VIKTOR SZÉP

THE FRAMEWORK FOR COLLECTIVE DECISION-MAKING IN EU FOREIGN POLICY

THE CASE OF THE SANCTIONS IMPOSED AGAINST RUSSIA

Editors: Gabriella Szabó and Dániel Oross

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1. Introduction[1]

Since 2010, a new era has started in the history of sanctions. The EU is increasingly adopting measures which go far beyond travel bans and asset freezes. Remarkably, however, the increased use of sanctions by the EU went almost unnoticed for a very long time. The reason behind this ignorance was the large gap between the public perception of sanctions and the types of sanctions imposed by the EU. Indeed, for decades, the EU relied mostly on travel bans and asset freezes, sometimes combined with arms embargoes. These 'targeted sanctions' were completely different in their nature compared to the full economic blockades *à la* Cuba or other similar measures known from previous episodes of international sanctions (Portela, 2016: 36).

Since 2010, the EU has started to apply measures with serious economic repercussions thus raising public awareness about the willingness of EU Member States to use economic coercion as a mean to tackle global conflicts. In particular, the EU has recently imposed oil embargo and financial sanctions against Iran, prohibited the import of Ivorian cocoa and banned the import of Syrian oil and gas. The evolution of the EU's sanctions regime reached its peak during the Ukrainian crisis (Portela, 2016: 39). Imposing sanctions against Russia was unprecedented in the sense that no state of its size had been subject to major economic and financial sanctions. While the US and the EU sought to involve Russia in the global economy after the collapse of the Soviet Union, they have now deliberately limited their relationship with Russia (Gould-Davies, 2018: 5).

EU leaders, however, are now confronted with navigating more fragmented and polarised EU institutions (ECFR, 2019). The willingness to apply more sanctions has coincided with the rise of populist and anti-European parties across Europe. While they have rarely reached breakthrough results in elections, neither at Member State nor at European level, anti-establishment parties have had a clear impact on how (external) policies are now shaped in Europe. EU decision-making procedures, renowned for their slowness and complexity, are becoming even more constrained. For the first time in the history of European integration, the two traditional political groups in the European Parliament (the European People's Party and the Socialists and Democrats) lost their absolute majority in the 2019 elections. The European Council and the Council,

[1] This introduction is partly built on my previous article (see: Szép, 2019b)

composed of national representatives, are not exceptions either: they are also affected by the rise of populist regimes making compromises unnecessarily complicated at the European level.

EU foreign policy is particularly doomed to failure, especially in times when multilateralism and the liberal world order, established after the Second World War, are threatened from within and outside of the EU. The unanimity principle clearly prevented the EU from establishing an advanced form of cooperation in the areas of foreign, security and defence policy. The European Parliament remains excluded from the Common Foreign and Security Policy (CFSP), while the limited role of the Commission is also reaffirmed by the Treaties. The lack of qualified majority voting has allowed Member States to protect their national preferences even when collective decisions would enhance the EU's capabilities to act at the international level. Even when EU Member States reach agreement on any given foreign policy issue, the EU remains unable to prevent Member States from pursuing divergent policies towards third states, let alone establishing a truly *common* foreign and security policy (Orenstein and Kelemen, 2017).

1.1 The aim of the research

Within this context, it is timely to reconsider whether the EU and its Member States can act together in the imposition of sanctions to tackle external challenges. In the first part of the research, the aim of this research is to explore the legal and institutional framework for collective decision-making in sanctions policy provided for by EU law. It offers a comprehensive overview and analysis of EU external relations law covering sanctions policy. In particular, it examines primary and secondary EU legislation as well as the case law of the Court of Justice of the European Union (CJEU) on sanctions policy. Based on this analysis, this research argues that EU Member States are seriously restricted by EU law in adopting national measures in the area of foreign and security policy. In particular, the adoption of economic sanctions is principally an EU competence. Even if economic sanctions pursue foreign and security policy objectives, they remain principally commercial policy tools which fall within exclusive EU competence. EU Member States are, principally, prevented from adopting national legislation in the area of economic sanctions, even though they have retained wide competences in foreign and security policy.

Due to their foreign and security policy implications, the restrictive measures imposed by the EU have undeniable links with the CFSP. Specifically, the requirement of unanimity and the dominance of the Member States are key features of EU sanctions policy. The Treaty provisions make it clear that the European Parliament is excluded from EU sanctions policy while the Council still controls the policy-making procedure leading to the adoption of different sanctions. Indeed, EU sanctions policy was mainly driven by the interests of the Member States: measures affecting their political and trade relations can only be taken by the Council. Their primary role was reaffirmed by the Lisbon Treaty: EU Member States, within the framework of the Council, adopt travel bans and arms embargoes on the basis of Article 29 of the Treaty on European Union (TEU), while they impose economic and financial sanctions on the basis of Article 215 of the Treaty on the Functioning of the European Union (TFEU). It is not a coincidence, therefore, that the dominant part of the literature refers only to the Council when discussing decision-making processes on EU sanctions (Koutrakos, 2015: 495-497, 504-508; Portela, 2012). Undoubtedly, most of the time the Council remains the only institution which conducts negotiations on EU sanctions (Szép, 2019b: 1).

This research, however, challenges the traditional understanding of EU sanctions policy whereby the Council is regarded as the dominant actor in the imposition of restrictive measures. It stresses the increased prominence of EU soft law,[2] in particular the Conclusions issued after European Council meetings. Indeed, the European Council, through its Conclusions, has become a central actor in EU sanctions policy. Since the entry into force of the Lisbon Treaty, these European Council Conclusions contain specific – as opposed to general – policy guidelines and formulate detailed policy proposals to other EU institutions. Indeed, the case of Russian sanctions was one of the first episodes in EU sanctions policy in which the European Council *explicitly* called on other EU institutions, notably the Council and the Commission, to adopt the necessary legal acts for the establishment of a new sanctions regime.

[2] EU soft law is a wide concept and this research does not argue that EU soft law, in general, now dominates EU foreign policy-making. Instead, it seeks to emphasize that European Council Conclusions (a type of EU soft law) now have a prominent role in EU sanctions policy. The Conclusions issued after the meetings of the European Council (Van Vooren – Wessel, 2014: 37) now have a more prominent role in the imposition of international sanctions. Other soft law instruments should be examined separately and see whether their positions have changed in EU foreign policy-making.

In the empirical part, the research shows when and how EC/EU Member States considered the adoption of sanctions against Russia since the end of the Cold War. In fact, the Ukrainian crisis was one of the first episodes when the EU imposed CFSP sanctions against Russia. It does not mean that the EU was silent in major crises in the past: for example, EU Member States decided to suspend the Partnership and Cooperation Agreement with Russia in view of the Chechen crisis of 1994. The Ukrainian crisis represented another dimension of EU-Russia relations when Member States decided to act collective and impose sanctions against Russia. The research examines trade data and trade preferences of the Member States and argues that the EU designed its sanctions regimes against Russia to have the minimum impact on Europe while maximizing pressure on the Russian elite. In other words, the Commission proposed legislations that took into consideration Member State preferences while making sure that Russia pays the price for its actions in Ukraine.

In light of the main research question, this research seeks to offer a better understanding of EU sanctions policy *through the example of Russian sanctions*. In other words, the sanctions imposed against Russia are merely cases through which the author wishes to demonstrate how policy-making procedures have changed in EU sanctions policy since the entry into force of the Lisbon Treaty. It aims to show how the process of adopting sanctions has moved from a foreign ministers-led policy process to a policy area directly managed by the EU Heads of State and Government. Indeed, EU leaders now explicitly refer to sanctions in their Conclusions with strong expectations that other EU institutions, notably the Council and the Commission, follow the leadership of the European Council.

1.2 The layout of the research

This research is composed of four main chapters (Chapters 2, 3, 4 and 5). Chapter 2 represents an attempt to conceptualize the notion of 'sanctions' under EU law. From a broader perspective, sanctions are 'temporary abrogation of normal […] relations to pressure target states into changing specified policies or modifying behaviour in suggested directions' (Tostensen and Bull, 2002: 374). The chapter recognizes that the EU only labels sanctions those measures which are adopted by its Member States within the framework of the CFSP. It is clear, however, that the

EU is increasingly using different types of sanctions to tackle both *internal* and *external* challenges. In fact, the EU imposes sanctions against its own Member States as well as third States in order to encourage compliance with different legal obligations (e.g. international or EU law), expecting adjustment of their behaviour in a certain, pre-determined way. A common feature of these measures is that the EU reduces pre-existing advantages (e.g. institutional access, voting rights, financial benefits, etc.) of a state concerned or raises the cost of undesirable state behaviour.

Internally, the EU is equipped with several tools to encourage Member State compliance with EU law obligations. Article 258 TFEU, for instance, empowers the Commission to launch infringement proceedings against EU Member States that fail to comply with EU law. The procedure ensures that EU law is observed and enforced in the Member States and, on the basis of Article 260 TFEU, foresees the imposition of financial penalties in cases of non-compliance with the judgment of the CJEU. Although the Commission can also launch values-related infringement proceedings covering issues such as democracy or the rule of law (Bárd and Śledzińska-Simon, 2019), the EU defends its main values by resorting to Article 7 TEU. The latter combats against 'a clear risk of a serious breach by a Member State of the values referred to in Article 2 [TEU]' and, after the determination of 'the existence of a serious and persistent breach', it can also impose sanctions against a Member State concerned. The procedure can lead to the 'suspen[sion of] certain of the rights [of] the Member States, including the voting rights of the representative of the government of that Member State in the Council'. Compared to infringement proceedings, EU Member States – as opposed to the CJEU – decide on those sanctions highlighting the political – instead of the legal – nature of that decision.

Externally, the EU seeks to establish a 'rules-based international order' founded on the same principles as the EU, such as democracy, rule of law or the protection of fundamental human rights. It promotes and defends the values laid down in Article 21(1) TEU through the use of different instruments. The EU can, for instance, reduce tariffs, provide aids, extend loans, impose sanctions, delay the conclusion of agreements or reduce or suspend aids (Smith, 2014: 44–65). Indeed, the EU is equipped with several instruments that are used as sanctions (Portela 2012). The EU, on the basis of Article 218(9) TFEU, can suspend the application of international agreements. The denunciation of agreements, however, is very rare and is considered a last resort solution (Maresceau, 2009: 455–66). It can also suspend aid which the EU has done

vis-à-vis several African, Caribbean and Pacific countries. Article 96 of the Cotonou Agreement provides the possibility of taking 'appropriate measures' if one party fails to comply with the fundamental principles laid down in the agreement.

Despite the broad understanding of sanctions under EU law, this research focuses only on sanctions which are adopted by EU Member States within the framework of the CFSP, such as travel bans, arms embargoes or economic sanctions. It analyses EU external relations law covering the CFSP and sanctions policy and examines the legal framework that constrains the Member States in the formulation of their own foreign policy while recognizing that it also enables Member States to design a foreign policy which better correspond with national preferences.

Chapter 3 continues to focus on EU sanctions but recognizes that an analysis of another policy area – the CFSP – is a prerequisite to understanding the legal framework governing EU restrictive measures. Due to the inextricable link between foreign and sanctions policy, this chapter offers an overview as well as an analysis of the CFSP. It starts with a literature review focusing on theories of EU foreign policy but limits its attention to works that are directly related to the main research question of this research. Specifically, the focus is on theories of EU foreign policy that deal with the question of how collective decisions can be reached in CFSP. While it presents all relevant theories, the author of the research sees the Member States and their national preferences as the main driving forces of the EU, refuting most of the literature on EU foreign policy dominated by constructivist approaches. It argues that the interests of each Member State influence the outcome of the negotiations.

This chapter also offers a legal analysis on the CFSP. It demonstrates that the CFSP has remained the ‘strange animal’ in the EU. It recognizes that the Member States still dominate this policy field but acknowledges that the CFSP has moved away from traditional intergovernmentalism. The TEU provides clear legal obligations in the area of foreign, security and defence policy, including the commitment of the Member States to respect the decisions taken within the framework of the CFSP. However, legal enforcement is still largely missing giving the Member States more flexibility in cases when they seek to formulate a foreign policy which corresponds better with their perceived national interests.

