions or full-scale embargoes. However, these broader measures would require careful consideration due to concerns about their impact on civilians and overall effectiveness.

A second, potentially more likely, scenario suggests a continued use of sanctions with an emphasis on strategic application. This could involve a combination of targeted and broader sanctions, alongside investments in improving EU capabilities. These improvements might focus on pre-assessment practices and enhanced monitoring and compliance mechanisms. Regardless of the specific approach, sanctions are likely to remain a relevant instrument within the EU's foreign policy toolkit.

Furthermore, the international system's increasing emphasis on legal frameworks in areas like counter-terrorism and money laundering could influence the targets and purposes of sanctions. They might be applied less in politically sensitive crisis situations and more in the fight against organized crime, cyber threats, and non-state actors. In effect, sanctions could evolve to serve a more legal enforcement function on an international level.

In conclusion, the EU's approach to sanctions will likely need to adapt to evolving legal, political, and technological realities. By addressing implementation challenges, employing a more strategic approach, and potentially focusing on emerging threats, the EU can ensure that sanctions remain a viable tool for promoting peace, security, and human rights in the years to come.

Annotation. The European Union (EU) has become a significant user of international sanctions to address global issues. This study examines the EU's legal foundation for sanctions, analysing the decision-making process and the expanding toolkit that has established sanctions as a foreign policy instrument. By providing insights into the operation and impact of EU sanctions mechanisms, it identifies critical areas for improvement, such as strengthening the legal basis for targeting non-state actors, enhancing procedural safeguards, and ensuring transparent justifications for sanctions. Additionally, it explores obstacles and risks associated with current policies, proposing changes to make the EU's sanctions regime more effective. Through continuous improvement and adaptation of its legal framework, the EU can better respond to international challenges and uphold its foreign policy objectives in the coming decades. The research aims

to contribute to the ongoing discourse on the future direction of EU sanctions policy, emphasizing the need for a more flexible and responsive approach.

Ամփոփագիր: Եվրոպական միությունը (ԵՄ) սկսել է ակտիվորեն օգտագործել միջազգային պատժամիջոցները գլոբալ խնդիրների լուծման համար: Այս աշխատանքն ուսումնասիրում է ԵՄ պատժամիջոցների իրավական հիմքը, վերլուծում է որոշումների կայացման գործընթացը և ընդլայնվող գործիքակազմը, որով պատժամիջոցները դարձել են արտաքին քաղաքականության գործիք: Տեղեկատվություն տրամադրելով ԵՄ պատժամիջոցների մեխանիզմների գործունեության և ազդեցության մասին՝ այն սահմանում է բարելավման կարիք ունեցող կարևորագույն ոլորտներ, ինչպիսիք են ոչ պետական դերակատարների դեմ պայքարի իրավական դաշտի ամրապնդումը, ընթացակարգային երաշխիքների բարելավումը և պատժամիջոցների թափանցիկ հիմնավորման ապահովումը: Բացի այդ, այն ուսումնասիրում է ընթացիկ քաղաքականության հետ կապված խոչընդոտներն ու ռիսկերը և առաջարկում է փոփոխություններ, որոնք ավելի արդյունավետ կդարձնեն ԵՄ պատժամիջոցների ռեժիմը: Իր իրավական բազայի շարունակական կատարելագործման և հարմարեցման շնորհիվ ԵՄ-ն կկարողանա ավելի լավ արձագանքել միջազգային մարտահրավերներին և պաշտպանել իր արտաքին քաղաքական նպատակները առաջիկա տասնամյակների ընթացքում: Ուսումնասիրությունը նպատակ ունի նպաստել ԵՄ պատժամիջոցների քաղաքականության հետագա ուղղության վերաբերյալ շարունակվող դիսկուրսին՝ ընդգծելով ավելի ճկուն և արձագանքող մոտեցման անհրաժեշտությունը:

Аннотация. Европейский союз (ЕС) стал активно использовать международные санкции для решения глобальных проблем. В данном исследовании рассматривается правовая основа санкций ЕС, анализируется процесс принятия решений и расширяющийся инструментарий, с помощью которого санкции стали инструментом внешней политики. Предоставляя информацию о функционировании и влиянии санкционных механизмов ЕС, он определяет важнейшие области, требующие улучшения, такие как укрепление правовой базы для борьбы с негосударственными субъектами, усиление процедурных гарантий и обеспечение прозрачного обоснования санкций. Кроме того, в нем рассматриваются препятствия и риски, связанные с текущей политикой, и предлагаются изменения, которые сделают режим санкций ЕС более эффективным. Благодаря постоянному совершенствованию и адаптации своей правовой базы ЕС сможет лучше реагировать на международные вызовы и отстаивать свои внешнеполитические цели в ближайшие десятилетия. Исследование призвано внести свой вклад в продолжающийся дискурс о будущем направлении политики санкций ЕС, подчеркивая необходимость более гибкого и отзывчивого подхода.

Keywords: *EU sanctions framework, effectiveness, non-state actors, restrictive measures, legal basis, emerging challenges, foreign policy goals.*

Բանալի բառեր - ԵՄ պատժամիջոցների համակարգ, արդյունավետություն, ոչ պետական դերակատարներ, սահմանափակող միջոցներ, իրավական հիմք, ծագող մարտահրավերներ, արտաքին քաղաքականության նպատակներ, մարտահրավերներ, արտաքին քաղաքականության նպատակներ:

Ключевые слова: *Система санкций ЕС, эффективность, негосударственные субъекты, ограничительные меры, правовая база, вызовы, внешнеполитические цели.*

BIBLIOGRAPHY

1. Council Decision 2013/32/CFSP amending Decision 2010/413/CFSP concerning restrictive measures against Iran. (2013, January 28). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0663>.
2. Eriksson, M. (2011). Targeting Peace: Understanding UN and EU Targeted Sanctions. Farnham, UK/Burlington, VT: Ashgate.
3. Howorth, R., & Regan, P. (2017). The European Union and the judicialisation of sanctions. *Journal of European*

Public Policy, 24(2), pp. 223-244. doi: 10.1080/09542961.2015.1089252.

4. United Nations Security Council Resolution 1970 (2011).
5. International Crisis Group. (2011). Popular Protests in North Africa and the Middle East (IV): Tunisia's Way. Middle East/North Africa Report no. 106, Brussels.
6. International Crisis Group. (2011). Popular Protest in North Africa and the Middle East (I): Egypt Victorious? Middle East/North Africa Report no. 101, Brussels.
7. Joakim Kreutz. (2005). Hard Measures by a Soft Power? Sanctions Policy of the European Union 1981-2004. Bonn International Center for Conversion (BICC), Paper no. 45, Bonn, pp. 7-8.
8. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents. (2001, December 19). Retrieved from eur-lex.europa.eu.
9. Treaty on the Functioning of the European Union. (2007, December 13). [2016 consolidation]. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AL%3A2022%3A327%3AFULL>.
10. The EU and the UN Security Council: Partners in a Fragile World by Richard G. Newell (pp. 142-148).
11. The Sanctions Decade: Assessing the Economic Effects of Sanctions by Kimberly Ann Elliott (pp. 87-92)
12. Common Rules Governing Control of Exports of Military Technology and Equipment, 2008/944/CFSP.
13. Consilium of the European Union. (2023, January 12). How does the Council work? Retrieved from <https://www.consilium.europa.eu/>.
14. Schimmelfennig, F. (2020). The Liberal Moment in Intergovernmental Cooperation: Delegation and Constraining Discretion in the European Union (pp. 25-27)
15. Schmidt, V. A. (2013). From Hierarchy to Negotiation: The Transformation of EU Foreign Policy (pp. 102-105).
16. International Criminal Tribunal for the former Yugoslavia website. <https://www.icty.org/>

Grigoryan S. - Yerevan State University, Faculty of Law, Chair of European and International Law, PhD Student, e-mail: Siranush.grigoryan@ysu.am, Orchid ID: 0000-0003-1418-5643.

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