Although there is an inextricable link between the CFSP and sanctions policy, unilateral actions by the Member States in the imposition of certain types of sanctions are nearly prohibited. Indeed, as the analysis of EU primary and secondary law reveals, the close relationship between the common commercial policy, an exclusive EU competence, and economic sanctions lays out the limits on Member State freedom and restricts the ability of the Member States to pursue independent policy without infringing primary and secondary EU law. Economic sanctions are used to achieve foreign policy goals but are clearly commercial policy instruments. This hybrid nature of economic sanctions led to several litigations where the CJEU, in fact, limited the ability of the Member States to pursue independent foreign policy actions when using economic sanctions. Indeed, the Commission is entitled to launch infringement proceedings against EU Member States for violation of EU law covering trade relations with third States. Therefore, the use of sanctions stands in stark contrast with the CFSP in terms of enforcement: EU Member States are scrutinized by the Commission on whether they have fulfilled their EU law obligations and are thus constrained in the formulation of their foreign policy.

Finally, Chapter 3 goes on to examine the role of EU institutions in EU foreign and sanctions policy making. This rather descriptive section intends to contrast the traditional understanding of policy-making in EU foreign and sanctions policy with the new policy-making mode that has been observed by the research. It turned out that the European Council interferes, more than ever, in the formulation of EU restrictive measures. This research collected every Conclusion adopted by the European Council since 1993. Based on an overview and analysis of these Conclusions, it is possible to argue that EU Heads of State and Government almost never referred to sanctions, as a specific tool of foreign policy, let alone instructing other EU institutions to adopt such measures. If the term ‘sanctions’ did appear in these Conclusions, they served the purpose of acknowledging that restrictive measures were imposed by the foreign ministers or they implemented UN sanctions through the EU framework due to international law obligations. Since the entry into force of the Lisbon Treaty, however, there were at least four cases in which the European Council explicitly called on the Commission and the Council to adopt sanctions: before the Iranian nuclear deal, during the Syrian civil war and the Ukrainian crisis as well as after the Salisbury attack (Szép, 2019b: 3).

Chapter 4 continues the argument that the European Council leads sanctions policy and looks specifically at the case of the restrictive measures imposed against Russia. It shows that the

European Council played a leading role in the Ukrainian crisis through the example of sanctions introduced against Russia. Sanctions were imposed in three phases all of which were preceded by a European Council meeting in which EU Heads of State and Government decided whether actions should be taken.

The chapter then proceeds with the role of France and Germany and how they played a pivotal role in the sanctions regime. Contrary to the belief that they pressed other EU Member States to adopt a new sanctions regime against Russia, they did not force any Member State to accept measures. However, France and Germany have played a key role in the ceasefire agreement – called the Minsk Agreement II. – which became a point of reference on whether sanctions should be (partially) lifted. They oversee the implementation of the Minsk Agreement as well as report regularly to the European Council on the status of execution. In addition, on a proposal of Donald Tusk, the European Council agreed that sanctions would only be lifted if the Minsk Agreement was implemented. This guarantees that sanctions remain in place as long as some important conditions are not fulfilled by Russia. The linkage with the Minsk Agreement is also an assurance against government changes in the EU: any argument against the sanctions regime will lead to the loss of credibility for a Member State concerned. Other Member States will likely argue that if there is no progress in the implementation of the Minsk Agreement, there could be no argument for lifting sanctions against Russia.

Chapter 4 also emphasizes that other states (such as the US or Canada) cooperate with the EU on sanctions while other (mostly European) states have aligned their foreign policies with the EU. Coordination can take place in G7/8, in which the most advanced economies hold close consultation on world affairs. They can decide to impose diplomatic as well as other types of sanctions against a State. Alignment, however, implicates hierarchy between the EU and a third State in which the latter is expected to formulate a foreign policy mirroring the measures taken in the Council. Indeed, once a decision has been made within the framework of the CFSP, the High Representative invites third States to join the sanctions regime concerned to increase the effectiveness of those measures. The section does not limit itself to showing how cooperation/alignment took place, but it goes on to offer a comprehensive analysis on the legal background of the alignment. Indeed, it examines EU as well as national legislation created to cooperate in foreign and sanctions policies.

Chapter 5 is the empirical part of the research and attempts to explain how collective decisions on sanctions were established in the EU. First, from a historical perspective, it clearly shows the reluctance of EU Member States to use coercive measures against Russia. The chapter avoids long and descriptive section to present EU-Russia relations in general. Instead, it specifically focuses on episodes in which the EU deliberately considered the use of sanctions against Russia during major crisis. It turns out that the EU has nearly always tried to avoid using sanctions and estranging Russia to integrate itself into the new world economy, especially after the collapse of the Soviet Union. The EU refused the ratification of the Partnership of Cooperation Agreement during the first Chechen War but decided not to use CFSP sanctions. Sanctions were later considered during the Georgian crisis but Nicolas Sarkozy, former French President and mediator between the EU and Russia, sought peaceful means to settle the crisis while objecting the introduction of coercive measures. The current Ukrainian crisis represents a new era in the history of EU-Russia relations due to the fact that this is the first case in which the EU considered and later applied serious economic and financial sanctions against Russia.

Finally, chapter 5 proceeds with the main trade preferences of the Member States vis-à-vis Russia. It examines the trade areas concerned and shows that EU Member States avoided the adoption of measures which affected their fundamental economic interests. Remarkably, three sectors shelted from sanctions. The EU did not target the gas sector due to the exposure of Central and Eastern European states to Russian gas. The EU also decided not to exclude Russia from the SWIFT international banking system. Finally, an agreement was also reached not to target the nuclear sector mainly due to Finnish and Hungarian interests. Instead, the EU chose measures that do not undermine the national interest of each Member State but cause pain to certain Russian individuals or sectors.

1.3 Methodology

EU foreign policy is mostly studied by political scientists and experts of international relations. This is hardly surprising due to the fact that the EC/EU did not produce law in the area of foreign and security policy. Indeed, legal scholars have had difficulty in analysing the CFSP, and its predecessor, the European Political Cooperation (EPC), with legal tools: the absence of law and key constitutional principles, such as primacy and direct effect, made the CFSP a hard

case for legal experts. EU lawyers considered the CFSP international law, whereas international lawyers perceived it as European law (Wessel, 2015: 1). With the entry into force of the Lisbon Treaty, however, the CFSP is more linked to other external actions than ever. Even if EU external actions are codified in two Treaties, the CFSP is now an integral part of EU external policies (Van Elsuwege, 2010: 994). In the area of sanctions, the EU also produces laws which are binding in their entirety and directly applicable in all Member States.

This research uses multiple methods. First, it recognizes that sanctions are inextricably linked with the foreign and security policy of the EU. It offers, therefore, a legal analysis of both policy areas, including primary and secondary EU law covering the CFSP and sanctions policy. The research also explores the case law of the CJEU in both areas. In the area of foreign and security policy, the lack of judicial tools to evaluate CFSP Decisions did not prevent the author of this research project from offering an analysis on related case law which sheds light on the nature of the CFSP (Chapter 3). It also overviews primary and secondary EU law when conceptualizing the notion of 'sanctions' (Chapter 2). In this part, the research goes beyond EU external actions law and examines the whole body of EU law to explore every sanctions mechanism. Even though it explores a whole range of instruments under EU law, it defines 'sanctions' simply as measures adopted within the framework of the CFSP.

In the empirical part, the study overviews the role of sanctions in EU-Russia relations and explores how the imposition of restrictive measures was considered by EU leaders since the end of the Cold War. Although the EU took serious actions against Russia in the past (e.g. suspension of PCA in 1994), it sought to avoid the imposition of CFSP sanctions. The Ukrainian crisis is one of the first episodes when the EU imposed in three phases different types of sanctions against Russia. The question is then how EU Member States were able to act collectively, especially in light of the EU's previous experiences in the field of sanctions policy. The research examines trade data and trade preferences of the Member States and argues that the EU designed its sanctions regimes against Russia to have the minimum impact on Europe while maximizing pressure on the Russian elite. In other words, the Commission proposed legislations that took into consideration Member State preferences while making sure that Russia pays the price for its actions in Ukraine.

Finally, it should be noted that this research is not a normative piece of work but is instead based on a legal analysis and complemented with an empirical study. In other words, it does not think in terms of what the EU should have or should not have done, whether the measures adopted against Russia were right or wrong, etc. Even if the author of this research has his own opinion on the EU's sanctions regime, the focus will be on analysis, from legal and political science perspectives, of EU foreign and sanctions policy. It tries to draw conclusions from these and to contribute to the scientific discourse on EU foreign and sanctions policy. One of the main findings of the empirical part is that there is now evidence that two different mechanisms prevailed in the Council and the European Council in the midst of the debate on sanctions and that the latter EU institution has become a dominant actor in today's EU sanctions policy.

2. Sanctions under European Law

There is a myriad of tools that are used as sanctions in the EU. The aim of this chapter is to demonstrate the richness of the EU's toolbox in the field of sanctions as covered by EU law. In fact, the EU uses sanctions to tackle both internal and external challenges. In general, sanctions can be defined as measures used to convince (Member) States to abandon their misconduct and adjust their behaviour according to pre-set rules or norms. In the EU, Member States' behaviour is regulated in a number of ways. The most renowned instrument at the EU's disposal is the infringement proceeding created to promote Member State compliance with EU law. Other tools are also in use, such as Article 7 TEU. The latter, however, is triggered when a (group of) Member State(s) violate(s) the values laid down in Article 2 TEU. Article 7 TEU thus foresees sanctions in cases where EU Member States disrespect fundamental principles of the EU. In some cases, the two different procedures defined by the Treaties overlap: the Commission can also launch values-related infringement proceedings covering issues such as democracy or the rule of law (Bárd and Śledzińska-Simon, 2019).

This research, however, uses the term 'sanctions' for those measures which are adopted within the framework of the CFSP, including travel bans, arms embargoes, economic and financial sanctions as well as dual-use goods. Thus, the scope of this research is EU 'external' sanctions as adopted on the basis of Article 29 TEU and Article 215 TFEU. Externally, the EU has other

tools which can also be considered as sanctions (such as the suspension of international aids) but this research project focuses exclusively on 'CFSP sanctions'. Interestingly, the EU only labels those measures which the Member States adopt within the framework of the CFSP in the EU's external actions as sanctions.

2.1 Sanctions in EU internal affairs

2.1.1 Art 7 TEU

In the early days of European integration, enforcement of compliance was restricted to the *acquis communautaire* via (current) Article 258 and 259 TFEU. This has led to the unbalanced picture in which EU law can be enforced in all EC/EU Member States while compliance with core EC/EU values remained uncertain (Kochenov, 2017: 3–4). The predecessor of current Article 7 TEU was introduced by the Amsterdam Treaty in 1999. The reason of its introduction was the foreseen enlargement of the EU with new Member States located in the Central and Eastern European region. The common fear was that the EU was becoming an actor incapable of managing possible democratic backslidings in the new Member States. Article 7 TEU is often referred to as the 'nuclear option' due to its scarce use and invocation only in extreme circumstances (Kochenov and Pech, 2016: 3–5) although some argue 'there is nothing nuclear in this instrument' and 'should be activated as soon as possible to demonstrate that the values of Article 2 TEU are more than empty proclamations' (Kochenov, 2017: 3).

Article 7 TEU foresees sanctions for a 'serious and persistent breach' of fundamental values occurring in cases of non-compliance with the values enumerated in Article 2 TEU.[3] The core provision is to be found in Article 7(3) TEU, a paragraph inserted by the Nice Treaty, which provides the suspension of 'certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the govern-

[3] Article 2 TEU provides: 'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail'.

ment of that Member State in the Council'. Article 7 TEU has three phases: (1) the determination of 'a clear risk of a serious breach'; (2) the determination of 'a serious and persistent breach'; and (3) the decision to impose sanctions (Besselink, 2017: 127).

Article 7(3) does not precisely define the type of sanctions to be imposed in cases of non-compliance but excludes the possibility of suspension of membership or the termination of EU membership. It is also clear that measures introduced against Haider's FPÖ during the 2000s cannot be part of the toolbox provided by Article 7 TEU given that those sanctions were not EC/EU measures but bilateral sanctions of the other Member States. It is often accepted that sanctions could take the form of the suspension of secondary law or EU funding with regard to the Member State concerned. There is, however, a clear limitation in Article 7 TEU which foresees that sanctions must 'take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons'. This suggests the imposition of proportionate sanctions (Besselink, 2017: 131).

There are five actors involved in the sanctions mechanism. The Council, according to Article 7(3) TEU, holds a dialogue with the Member State concerned and imposes sanctions by qualified majority. The European Council, based on Article 7(2) TEU, determines the prerequisite existence of a 'serious and persistent breach' of the values enumerated in Article 2 TEU. One third of the Member State or the Commission can trigger the European Council's determination. Finally, the EP gives its consent to this determination (Besselink, 2017: 131-133). Article 354 TFEU foresees 'the Member State in question shall not take part in the vote and the Member State in question shall not be counted in the calculation of the one third or four fifths of Member States'.

The imposition of sanctions against the Member State concerned is not the only mean at the EU's disposal in Article 7 TEU. It has a preventive function as well, a provision introduced by the Nice Treaty, now Article 7(1) TEU.[4] While there is a clear connection between the preven-

[4] Article 7(1) TEU provides: 'On a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission, the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2. Before making such a determination, the Council shall hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure. The Council shall regularly verify that the grounds on which such a determination was made continue to apply.'

tive arm and the sanction mechanism laid down in Article 7 TEU, the former is, in fact, a separate and different mechanism from the latter one. The preventive arm consists of publishing recommendations to the Member State concerned. One of the major changes brought by the Lisbon Treaty is that recommendations can be issued before the existence of a clear risk of serious breach.

Recently, Article 7 TEU has been triggered against two EU Member States: in December 2017 by the Commission against Poland, and in September 2018 by the European Parliament against Hungary. In the case of Poland, the Commission found threatening the lack of independent and legitimate constitutional review and the adoption of a new legislation concerning the Polish judiciary (European Commission, 2017b). In the case of Hungary, the European Parliament indicated 12 areas which give rise to concerns. These include the functioning of the constitutional and electoral system, the independence of the judiciary and of other institutions and the rights of judges, corruption and conflicts of interest, privacy and data protection, academic freedom, freedom of religion, freedom of association, the right to equal treatment, the rights of persons belonging to minorities and the protection from hateful statements against such minorities, the fundamental rights of migrants, asylum seekers and refugees and economic and social rights (European Parliament, 2018).

2.1.2 Financial sanctions in infringement proceedings

The TFEU is equipped with several enforcement mechanisms, one of which is Article 258 TFEU which provides the Commission with wide competences to bring enforcement proceedings against the Member States failing to comply with their obligations under EU law (Craig and Búrca, 2017: 408–14). Article 258 TFEU provides:

> If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.
>
> If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union.

The Lisbon Treaty has changed the wording of this provision which now refers to 'the Treaties' rather than only to the old EC Treaty, thus reflecting the 'de-pillarization' of the Union. Thus, infringement proceedings can be launched for violations of obligations under the TEU as well as the TFEU. It is the responsibility of the Commission to launch proceedings under Article 258 TFEU in a response to a complaint or on its own initiative. The procedure is divided into four phases. First, the Member State concerned is given the right to explain its position on the legal matter in question during the pre-contentious stage. Second, the Member State concerned, if informal dialogue has failed to deliver a legally sound argument, is formally notified of the specific infringement in the form of a letter sent by the Commission. Third, if that formal dialogue fails to convince the Commission, it may proceed to the phase of issuing a reasoned opinion. The Member State concerned is given a fixed period to comply with the demands of the Commission. Fourth, in the final phase, the Commission may refer the Member State concerned to the Court (Craig and Búrca, 2017: 413).

When considering the parallel use of Article 7 TEU and Article 258 TFEU, AG Evgeni Tanchev noted the different nature of the two provisions. AG Evgeni noted 't]here are firm grounds for finding that Article 7 TEU and Article 258 TFEU are separate procedures and may be invoked at the same time. In particular, the wording of each provision does not rule out the other and […], the reference to 'an obligation under the Treaties' in Article 258 TFEU covers in principle all rules of non-CFSP Union law. This is supported by the different scheme and purpose of the procedures established in Article 7 TEU and Article 258 TFEU. Article 7 TEU is essentially a 'political' procedure to combat a Member State's 'serious and persistent breach' of the values set out in Article 2 TEU, subject to high thresholds, and may lead to the suspension of the Member State's membership rights including its participation rights. Article 258 TFEU constitutes a direct 'legal' route before the Court for ensuring the enforcement of EU law by the Member States, and is aimed at obtaining a declaration of infringement and may also lead to the imposition of financial penalties in the procedure set out in Article 260 TFEU, with a view to encouraging the Member State concerned to terminate the infringing conduct. These differences reflect the autonomous, indeed complementary, nature of these procedures and that they may apply in parallel. Moreover, the fact that Article 269 TFEU, concerning challenge to the legality of an act adopted by the European Council or the Council pursuant to Article 7 TEU,

restricts the Court's jurisdiction to the 'procedural stipulations' in Article 7 TEU cannot diminish the Court's authority to rule on the basis of its jurisdiction under Article 258 TFEU.'[5] Infringement proceedings under Article 258 TFEU are narrower and broader than Article 7 TEU because the former must necessarily involve an EU law aspect but is able to tackle any failure of EU law of whatever gravity (Bárd and Śledzińska-Simon, 2019).

The provision for a penalty, now Article 260 TFEU, was first introduced in 2002 to provide an incentive for the Member States to comply with ECJ rulings (Craig and Búrca, 2017: 433). Article 260(1) TFEU provides:

> If the Court of Justice of the European Union finds that a Member State has failed to fulfil an obligation under the Treaties, the State shall be required to take the necessary measures to comply with the judgment of the Court.

Once a judgment has been issued, it 'shall be binding from the date of its delivery'[6], according to Article 91 of the Rules of Procedures of the Court of Justice, and the Member State concerned "is required to take the necessary measures to remedy its default and may not create any impediment whatsoever'.[7] The CJEU also established that 'a Member State may not plead internal circumstances, such as difficulties of implementation which emerge at the stage when a Community measure is put into effect, to justify a failure to comply with obligations and time-limits laid down by community law'.[8]

The argument of the Court establishes the legal foundation of sanctioning the Member State concerned leading to the imposition of financial penalty. Under current EU treaty law, the CJEU applies financial sanctions in two cases if the Commission referred a Member State to the Court for having infringed EU law. Under Article 260(2) TFEU, the Commission brings a Member State infringing EU law before the CJEU if the latter has not taken the necessary measures to comply with the judgment of the Court. Article 260(2) TFEU, however, remains silent on how the judgment of the Court should be implemented. The lack of pre-determined period to comply with the judgment of the Court allows the Commission to decide on the timeframe in the form

[5] Case C-619/18 *European Commission v Republic of* Poland (2019) ECLI:EU:C:2019:325, Opinion of AG Tanchev, para 50.
[6] Rules of Procedure of the Court of Justice (2012) OJ L 265
[7] Joined Cases C-24/80 and 97/30 *Commission v France* (1980) ECLI:EU:C:1980:107, para 16.
[8] Case C-387/97 *Commission v.* Greece (2000) ECLI:EU:C:1999:455, para 70.

of an informal dialogue conducted with the Member State concerned. Under Article 260(3) TFEU, the Commission can bring a Member State before the Court if the latter has failed to fulfil its obligation to notify measures transposing a directive adopted under a legislative procedure.

The Lisbon Treaty has introduced two changes in Article 260 TFEU. First, the Commission is under no legal obligation to issue a reasoned opinion before referring a Member State before the CJEU making the procedure speedier. Second, Article 260(3) TFEU was tabled by the European Convention and inserted in the Lisbon Treaty as a new provision. The latter is used to seek a pecuniary penalty against a Member State which failed to notify measures transposing an EU directive. In other words, penalties are not limited to non-compliant behaviour with an Article 258 TFEU ruling of the Court (Craig and Búrca, 2017: 434). The scope of Article 260(3) TFEU does not cover directives adopted as non-legislative acts and penalty imposed under that provision shall not exceed the amount of money proposed by the Commission. Since the entry into force of the Lisbon Treaty, however, the Court has not issued a judgment under this new procedure because the Commission withdrew all the actions due to compliant behaviour. The practice shows that the cases initiated under Article 260(3) TFEU are used in cases in which the Member State concerned did not notify any transposition measure on time and in cases of partial implementation of directives (Várnay, 2017: 303–4).

The Commission has recently adopted new rules to determine the amount of financial sanctions forwarded to the CJEU. Past practice suggests that the Commission took into account the seriousness of the infringement and its duration, as well as the economic situation of the Member State concerned and its institutional weight. In short, the so-called 'n-factor' was calculated based on the GDP of the Member State and the number of votes allocated to it in the Council (European Commission, 2018b). The CJEU, however, established that the institutional weight in the Council should not be part of the calculation as the Lisbon Treaty has changed the voting rules in that institution.[9] The Commission recognized that using merely GDP would 'exclusively reflect the economic dimension of Member States [and] would have very different impacts for different Member States'.[10] The Commission, therefore, decided to continue its past

[9] Case C-93/17 *European Commission v. Hellenic* Republic (2017) ECLI:EU:C:2018:903, para. 139

[10] Communication from the Commission — Modification of the calculation method for lump sum payments and daily penalty payments proposed by the Commission in infringements proceedings before the Court of Justice of the European Union (2019) OJ C 70

practice of looking at the institutional weight of the Member State concerned but shifted its attention from the Council to the European Parliament. Thus, the n-factor is composed of the GDP of the Member State concerned and the number of seats for representatives in the European Parliament.[11] As argued by the Commission, '[t]this will lead to amounts that do not create unjustified differences between Member States and stay as close as possible to the amounts resulting from the current calculation method, which are both proportionate and sufficiently deterring' (European Commission, 2019).

2.1.3 Art 75 TFEU[12]

EU Member States have recognized the rising importance of the use of measures to fight against terrorism taken at the Union level. They introduced two possible legal bases for restrictive measures against individuals in this area: Article 75 and 215 TFEU (Eckes, 2009). Article 75 TFEU provides:

> Where necessary to achieve the objectives set out in Article 67, as regards preventing and combating terrorism and related activities, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall define a framework for administrative measures with regard to capital movements and payments, such as the freezing of funds, financial assets or economic gains belonging to, or owned or held by, natural or legal persons, groups or non-State entities.
>
> The Council, on a proposal from the Commission, shall adopt measures to implement the framework referred to in the first paragraph.
>
> The acts referred to in this Article shall include necessary provisions on legal safeguards.

While both provisions seem to share the same set of objectives, they are placed in different parts of the Treaties. Article 75 TFEU is located in Title V of the TFEU under the title of Area

[11] Communication from the Commission — Modification of the calculation method for lump sum payments and daily penalty payments proposed by the Commission in infringements proceedings before the Court of Justice of the European Union (2019) OJ C 70

[12] This part of the research is partly built on my previous publication (see: Szép, 2019a)

of Freedom, Security and Justice and seeks to achieve the objectives defined by Article 67 TFEU. Article 215 TFEU, by contrast, is located in Part V of the TFEU under the Heading 'The Union's External Actions' and is expressly linked to prior CFSP actions. While Article 215 TFEU does not contain any objectives, let alone the fight against terrorism, it is clear that Article 21 TEU covers CFSP and non-CFSP actions which includes - indirectly - the fight against terrorism embedded into the wider objective of preserving peace and stability.

The blurred division between Articles 75 and 215 TFEU, however, caused uncertainties over the choice of proper legal basis concerning sanctions imposed against individuals and/or entities involved in terrorist actions. The choice is of constitutional significance as Article 215 TFEU continues to follow the so-called 'two-step procedure': the adoption of a Council Regulation on the basis of Article 215 TFEU must be preceded by a Council Decision adopted on the basis of Article 29 TEU. In contrast, under Article 75 TFEU Council Regulation is adopted in accordance with the ordinary legislative procedure implying that the European Parliament is fully involved in the decision-making procedure. The first inter-institutional conflict after the entry into force of the Lisbon Treaty was initiated by the Parliament asking for an annulment of a sanctions regulation (Van Elsuwege, 2014: 119). The case concerned the amendment of Regulation 881/2002/EC imposing restrictive measures directed against certain persons and entities associated with Osama bin Laden, the Al-Qaida network and the Taliban which was based on Articles 60, 301 and 308 EC. With the entry into force of the Lisbon Treaty, the Commission held that that regulation should be based on Article 215(1) TFEU. In contrast, the European Parliament suggested relying on Article 75 TFEU 'since the objective is preventing and combating terrorism and related activities by non-State entities' (Van Elsuwege, 2014: 120).

One of the questions to be decided by the Court was whether course to dual legal basis may be an alterantive to amend that regulation. The Court held, however, that recourse to dual legal basis was not possible, as it follows from the principle established in Titanium Dioxide, where the procedures laid down for each legal basis were incompatible with each other. The Court made it clear that the differences between the objectives pursued under Articles 75 and 215 made it impossible for the procedures regulated therein to be combined. The Court also analysed in detail the ambit and aim of Articles 75 TFEU and 215 TFEU. It highlighted that one of the most important features of the past and current practice is that the provisions governing the adoption of restrictive measures construed a bridge between the Treaties. In Kadi, the Court

considered that the adoption of economic sanctions on the basis of Articles 60 EC and 301 EC was linked with the objectives of the EU Treaty. Similarly, a prior political decision needs to be achieved in accordance with Chapter 2 of Title V of the TEU before Article 215 TFEU can be triggered. The Court noted that no such link was established by Article 75 TFEU with CFSP decisions. Furthermore, it stressed the importance of the international dimension of terrorism which can be linked with CFSP objectives. Terrorists with global activities and the threat they pose to the international community fundamentally affect the Union's external activities. On this basis, it ruled that given the international aspects of these activities, the adoption of restrictive measures can be based on Article 215 TFEU, a measure taken in order to give effect to EU external actions objectives (Szép, 2019a: 330-331).[13]

The case raised important questions, such as the involvement of the European Parliament in EU foreign affairs. The intention of the treaty drafters is clear: to leave the European Parliament out from CFSP and keep the (mostly) intergovernmental nature of this policy area with the view that the interests of the Member States prevail in foreign and security policy. The reason for the European Parliament to be included in EU foreign affairs is understandable: to increase the democratic legitimacy of the decisions taken within the framework of the CFSP. However, as the Court argued 'it is not the procedures that define the legal basis of a measure but the legal basis of a measure that determines the procedure to be followed in adopting that measure'.[14] It thus ruled that the contested regulation was correctly based on Article 215 TFEU and confirmed the limited role of the European Parliament in foreign and sanctions policy (Szép, 2019a: 331-332).

2.2 Sanctions in EU external affairs

2.2.1 CFSP sanctions[15]

The labels 'sanctions' or 'restrictive measures' are only used in the EU for measures which are decided within the framework of the CFSP, a policy framework still driven and controlled by

[13] Case C-130/10, *European Parliament v Council of the European* Union (2012) ECLI:EU:C:2012:472, para 78.
[14] Case C-130/10, *European Parliament v Council of the European* Union (2012) ECLI:EU:C:2012:472, para 80.
[15] Given that this research gives an exhaustive overview and analysis on CFSP sanctions, this section is confined to the general framework and guidelines provided by the EU in respect of the application of restrictive measures.

the Member States but undoubtedly shaped by the Commission and the EEAS. The use of sanctions dates back to the 1960s when individual Member States, and not the EC, implemented UN sanctions. It was only in the early 1980s when EC Member States recognized the legal barriers to impose unilateral (economic) sanctions arising from the competing and widening EC competences in commercial policy (Szép, 2019: 322-327). It is hard to make a more accurate statement on the evolution of EC/EU sanctions policy than Piet Eeckhout did in his celebrated book '*EU External Relations Law*' where he convincingly argued that 'we have moved from Member State action, through the use of the common commercial policy, in conjunction with decisions in the framework of European Political Co-operation, to a specific legal basis in the EC treaty, and now in the TFEU, for the adoption of sanctions, based on decisions taken within the CFSP' (Eeckhout, 2011: 502).

In December 2003, the Council approved the Sanctions Guidelines for the first time in its history, last updated in April 2018, which aims to 'standardise implementation and to strengthen methods of implementation […] while it also "address[es] a number of general issues and present standard wording and common definitions that may be used in the legal instruments implementing restrictive measures' (Council of the European Union, 2018). Sanctions, often referred as restrictive measures in the EU, are key tools to promote the objectives laid down in Article 21 TEU, such as democracy, rule of law, human rights and international law. The EU does not use sanctions as punintive measures. Instead, it aims first and foremost to change the target countries', entities' or individual's behaviour while also making efforts to ensure the adverse consequences of sanctions do not affect the civilian population of the concerned state. It does so by adopting targeted sanctions in respect of individuals or entities responsible for policies or actions that have prompted EU sanctions (Council of the European Union, 2018).

The EU can enact sanctions in three different ways. First and foremost, the EU and its Member States are legally bound to implement UN sanctions. Whenever the UN Security Council adopts a resolution containing sanctions against certain countries, individuals or entities, EU Member States, acting within the framework of the Council, will enact appropriate legislation to comply with their international law obligation. Second, the EU may reinforce UN measures if the Member States are not completely satisfied with the agreement reached at the UN level and want to move forward with additional legislation. Finally, the EU is competent to adopt the so-called

'autonomous sanctions'. These measures are often adopted when the UN was unable or uninterested in adopting sanctions in respect of particular actors but the EU and its Member States, in defence of EU values and interests, enacted sanctions (Council of the European Union, 2018).

The Council adopts restrictive measures in two steps: it imposes travel bans and arms embargoes on the basis of Article 29 TEU in the form of a CFSP Council Decision. These measures are implemented at either the EU or national level. If this decision prescribes the use of economic measures as well, for example export bans, separate legislation needs to be adopted on the basis of Article 215 TFEU in the form of a Council Regulation. These legal acts are binding and directly applicable throughout the EU and are subject to judicial review by the Court of Justice and the General Court in Luxembourg. Similarly, CFSP Council Decisions targeting natural and legal persons are also subject to judicial review. EU measures include, among others, asset and economic resource freezes, travel bans, arms embargoes, embargoes on equipment used for internal repression, other export and import restrictions and flight bans. A ban on financial services, investments as well as sectoral bans has also been used by the EU. While listing persons and entities, the EU is obliged to respect their fundamental rights as required by the Treaty on European Union. In particular, due process rights shall be guaranteed in full conformity with the jurisprudence of the Court of Justice of the EU. Designating a person or an entity requires a clear criterion, tailored to each specific case accompanied by accurate, defendable statements of reasons why those persons and entities are targeted by the Council (Council of the European Union, 2018).

Since the end of the Cold War, there was almost no year that went by without enacting a new sanctions regime (Portela, 2016: 38). Indeed, the use of sanctions has become a key CFSP tool to foster change necessary in the attainment of EU's objectives laid down in Article 21 TEU. There are currently 35 sanctions regime in force targeting individuals and entities in different states while the EU has recently adopted thematic sanctions regimes as well, such as the restrictive measures imposed against persons and entities involved in the creation and the use of chemical weapons.[16] One of the features of this latter sanctions regime is that it has no specific target

[16] Council Decision (CFSP) 2018/1544 of 15 October 2018 concerning restrictive measures against the proliferation and use of chemical weapons (2018) OJ L 259; Council Regulation (EU) 2018/1542 of 15 October 2018 concerning restrictive measures against the proliferation and use of chemical weapons (2018) OJ L 259

country. Instead, it lists individuals and entities involved in activities associated with the use of chemical weapons.

2.2.2 Termination or suspension of EU cooperation agreements

The regime for suspension of EC/EU international agreements was first introduced by the Amsterdam Treaty in Article 300(2) EC Treaty. Provisions on the termination of agreements, however, were never part of the Treaties and were not introduced by the Lisbon Treaty either. The introduction of a provision on suspension of agreements was a response to the need to react to serious human rights violations (Lorand Bartels 2005, chap. 1). The regime for suspension of application of agreements is now codified in Article 218(9) TFEU. This provision provides:

> The Council, on a proposal from the Commission or the High Representative of the Union for Foreign Affairs and Security Policy, shall adopt a decision suspending application of an agreement and establishing the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.

While the Lisbon Treaty has substantially improved the powers of the EP in the conclusion of EU international agreements, one of the features of Article 218(9) is that the EP is excluded from the suspension procedure. The lack of competences of the EP during the suspension procedure clearly appeared during the American National Security Agency (NSA) scandal where the EP expressed its concern over NSA's interference with the SWIFT Agreement and sought to suspend the agreement. The agreement was not suspended given the lack of political will in the Council and the Commission which clearly shows the lack of legal competences of the European Parliament (Kleizen, 2016). The European Parliament is 'immediately and fully informed at all stages of the procedure', according to Article 218(10) TFEU. There are principally two arguments for excluding the European Parliament. On the one hand, suspension or termination of agreements falls in the sphere of foreign policy due to the overly political nature of that decision. On the other hand, the involvement of the European Parliament would prolong the timeframe making the EU an ineffective actor in international relations (Koutrakos, 2015: 155).

The lack of provisions in the TFEU on how agreements shall be terminated does not mean that no legal grounds would have been established to terminate agreements. The EU almost always concludes agreements for a fixed period of time (Maresceau, 2009). For example, the Partnership and Cooperation Agreement with Russia was originally concluded for 10 years and now, based on Article 106, is renewed annually.[17] In addition, agreements contain a clause on unilateral termination that has one common characteristic: the EU is obliged to give notice of the denunciation. Once a notification has been sent, agreements may be terminated within an average of half a year. The denunciation of agreements is so rare in the EU's practice due to its 'last resort nature' that only one example existed: the denunciation of the 1980 Cooperation agreement with Yugoslavia (Maresceau, 2009).

A recent example of how EU Member States can withdraw their support to ratify international agreements to pursue political objectives was clearly showed during the crisis of the Amazon rainforest. Indeed, France and Ireland foresaw a parliamentary veto against the trade deal between the EU and South America, often referred as the EU-Mercosur Trade Agreement. After 20 years of negotiations, the parties reached an agreement on the details of the commercial agreement. France and Ireland voiced their concerns, however, over whether Brazilian President Jair Bolsonaro respects the environmental commitments laid down in the agreement. Bolsonaro was accused of encouraging loggers to start fires and not making enough efforts to fight the blazes. French President Emmanuel Macron's spokesperson said that '[i]n these conditions, France will oppose the Mercosur deal as it is'.[18]

2.2.3 Suspension of aids

The first comprehensive agreement between the EC and ACP states entered into force in 1975 under the Lomé Convention I. During the 1970s, conditionality was explicitly excluded from the agreement given the ACP countries fierce opposition to unilateral aid removal and the implementation of Western-style human rights. The Uganda crisis at the end of the 1970s drew the attention of European policymakers, demonstrating that human rights should be protected through a new legal framework. While the Lomé III Convention already contained provisions

[17] Article 106 provides: 'This Agreement is concluded for an initial period of 10 years. The Agreement shall be automatically renewed year by year provided that neither Party gives the other Party written notice of denunciation of the Agreement at least six months before it expires'.
[18] France and Ireland threaten to vote against EU-Mercosur deal, *EurActiv*, 8 January 2018.

on human rights, it was not until the Lomé IV Convention that human rights became fundamental clauses in the agreement: it expected the parties involved to commit themselves to human rights, democracy and the rule of law. Indeed, the EU included human rights clauses in nearly all agreement concluded with developing countries (Holland, 2002: 25–51). One of the innovations of the Lomé IV Convention was that a suspension clause was introduced to deal with violation of Lomé's 'essential elements'. If one of the parties failed to comply with fundamental principles, the benefits could be fully or partially suspended (Zimelis, 2011: 393).

The Cotonou Agreement is the legal framework through which the EU maintains its relations with African, Caribbean and Pacific (ACP) countries since 2000. After the Lomé Convention expired, the new overarching framework was signed in Cotonou in June 2000 and was concluded for 20 years. Since the entry into force of the Cotonou Agreement, the EU has decided several times to suspend development aids to a number of African, Caribbean and Pacific (ACP) countries in an effort to promote democratic principles and human rights in developing countries. While CFSP sanctions continue to be implemented regarding individuals or entities residing in ACP countries, the suspension of development aids is not labelled as 'sanctions' or 'restrictive measures' in the EU. The suspension of development assistance works in a separate legal framework: Article 96 of the Cotonou Agreement concluded between the EU and ACP countries gives parties the possibility to take 'appropriate measures' if one party fails to comply with the fundamental principles laid down in Article 9(2) of the same agreement. Even if, however, the EU foresees the suspension of development aids, it usually affects certain parts of the development aid, especially budgetary support and does not cause disturbances in ongoing programmes while humanitarian aid is expressly exempted (Portela, 2007: 42–43).

The procedure applied in cases of non-compliance is highly institutionalized. In its preamble as well as in many provisions, in particular in Article 9(2), the Cotonou Agreement acknowledges the importance of human rights, democratic principles and the rule of law as well as emphasizes the need for good governance as key pillars of the partnership and development. Article 96 of the Cotonou Agreement provides for a procedure which is used in cases where one of the parties fails to comply with the fundamental principles laid down in the agreement, in particular in article 9(2). Article 96 provides for a consultation procedure as well as the possibility to take appropriate measures against the other, non-compliant party. In cases of non-compliance, the parties engage with each other in the form of a political dialogue, a right provided under Article

8, which serves the purpose of exchanging information and fostering mutual understanding. The explicit objective of this dialogue is to '[prevent] situations arising in which one Party might deem it necessary to have recourse to the consultation procedures envisaged in Article 96 and 97'.[19]

If the opportunity of political dialogue provided under Article 8 does not bring solid evidence for the alignment of one party with the fundamental principles laid down in Article 9(2), one party should supply the other Party and the Council of Ministers with the relevant information required for a thorough examination of the situation. Consultations continue for a period established by mutual agreement but does not last longer than 120 days. If the consultations do not lead to acceptable solutions or are refused, appropriate measures may be taken.[20] These measures are proportional to the violation and are directed against those responsible for breaching the fundamental principles of the agreement. These measures can take the form of precautionary measures for ongoing cooperation projects or the suspension of projects, programmes and other forms of aid. Measures can also include the suspension of development assistance as well (Council of the European Union, 2018).

Article 96 has been applied 15 times since 2000, including the cases of Fiji (2000, 2007), Zimbabwe (2002), the Central African Republic (2003), Guinea-Bissau (2004, 2011), Togo (2004) and Madagascar (2010) (Council of the European Union, 2018). Another recent example was the case of Burundi where the EU and Burundi held consultations provided for under Article 96. The consequences of the crisis in 2015 led to 120 deaths, thousands injured and 190 000 people forced to leave the country to neighbouring countries (Council of the European Union, 2015). Alongside envisaging the suspension of development assistance, the Council adopted travel restrictions and asset freezes against four persons who had been responsible for undermining democracy in Burundi.[21] At the end of the consultation procedure, the EU concluded that Burundi did not comply with the fundamental principles laid out in Article 9(2) of the Cotonou Agreement and decided to take appropriate measures against Burundi (Council of the European Union, 2018c). The EU, therefore, decided to suspend direct financial support to the

[19] Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 - Protocols - Final Act – Declarations (2000) OJ L 317
[20] ibid.
[21] Council Decision (CFSP) 2015/1763 of 1 October 2015 concerning restrictive measures in view of the situation in Burundi (2015) OJ L 257

Burundian administration, including budget support. However, it decided to maintain its support for the people of Burundi: in this respect, two emergency programmes in the areas of health care and rural development as well as humanitarian operations continued to be implemented. The EU also decided that EDF funds amounting to EUR 322m remain available to Burundi.[22]

2.2.4 The Kimberley Process

Trade in diamonds has the potential to provide wealth and prosperity to citizens but can also lead to tragedies and abuses of human rights, as the cases of Sierra Leone, the Democratic Republic of Congo and Angola showed. The UN Security Council first responded to illicit sales of rough diamonds by 1998 by banning trade in these products with Angola.[23] The imposition of smart sanctions continued against Sierra Leone[24] aiming at promoting only legitimate trade with sovereign governments. In 2002, the UN Security Council imposed sanctions against Libera as well to punish the Taylor regime and its supporters involved in regional destabilizing actions.[25] In May 2000 the three larges diamond producer countries (South Africa, Botswana and Namibia) started informal talks held in Kimberley with the three largest consumers of diamond (US, Belgium and the UK) with the presence of representatives of industry and civil society. Their aim was to halt the trade in 'conflict diamonds (Wright, 2004: 699).

As a result of collective efforts, the UN General Assembly adopted a ground-breaking resolution to establish an international certification scheme for rough diamonds. The resolution acknowledged the importance of fighting the problem of conflict diamonds fuelling violence in a number of African states and recognized that conflict diamonds finances the military activities of rebel movements undermining the work of legitimate governments. The resolution called on states to target the link between the trade in conflict diamonds and the supply of weapons to rebel movements. It also urged support for diamond exporting and importing states efforts to find ways to break the link between diamonds and armed conflict. Most importantly, it expressed the need, among others, to establish an international certification scheme for rough

[22] Council Decision (EU) 2016/394 of 14 March 2016 concerning the conclusion of consultations with the Republic of Burundi under Article 96 of the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part (2016) OJ L 73
[23] Resolution 1173 (1998) adopted by the Security Council at its 3891st meeting
[24] Resolution 1306 (2000) adopted by the Security Council at its 4168th meeting
[25] Resolution 1408 (2002) adopted by the Security Council at its 4526th meeting

diamonds[26] which culminated to the creation of the Kimberley Process Certification Scheme (KPCS), established in November 2002 and entering into force in 2003. The KPCS defines the term 'conflict diamonds' as 'rough diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate governments, as described in relevant [UNSC] resolutions insofar as they remain in effect, or in other similar UNSC resolutions which may be adopted in the future, and as understood and recognised in [UNGA] Resolution 55/56, or in other similar UNGA resolutions which may be adopted in future' (Kimberley Process, 2020).

The Kimberley Process currently consists of 54 participants and 81 states willing to implement the requirements set out in the KPCS document. The EU and its Member States are counted as a single participant. Estimates suggest that the 54 participants cover approximately 99,8% of the global production of rough diamonds. The certification scheme imposes wide-ranging requirements on participating states allowing them to certify deliveries of rough diamonds as conflict-free. The KPCS sets out minimum requirements to its members and expects them to enact national legislation in order to meet those requirements. Trade in rough diamonds between members is only allowed if participants have fulfilled the minimum condition necessary to comply with the certification scheme.[27] The KPCS, however, is not a legally binding document. Instead, it sets common standards; it is expected that the members implement these standards through national legislation (Wright, 2004: 699).

In December 2002, the EU adopted Council Regulation (EC) No 2368/2002 to create, according to Article 1 of this Regulation, a system of certification as well as import and export controls for rough diamonds for the purposes of implementing the Kimberley Process certification scheme. It notes that previous UN sanctions regimes against Sierra Leona, Angola and Liberia were not able to stop the flow of conflict diamonds. It further reminds us that the EU implemented UN sanctions against Sierra Leone.[28] It goes on to note that previously existing measures should be complemented by effective control systems, such as the Kimberley Process. Article 6 prohibits the import of rough diamonds into the EU if those products are not accompanied by a certificate, are not contained in tamper-resistant containers and the certificate does not clearly identify the consignment. Article 11 prohibits the export of rough dimaonds from

[26] Resolution adopted by the General Assembly (2000) A/RES/55/53
[27] See also Section II, V (A) and VI (8) of the KPCS
[28] Council Regulation (EC) No 303/2002 of 18 February 2002 concerning the importation into the Community of rough diamonds from Sierra Leone (2002) OJ L 47

the EU if those are not accompanied by a corresponding certificate and are not contained in tamper-resistant containers.[29]

2.2.5 Anti-Torture

The prohibition of torture and other cruel treatment and punishment is universal. Article 5 of the Universal Declaration of Human Rights prohibits torture and states '[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment' (United Nations, 2020). The International Tribunal for the Former Yugoslavia stated that the prohibition of torture is a peremptory norm or jus cogens.[30] The main instrument to combat torture within UN framework is the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). It is one of the nine instruments which has the purpose of preventing torture in every state and makes use of criminal law to prevent violations of the CAT (Nowak and McArthur, 2008: chap. 1). Article 2 calls on states to take legislative, administrative, judicial and other preventive measures to combat torture and other inhuman forms of punishment. Article 3 prohibits states from sending people home should there be good grounds that they will be tortured. Article 1 CAT defines the term torture as 'any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions'.[31]

The ban on torture and ill-treatment was transposed into EU law in the Charter of Fundamental Rights. Article 4 provides that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. Article 19 further prohibits the extradition of a person to a 'state where

[29] Council Regulation (EC) No 2368/2002 of 20 December 2002 implementing the Kimberley Process certification scheme for the international trade in rough diamonds (2002) OJ L 358
[30] IT-95-17/1-T *Prosecutor v Anto Furundzija* (1998)
[31] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 (1987)

there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment'.[32]

The EU also enacted secondary legislation in the form of Council Regulation (EU) 2019/125 of 16 January 2019 on the basis of Article 207 TFEU. This Regulation determines EU rules governing trade with third states 'in goods that could be used for the purpose of capital punishment or for the purpose of torture or other cruel, inhuman or degrading treatment or punishment, and rules governing the supply of brokering services, technical assistance, training and advertising related to such goods'.[33] Article 3 prohibits any export of goods listed in Annex II of that Regulation, including e.g. goods designed for restraining human beings (such as shackles and gang chains), weapons and devices designed for the purpose of riot control or self-protection (such as portable electric discharge weapons) or weapons and equipment disseminating incapacitating or irritating chemical substances (such as portable weapons and equipment which either administer a dose of an incapacitating or irritating chemical substance). Annex II enumerates goods which are used solely for the purpose of capital punishment as well as for torture and other cruel acts. Similarly, Article 4 prohibits the import of any goods listed in Annex II. Article 11 makes goods which may be used for the purpose of torture or other cruel, inhuman or degrading treatment or punishment subject to prior export authorisation. Similarly, Article 16 makes goods that may be used for the purpose of capital punishment subject to a prior export authorisation. The lists of controlled goods are set out in Annex III and Annex IV of the Regulation.[34]

The EU also launched a global alliance for torture-free trade. This new initiative was launched formally on 18 September 2017 during the UN General Assembly week in New York. It is a joint effort by the EU, Argentina and Mongolia to stop the trade in goods used for torture and the death penalty. States joining the Alliance commit themselves to four action points: they take measures to control and restrict exports of these goods, monitor trade flows and exchange information, offer technical assistance as well as exchange practices for efficient control and enforcement systems. Trade Commissioner Cecilia Malmström stated that '[t]hese products serve

[32] Charter of Fundamental Rights of the European Union (2012) OJ C 326
[33] Regulation (EU) 2019/125 of the European Parliament and of the Council of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (2019) OJ L 30
[34] ibid.

no other purpose than inflicting terrible pain and killing people. We should never permit that they are traded like any other commodity. It's time for concrete action to shut down this despicable trade' (European Commission, 2017).

2.2.6 Dual use goods

The uneasy link between external policies, in particular the tension between trade and foreign policy, has brought competing views on how to govern conflicting areas of activities in the EC/EU, such as the cases of dual-use goods or economic sanctions show. Suffice to say that external economic sanctions and foreign policy are, from a constitutional point of view, separated from each other and regulated under two different treaties, the TFEU and TEU respectively (Eeckhout, 2011: 501). Article 2 of Council Regulation (EC) No 428/2009 defines dual-use goods as "goods, software and technology that can be used for both civilian and military applications".[35] It is quite apparent that the items defined in the regulation have both trade and foreign policy repercussions raising delicate questions about the use of a proper legal basis: the export of military products lay between Community law and national law or beyond the sphere of Community law altogether (Koutrakos, 2001: chap. 8).

After the Court published its rulings on the non-restrictive interpretation and the wide scope of the Common Commercial Policy (CCP) and subsequently on the predominance of CCP in dual-use items, the provisions of the CCP, now Article 207 TFEU, became the legal basis for governing dual-use goods. This is, as mentioned above, Regulation 428/2009 which set up a Community regime for the control of exports, transfer, brokering and transit of dual-use items.[36] Its material scope is defined in its annex covering 10 categories of products: nuclear materials, facilities and equipment, special materials and related equipment, materials processing, electronics, computers, telecommunications and 'information security', sensors and lasers, navigation and avionics, marina, aerospace and propulsion. This list is amended, a responsibility of

[35] Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (2009) OJ L 134
[36] Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (2009) OJ L 134

the Commission since 2014, as a consequence of the obligations and commitments of the Member States under international non-proliferation regimes and export control arrangements as well as international treaties (Koutrakos 2015, 491–95).

There are four types of export authorisations under the Regulation. The EU General Export Authorisations (EUGEAs) allow, under the conditions laid down in Annex II of the Regulation, the export of dual-use goods to certain destinations, including Australia, Canada, Japan, New Zealand, Norway, Switzerland, Liechtenstein and the US. There are three additional authorisations: individual licences apply to one exporter and cover exports of dual-use goods to one end-user; global licences are granted to one exporter and cover multiple items to multiple end users; and national general export authorisations which exist in individual Member States (European Commission, 2018).

A fundamental feature of the common rules of exports, a foundation of the internal market, is the principle of mutual recognition, validating export authorisations in all EU Member States if they were previously recognized by the authorities of any EU Member State. The catch-all clause allows Member States to adopt national legislation preventing the export of dual-use goods not covered by the annex of the Regulation (Koutrakos, 2015: 493). Article 4(1) provides that the catch-all clause can be applied 'if the exporter has been informed by the competent authorities of the Member State in which he is established that the items in question are or may be intended, in their entirety or in part, for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons'.[37] Article 4(2) of the Regulation allows export restrictions where products are intended to be used for military purposes and the country of destination is subject to arms embargo by the OSCE or the UN Security Council.

Article 8(1) allows EU Member States to prohibit or impose an authorization requirement on the export of dual-use goods not listed in the Annex of the Regulation for reasons of public security or human rights considerations. In addition, the obligations imposed upon the Member

[37] Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (2009) OJ L 134, art. 4(1)

States do not prejudice the right of Member States to take national measures under Article 11 of Regulation (EEC) No 2603/69. In addition, if a Member State declares that an authorisation by another Member States threatens the former's security interests, it can request the latter not to grant that export authorization (Koutrakos, 2015: 493).

2.3 Protecting EU Member States from Extra-Territorial Measures and Sanctions

The Blocking Statue of the EU[38] aims at protecting EU operators from the extra-territorial application of third country laws (European Commission, 2019b). Its antecedents go back to 1996 when the US imposed sanctions against Cuba in 1996 and adopted the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act[39], also known as the Helms-Burton Act. EU Member States decided to take measures to neutralize the effects of the US legislation and to remove the adverse effects of Helms-Burton Act. Accordingly, the Commission submitted to the Council in July 1996 a "proposal for a Council regulation protecting against the effects of the application of certain legislation of certain third countries, and actions based thereon or resulting therefrom".[40] Three months later, the Council reached an agreement on Council Regulation 2771/96[41] adopted on the basis of Articles 73g, 113 and 235 EC Treaty. It affirmed that extra-territorial sanctions "violate international law" and "have adverse effects on the interests of the Community", and, therefore, took action "to protect […] the interests of the Community and the interests of […] natural and legal persons, in particular, by removing, neutralising, blocking or otherwise countering the effects of the foreign legislation concerned".[42] The Council, within the framework of the CFSP, adopted a Joint Action as well on the basis of Articles J.3 and K.3

[38] Regulation (EU) No 37/2014 of the European Parliament and of the Council of 15 January 2014 amending certain regulations relating to the common commercial policy as regards the procedures for the adoption of certain measures (2014) OJ L 18
[39] Cuban Liberty and Democratic Solidarity (LIBERTAD) Act
[40] Legislative resolution embodying Parliament's opinion on the proposal for a Council Regulation protecting against the effects of the application of certain legislation of certain third countries, and actions based thereon or resulting therefrom (1996) OJ C 347
[41] Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom (1996) OJ L 309
[42] ibid.

TEU[43] because the Regulation did not cover all persons and areas of activities the Commission had proposed (Huber, 1996: 700).

The substantive provisions are contained in Articles 4, 5 and 6 in Council Regulation 2771/96.[44] Article 4 prohibits the recognition of the judgment or decision of a court, tribunal or administrative authority outside the Community. It expressly prevents the enforceability of US court judgments in the EC and provides for compensation against EU companies and natural persons (Huber, 1996: 704). Article 5 prohibits compliance with any requirement or prohibition of the Helms-Burton Act. In exceptional circumstances, Article 5(2) accepts compliance with the Helms-Burton Act if authorization by the Commission based on Article 8 was granted. Article 6 contains the so-called "claw back" clause (Huber, 1996: 705) enabling persons to recover damages, including legal costs.

The Blocking Statute is still in force and has been amended several times due to new US extra-territorial sanctions. Its scope has bee expanded and now covers the Iran Sanctions Act of 1996, the Iran Freedom and Counter-Proliferation Act of 2012, the National Defense Authorization Act for Fiscal Year 2012, the Iran Threat Reduction and Syria Human Rights Act of 2012 and the 'Iran Transactions and Sanctions Regulations'. Article 11 specifies that its aim is to counter the unlawful effects of third country extra-territorial sanctions on EU operators. Article 4 nullifies the effect in the EU of any court rulings or arbitration awards. Article 5 prohibits the compliance of EU operators with the above extra-territorial measures and allows EU operators to recover damages as a consequence of the imposition of extra-territorial measures. Article 5 accepts compliance with extra-territorial legislation in certain cases if authorization by the Commission was granted. Article 9 provides that EU Member States are responsible for the implementation of the EU Regulation, including for the adoption of penalties for breaches. The last amendment was made on 7 August 2018 after the unilateral US decision to re-impose extra-

[43] Joint Action of 22 November 1996 adopted by the Council on the basis of Articles J.3 and K.3 of the Treaty on European Union concerning measures protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom (1996) OJ L 309

[44] Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom (1996) OJ L 309

territorial sanctions against Iran which could potentially disturb the business of EU operators in Iran.[45]

Another defensive measure can be initiated by the European Commission in cases where third countries sanctions hit EU markets hard. This was especially the case with the Russian food embargo, the consequences of which were a drop of EU agri-food exports to Russia from around €11.8 billion in 2013 to around €6 billion in 2017. As a response, the European Commission took a number of emergency measures, notably in the fields of diary products as well as in fruit and vegetables. In the latter area, emergency measures were available until June 2018, a period under which the EU granted €500 million of aid to producers of fruit and vegetables (European Commission, 2020). Another element of the aid package mainly targeted farmers most affected, especially in the diary and livestock sectors, with an additional €500 million, including €420 million in national allocations. Article 1 of Commission Delegated Regulation (EU) 2015/1853 of 15 October 2015 providing for temporary exceptional aid to farmers in the livestock sectors thus fixed the amount at €420m and provides "targeted support to farmers in the beef and veal, milk and milk products, pigmeat and sheepmeat and goatmeat sectors ('livestock sectors')". Under this scheme, EU Member States are given flexibility in choosing the target with this support while they are also bound to inform the European Commission of their intentions.[46] Allocations are designed in a way that they reflect on national milk quotas and on most affected markets hit by the Russian embargo.

Member State	EUR
Belgium	13 049 568
Bulgaria	6 004 009

[45] Commission Delegated Regulation (EU) 2018/1100 of 6 June 2018 amending the Annex to Council Regulation (EC) No 2271/96 protecting against the effects of extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom (2018) OJ L 199I

[46] Commission Delegated Regulation (EU) 2015/1853 of 15 October 2015 providing for temporary exceptional aid to farmers in the livestock sectors (2015) OJ L 271

Czech Republic	11 155 561
Denmark	11 103 077
Germany	69 233 789
Estonia	7 561 692
Ireland	13 734 230
Greece	2 258 253
Spain	25 526 629
France	62 899 543
Croatia	1 812 383
Italy	25 017 897
Cyprus	354 997
Latvia	8 452 333
Lithuania	12 631 869
Luxembourg	669 120
Hungary	9 505 286
Malta	119 570

Netherlands	29 937 209
Austria	7 004 590
Poland	28 946 973
Portugal	4 764 178
Romania	11 145 958
Slovenia	1 368 433
Slovakia	2 464 247
Finland	8 985 522
Sweden	8 220 625
United Kingdom	36 072 462

Table 1: Amount available for EU Member States to aid farmers[47]

Two additional measures were taken by the European Commission with regard to countering the effects of Russian embargo. First, the Commission targeted cheese producers with the possibility of private storage aid for 100.000 tonnes of cheese. Article 1 of the Regulation provides "for a temporary exceptional private storage aid scheme for cheeses falling under CN code 0406". The maximum volume of product per Member States is based on their respective cheese production. Article 8 sets the contractual storage period between 60 and 210 days while Article

[47] Commission Delegated Regulation (EU) 2015/1853 of 15 October 2015 providing for temporary exceptional aid to farmers in the livestock sectors (2015) OJ L 271

10 sets €15,57 per tonne of storage for fixed storage costs and €0,40 per tonne per day of contractual storage.[48] Second, the Commission set up a new scheme for skimmed milk powder which aims at providing "additional measures with a view to encouraging operators to store higher quantities in order to alleviate the pressure on the market and therefore higher aid amounts should be granted where the products are submitted to a longer contractual storage period".[49] It gives the opportunity to contract a longer period of storage up to 365 days and a higher rate of daily support. Article 4 of the Regulation provides €8,86 per tonne of storage for fixed storage costs and €0,16 per tonne per day of contractual storage if the contractual storage period is between 90 and 210. If the period extends to 365 days, the latter is €0,36. Third, the European Commission made sure that between October and November 2015 (instead of December), EU Member States might have been given pay advances of up to 70% for CAP direct payments and up to 85% for area-related and animal-related support measures. Exceptionally, advance payments do not require pre-verification of the eligibility conditions, which can be done after the payments.[50] Finally, the European Commission launched a new programme, worth €111 million, promoting European agriculture products and the discovering of new markets in the world (European Commssion, 2016).

This chapter has overviewed how sanctions are understood in EU law context. I argue that sanctions, broadly understood, are used in the EU to tackle both internal and external challenges. In the field of EU external actions, sanctions can have different understandings: they entail the suspension of EU aids towards third countries, the imposition of economic and financial sanctions, etc. This research, however, only deals with 'CFSP sanctions'. In other words, it only takes into account (legal) measures that are adopted within the framework of the CFSP by EU Member States. Within the field of CFSP sanctions, this research, in its empirical part, looks specifiacally at the case of the sanctions imposed against Russia but uses this example to tell something more general about the change that has occurred in EU (foreign) policy-making.

[48] Commission Delegated Regulation (EU) 2015/1852 of 15 October 2015 opening a temporary exceptional private storage aid scheme for certain cheeses and fixing in advance the amount of aid (2015) OJ L 271

[49] Commission Implementing Regulation (EU) 2015/1851 of 15 October 2015 amending Implementing Regulation (EU) No 948/2014 as regards the contractual storage period and the amount of aid to be granted for the private storage of skimmed milk powder (2015) OJ L 271

[50] Commission Implementing Regulation (EU) 2015/1748 of 30 September 2015 derogating in respect of claim year 2015 from the third subparagraph of Article 75(1) of Regulation (EU) No 1306/2013 of the European Parliament and of the Council as regards the level of advance payments for direct payments and area-related and animal-related rural development measures and from the first subparagraph of Article 75(2) of that Regulation as regards direct payments (2015) OJ L 256

One of the central idea of this research, as will be demonstrated in the empirical part, is that the European Council has promoted itself as the ultimate decision-maker in EU foreign and sanctions policy and, in some cases, restrictive measures can only be imposed if a prior political agreement has been reached by the EU Heads of State and Government.

3. Understanding EU Foreign and Sanctions Policy

In this chapter, we will investigate the special (legal) nature of EU foreign and sanctions policies and its implications on the ability of the Member States to implement national measures to pursue domestically defined policy goals in the field of international relations and security. Foreign, security and defence policy cooperation has clearly remained the 'strange animal' of the EU: CFSP and CSDP are governed by Article 24 TEU which provides special rules to be followed by EU institutions and the Member States. Despite reforms introduced by subsequent EU Treaties, the CFSP still resembles an intergovernmental form of cooperation in which (Member) States dominate nearly all stages of policy-making.

At the same time, the CFSP has clearly undergone a major institutionalization process. Its predecessor, the EPC, was first codified by the Single European Act and was later transformed into a *common* foreign and security policy in Maastricht. EU Member States are now clearly constrained by the TEU should they choose to pursue a foreign and security policy which completely disregards EU law obligations. Yet the legal enforcement of EU level decisions still raises serious questions over the EU's ability to regulate Member State behaviour in this field. We tend to forget, however, that the CFSP is an EU competence. As Article 2(4) TFEU provides, 'the Union shall have competence to define and implement a common foreign and security policy'. The EPC/CFSP has now clearly evolved from an informal form of cooperation to an institutionalized policy area, yet it is clearly less integrated than other 'common' policy areas.

Despite this background, one of the main arguments of Chapter 3 is that EU Member States are now seriously constrained by EU law in enacting national measures in the field of foreign and security policy. In fact, the use of economic and financial sanctions, which were also introduced

against Russia, is an EU competence. As the settled case law of the CJEU suggests, the trade implications of foreign and security policy measures have serious repercussions on the ability of the Member States to implement national measures. In fact, trade policy has been one of the exclusive competences of the EU, in which national measures can only be enacted in extremely limited cases defined by primary and secondary EU law.

Chapter 3 is divided into four subchapters. Chapter 3.1 shows how theories of EU foreign policy have described the ability of the Member States to produce collective actions. The chapter then proceeds to analyse the (legal) nature of EU foreign and sanctions policies (Chapters 3.2 and 3.3). Finally, it shows the institutional dimension of EU foreign and sanctions policy (Chapter 3.4) which will directly lead to Chapter 4.1.

3.1 Theories of EU Foreign Policy[51]

This subchapter presents those theories of EU foreign policy which, directly or indirectly, touch upon the question of how collective decisions are made within the framework of the CFSP. In other words, this subchapter intentionally avoids presenting the entire universe of EU foreign policy theories. Particularly, it will not present well-known and established theories of EU foreign policy, such as normative power theory (Manners, 2002), civilian power theory (Maull, 2005), military power theory (Salmon and Shepherd, 2003), ethical power (Aggestam, 2008) or the concept of soft power (Nye, 1990). The reason is that these latter theories attempt to understand how the EU *projects power* in international relations. Clearly, this research does not directly nor indirectly deal with the question of power projection nor with related concepts, such as effectiveness or impact of EU measures. Even if the 'power theories' tell us something about EU foreign policy, the research question of this research cannot be linked with these models.

Instead, the main objective is to understand the framework for collective decision-making in EU foreign and sanctions policy. Clearly, scholars are deeply divided on how collective decisions are made in EU foreign policy. The author of this research argues that the interests of the

[51] This chapter is partly built on previous Hungarian article, Szép (2015a).

Member States strongly determine the outcome of the negotiations. In this sense, EU foreign policy works just as any other policy field: *the Member States bargain with each other and they pre-fixed national interests*. This argument, in itself, may not seem sufficiently striking or provoking. After all, the EU is established by its Member States with the explicit intention of promoting national interests through common institutions with a view to tackling common challenges. However, given that the literature of EU foreign policy is largely dominated by constructivist considerations, this argument (as well as the empirical results) may bring new ideas to the study of the preference formation of the Member States.

Theorizing EU foreign policy remains a challenge in the field of European studies. Although the EPC/CFSP is one of the most studied EU policy areas amongst political scientists, little has been achieved in elaborating a 'CFSP theory'. This field of study is characterized by a relatively high number of empirical studies focusing on current external challenges of the EU. However, from a theoretical perspective, EU foreign policy has been largely ignored for many reasons. From the outset, "the academic community [has been] unable either to relate EPC into any meaningful system theory, integration theory or international relations theory let alone create a new EPC general theory" (Weiler and Wessels, 1988: 229) Or, as Knud Erik Jørgensen notes, "[t]he general attitude towards theory remains negative, and when theory is considered, it remains largely a matter of duty" (Jørgensen, 1999: 87). Still, EU foreign policy currently remains an area where most works are devoted to the study of day-to-day external challenges rather than establishing new theoretical frameworks (Carlsnaes, 2010: 546; Rosamond, 2010: chap. 7). Another underlying reason behind the relatively small number of theories is that many scholars see the EU and its foreign policy as sui generis which cannot be theorized (Jørgensen, 2015: 75). Given the EU's more advanced integration in economic policies, theories of international political economy are more explicit in their attempt to theorize the process of European integration. In contrast, the theories of international relations have often failed to notice or have merely overlooked the existence of the CFSP. Indeed, the EU remains a heterodox unit of analysis (it is neither a state nor a traditional organization), its foreign policy is regarded as a 'sui generis within a sui generis organization' and it has achieved only modest integration in the area of foreign policy (Andreatta, 2011: 22).

Even if this area is dominated by empirical research, scholars have made numerous efforts to approach EPC/CFSP from a theoretical perspective. Remarkably, EU foreign policy has already

been analysed through realist, neorealist, intergovernmental, liberal and constructivist lenses. Although they have quite different views on the prospects of European integration, including the outlook to establish an advanced form of cooperation in the realm of foreign policy, they have all contributed to a better understanding of how EU Member States can reach collective decisions within the framework of the EPC/CFSP. Clearly, intergovernmentalism has been an influential approach in the study of the CFSP given that it is still largely dominated by EU Member States. They have always insisted on retaining most of their competences in the field of foreign, security and defence policy. The literature on EU foreign policy is, however, largely dominated by constructivist approaches. Many scholars are now convinced that a traditional intergovernmental approach to CFSP grossly misleads research and fails to realize that the Member States and their officials gradually approximated their views and were able to establish common positions more frequently than traditional theories would suggest.

Other traditional approaches have also tried to understand the peculiar nature of EU foreign policy. Specifically, while realist authors have mostly focused on the behaviour of states, they have also been preoccupied with the explanation of international organizations, such as the EU. Admittedly, however, they have faced challenges in explaining the establishment and the continued existence of the EU, let alone the creation and institutionalization of EPC/CFSP and later the CSDP. Joseph Grieco, the well-known realist, argues "the interest displayed by the European countries in the EU creates a problem for realist theory" (Grieco, 1997: 184) and admits that European cooperation through institutions is a puzzle for their basic assumptions (Grieco, 1993). Indeed, realism has failed to provide an explanation on how the anarchical nature of the international system has changed with the establishment of the EU or why European states have accepted the transfer of their competences at EU level? Similarly, realism may have downplayed the importance of institutions or cooperation which, according to realists, "is harder to achieve and more difficult to maintain than the institutionalist tradition suggests" (Grieco, Powell, and Snidal, 1993: 729).

EU foreign policy – a unique policy area within a sui generis organization – represents another challenge for realism. Admittedly, however, realist scholars have failed to integrate the existence of EU foreign policy into their assumptions. Neorealists claim "[t]he CFSP/ESDP is clearly a 'hard case' for neorealism and 'the EU has undoubtedly emerged as an important

element of Europe's security architecture, and neorealists need to account for such institutionalized multilateral cooperation" (Hyde-Price, 2006: 219). Foreign policy cooperation is rare in international politics. Hyde-Price also admits that "[s]tructural realism cannot explain all aspects of European affairs, and certainly not the nuances and intricacies of EU politics" (Hyde-Price, 2006: 223), Even liberal scholars, such as Robert Axelrod and Robert Keohane, note "issues of international political economy may be settled more cooperatively than issues of international security […] in economic relations, actors have to expect that their relationships will continue over an indefinite period of time. In security affairs, […] it may be possible to limit or destroy the opponent's capacity for effective retaliation" (Axelrod and Keohane, 1985: 233).

Even if realists admit that EU foreign policy was a hard case for them, they painted a gloomy picture of the prospect of European cooperation after the collapse of the Soviet Union. John Mearsheimer argued that "[w]ithout the Soviet threat or an American night watchman, Western European states will do what they did for centuries before the onset of the Cold War look upon one another with suspicion. […] Cooperation in this new order will be more difficult than it was during the Cold War. Conflict will be more likely" (Mearsheimer, 1990: 47–48). Thus Mearsheimer argued that the post-Cold War order opens the way to crises and war in Europe and predicted that the continent was more prone to violence than it had been during the Soviet era. He contended that peace during the Cold War could be explained by the bipolar distribution of military power, the relative equality between the US and the Soviet Union in terms of their military capabilities and the possession of nuclear weapons by both of them. In this way, the Cold War world order contributed to the unity and peaceful coexistence of Western European nations (Mearsheimer, 1990: 11-12).

Kenneth Waltz's balance of power theory, however, has had clear impact on how we understand the establishment and existence of EU foreign, security and defence policy. Ignoring the characteristics of human nature, thus moving away from Hans Morgenthau's classical realism, Waltz argues that the structure of the international system (in particular, the anarchical nature of the international system and the distribution of power) determines the ways in which states act in world politics. Waltz's balance-of-power theory postulates that one of the main purposes of states is to anticipate the domination of others: states, "at a minimum, seek their own preservation and, at a maximum, drive for universal domination" (Waltz, 1979: 118). Power balancing

is the solution to secure their safety and their existence. Waltz adds that it may be possible to conduct alternative behaviour (e.g. cooperation or integration) but these alternatives would be punished. “Although the integration of nations is often talked about, it seldom takes place” (Waltz, 1979: 105). In a later article, Waltz suggests that either the EU or Germany may play the role of balancer against the United States. By recognizing the successful integration of European states, Waltz claims that the EU does not have a historical precedent. However, he also argues that the foreign and security policy is a weak instrument in the EU and without reforming the system, Europeans will not be able to play greater role in world affairs (Waltz, 2000: 31–32).

Building on Waltz’s balance-of-theory, Christopher Layne asks the question whether the dominance of the United States will endure. He argues that there are three powers that have tried to balance against US hegemony: Britain’s attempt to create a “third force” between 1945 and 1948, French counterbalancing under the presidency of Charles de Gaulle and the establishment of a security and defence policy by the EU. Layne claims that the primary purpose of the European Security and Defence Policy is to become more independent from the United States and to gain hard power capabilities. According to this argument, the EU opposes unipolarity and thus wants to have more leeway in international affairs despite heavy criticism from the United States. Leyne’s main conclusion is that unipolarity persists but US hegemony will not endure indefinitely (Layne, 2006). Adrian Hdye-Price follows a similar logic and argues that the European Security and Defence Policy is an answer to systemic changes in the distribution of power. Systemic pressures explain why EU member states choose to cooperate or defect in the realm of high politics. Hyde-Price recognizes that the foreign policy cooperation of the EU is a “hard case” for neorealism. However, he insists, based on the tenets of structural realism, that the EU is an instrument of collective hegemony (Hyde-Price, 2006: 219).

Barry Posen has similar arguments but adds that the EU, by establishing the European Security and Defence Policy, is not necessarily balancing the United States but instead is preparing to cope with possible threats. According to Posen, the EU is not balancing the United States very intensily but is establishing parallel structures which will lead to complicate relations between the EU and the US. Provided that the EU further enhances its military capabilities, the alliance between Europeans and Americans may deteriorate in the future (Posen, 2004). Robert Art also follows the same logic of balance of power theory. Art acknowledges that realism cannot give

a full explanation of EU foreign policy but can shed light on it from the balance of power theory view. Cooperation in foreign affairs for long time seemed unnecessary because of the lack of external threats and reliance on the United States. However, the Kosovo and the Gulf Wars reinforced the feeling that cooperation in defence was an absolute need for Europeans. Offsetting the US has also become a primary driving force behind the cooperation (Art, 2007).

Stanley Hoffmann who once heavily criticized Ernst Haas' neofunctionalist theory, in a later article still downplayed the achievement of European integration. He acknowledges that the Maastricht Treaty is a way towards a common foreign and defence policy. However, Hoffmann still emphasizes the interests of each member state. He does not explicitly refer to Waltz's balance-of-theory yet it is also clear, according to Hoffmann, that one of the main reasons for the establishment of a common foreign policy is that "the power gap between [the United States] and the individual European states was bigger than ever" and thus "[r]edressing the balance […] seemed to make sense" (Hoffman, 2000: 191). He explains the development of the common foreign policy by arguing that Britain wanted to maximize its influence in world affairs, France also desired to influence collective action, Germany discovered its post-national identity and the Clinton administration was more willing to accept a limited autonomy of European defence. Nevertheless, he concludes, the desire of the United States to keep its unipolar position in the world will impede the establishment of a truly common foreign and defence policy (Hoffman, 2000: 193-195).

Theories of European integration, in particular neofunctionalism and liberal intergovernmentalism, have also shed light on EU foreign policy. Building on the insights of David Mitrany, neofunctionalists principally seek to explain the underlying dynamics of European integration. Despite the fact that Ernst Haas, one of the founding fathers of neofunctionalism, abandoned his theory in the mid-1970s (Haas, 1976), the model is still considered a starting point in understanding the process of European integration. Neofunctionalism clearly contradicts realist and intergovernmental views as the former sees integration more as a process and emphasises the role of multiple actors and nongovernmental elites. One of the basic assumptions also contradicts the core tenets of realism since Haas and Lindberg believed in the "end of ideology" meaning people would be preoccupied with questions that concern wealth rather than nationalist or religious ideals. 'Spillover' is a key concept attributed to neofunctionalism which later

was divided into three separate concepts: functional, political, and cultivated. Functional spillover refers to the interdependence between industrial economies and emphasises the interconnectedness of these sectors. Integrating certain functional tasks implies integrating more tasks in order to solve new problems. Political spillover emphasises the learning process of elites which helps to overcome the conflict between groups. Learning leads to a perception that their interests can be achieved through supranational rather than national solutions. The reorientation of their activities, expectations and loyalties to a new centre creates demands for further integration. Cultivated spillover stresses the importance of the role of central institutions which helps to 'upgrade the common interests' and thus supports moving away from the lowest common denominator (Haas, 2004; Lindberg 1963; Lindberg and Scheingold, 1970; Niemann, 2010; Tranholm-Mikkelsen, 1991).

Given that neofunctionalism focuses mainly on "low politics", i.e., issues emphasizing economic and cultural aspects of European integration, Haas was not preoccupied with foreign policy cooperation. Nevertheless, Haas underlines the fact that the six founding Member States cooperated in international economic organizations, such as in the General Agreement on Tariffs and Trade or the Organisation for European Economic Co-operation (Haas, 2004: xxvi–xxviii.) Furthermore, Haas explicitly mentioned military and defence questions but noted that these issues "have not displayed a close affinity to integration unless the issue involves the related question of saving and allocating resources for welfare measures" (Haas, 1961: 373) It was Philippe C. Schmitter who, from a neofunctionalist perspective, elaborated the so-called "externalization hypotheses". According to Schmitter, "the greater the impact of the intraregional deliberations upon mutual transactions, the more intense the external challenge is likely to be" (Schmitter, 1969: 165). Based on this assumption, Member States will find themselves compelled to adopt common external policy regarding third countries. On the one hand, third countries will react to the regional integration process and treat it as a policymaking unit. On the other hand, Member States realize that collective actions give them better bargaining power regarding third States (Schmitter, 1969: 165).

Looking at the possible ways of integrating nation states, Karl Deutsch, a leading scholar in international relations elaborating the transactionalist approach to integration, sought to study the alternatives by which "men some day might abolish war" (Deutsch et al., 1957: 3) Central to his approach are (international) communities (Jørgensen, 2015: 28) which establish a sense

of community by mutual transactions. The increasing importance of transactions makes affected states more and more important (Deutsch, 1964). Deutsch and his colleagues investigate the question of how security communities alter the calculations of nation states. Security communities are integrated groups of people who share a sense of community within a given territory. The members of that community do not fight each other and are thus able to eliminate wars. Two types of security communities are distinguished. On the one hand, "amalgamated security communities" imply that formerly independent units become a single larger unit with a unitary or federal government. On the other hand, members of "pluralistic security communities" remain legally independent and retain their decision-making powers (Deutsch et al., 1957: 5–9). The establishment of pluralistic security communities, favoured by Deutsch, has three essential conditions: the compatibility of major values, the capacity to respond to each other's needs and mutual predictability of behaviour (Deutsch et al., 1957: 193–96).

Stanley Hoffmann, criticizing Haas' theory, argues that, despite the early optimistic years of integration, Charles De Gaulle's empty chair policy is clear evidence of the supremacy of nation states. The willingness to cooperate in agricultural or trade questions may be possible but States are reluctant to give up their sovereignty in foreign policy issues. Instead of a process of political unification, the logic of diversity prevails which emphasises the differences between member states. The logic of diversity impedes the establishment of a common foreign policy because "high politics" belongs to an area which is of key importance to the national interest (Hoffmann, 1964, 1966: 881–82) Thus, according to Hoffmann, "[n]ation-states […] remain the basic units in spite of all the remonstrations and exhortations" (Hoffmann, 1966: 863). Raymond Aron also shares Hoffmann's basic assumptions. He argues that the Member States will each have their own foreign policy and separate military forces. In other words, Aron rejects the claim that economic integration leads to a federal state and that the economy dominates political questions. The common market leaves to the Member States the possibility to voice their different views on world affairs. The establishment of common institutions "will surreptitiously absorb neither the authority to take decisions by which a human collectivity asserts itself in opposing others nor the power to resort to the ultima ratio; it will not create a common will among French, Germans, Italians to be henceforth autonomous as Europeans and no longer as members of historical nations" (Aron, 1966: 748).

Accepting some of the basic assumptions of intergovernmentalism, Andrew Moravcsik creates a theoretical framework consisting of three stages. 'Multi-level theories' existed well before Moravcsik's liberal intergovernmentalism. Indeed, Robert Putnam's 'two-level game' theory argues that international (economic) cooperation can be exaplained by domestic factors. At this level, interest groups pressure government to adopt a pre-determined policy (Putnam, 1988; Putnam and Bayne, 1987). Similarly, Andrew Moravcsik's liberal intergovernmentalist theory seeks to explain international cooperation by domestic factors. The first stage is national preference formation which is liberal in inspiration emphasizing the role of domestic interest groups. However, Moravcsik argues that cost-benefit calculation differs across policy areas: while governments may be more constrained when formulating policies in economic issues, they can pursue more idiosyncratic purposes in foreign policy questions. The second stage is characterized by the relative bargaining power of governments, which affect the likelihood of cooperation. Governments are not indifferent regarding the redistribution of gains. However, they seek cooperation in order to achieve mutual benefits. Moravcsik argues that the uneven distribution of benefits and information is of crucial importance. States are the major actors in negotiations while the European Commission plays only a marginal role. In the third stage, Moravcsik argues that regime theories are useful starting points to examine the EC. However, these theories must be extended to understand the delegation and pooling of sovereignty. The delegation and pooling of sovereignty varies across issue areas where the EC may be only a coordinator while in other cases there are substantive delegation aiming at resolving the problems of control or sanctioning. For Moravcsik, delegation and pooling of sovereignty are indicators that national governments, while seeking to achieve effective decision-making procedures, accept increased political risk given that they may be outvoted at any time (Moravcsik, 1993, 1998).

According to liberal intergovernmentalism, foreign policy cooperation may only occur if Member States lack unilateral alternatives. Analysing the outcome of the Amsterdam Treaty, it turned out that Germany, the Benelux and Nordic countries supported integration in foreign policy issues due to the lack of unilateral foreign policy alternatives, such as a permanent seat in the UN Security Council. The United Kingdom and Greece, although for different reasons, supported the status quo and rejected the transfer of competences in foreign policy issues, given

that they had viable unilateral alternatives (Moravcsik and Nicolaïdis, 1999: 64). In other aspects of EU external actions, such as in enlargement, liberal intergovernmentalism emphasizes the role of relative bargaining power during negotiations. It predicts that candidate States will seek to attain membership given the economic and geopolitical benefits they may achieve after accession. EU Member States, on the other hand, may oppose enlargement and suggest a slower accession process. Both in the case of British membership and the Eastern enlargement, the EU was in a better position given the new members' weak bargaining positions (Moravcsik and Vachudova, 2003: 42).

Liberalism has also approached the question of cooperation from the institutional and commercial perspective. Institutional liberalism, as its name suggests, is preoccupied with the question of international institutions and their mitigating effects on the anarchical nature of world politics. The famous Prisoners' Dilemma is the analytical centrepiece of this approach. Robert Axelrod claims that cooperation can emerge despite the Prisoners' Dilemma, provided that the uncertainty of the future can be reduced. Axelrod introduces the so-called "tit for tat strategy" in his analysis implying that the possibility to meet again raises the likelihood of cooperation: states can base their strategies on others' previously demonstrated behaviour (Axelrod, 1985). "Even where common interests exist", contends Robert Keohane, "cooperation often fails" (Keohane, 1984: 6). However, both Axelrod and Keohane share the idea that international institutions help to overcome the difficulties arising from cooperation. They, along with other scholars, agree that cooperation in economic areas is easier to achieve compared to the security realm (Lipson, 1984). However, they seek to elaborate a single theoretical framework which can explain cooperative behaviour. Three factors determine the likelihood of cooperation: the mutuality of interest, the shadow of the future and the number of actors involved (Axelrod and Keohane, 1985: 227).

Commercial liberalism puts an emphasis on the economic aspect of international relations. Joseph Nye and Robert Keohane believe that realism has become an obsolete approach for studing international relations. Realism is no longer capable of explaining modern international relations because, apart from the state, other actors have also become important, such as multinational corporations, transnational social movements or international organizations. Complex interdependence reflects and ideal type of international relations. Nevertheless, they point out that cooperation is more likely to occur and the use of force becomes obsolete given the high

costs. Nuclear force is used merely for deterring others. Complex interdependence refers to, among other things, the decline of military force and the multiple channels of contact between societies (Keohane and Nye, 1977).

Rational theories of international relations, such as realism and intergovernmentalism, both assume that actors are rational in their calculations and have pre-fixed positions. A large number of works, however, challenge the traditional understanding of world politics and argue that the preferences of actors are shaped by, among other things, EU membership. Indeed, many scholars have argued since the beginning of the EPC that Member States may also adopt common decisions which deviate from the lowest common denominator. The early literature on the EPC was characterized by empirical observations with no clearly defined theoretical background. However, these observations have been widely cited given their influential results in the field. Decades later, constructivism also became a strong reference point in international relations questioning, for example, the belief that states are always acting rationally for the purpose of achieving their national interests. Even if not identical, the main tenets of constructivism are similar to the findings of the early EPC literature. But the EU is, according to many pundits, a unique international organization which may require its own theories. After all, it seems that traditional theories failed to explain the commitment of the Member States to expand their cooperation in the area of foreign, security and defence policy.

Grouping all these models and theories under the same division may obviously raise questions whether one can treat them as "same models". Of course, Europeanization cannot be, in any sense, regarded as a synonym of the constructivist school of thoughts. However, parts of the Europeanization literature explicitly build on previously elaborated key notions of constructivism, such as learning or socialization emphasizing the role of identity and shared beliefs in international politics. The mechanisms behind Europeanization, as Reuben Wong correctly notes, might be rational as the notion only indicates that there is a relationship between national and European foreign policy (Wong, 2011). This relationship might be explained either by rational or non-rational approaches. Nevertheless, given that non-rational approaches are also significant in the Europeanization literature, they can easily find their place near constructivism. Other perspectives, such as the early literature on EPC, do not explicitly build their approaches on constructivism (in fact, constructivism did not exist at that time), however, they – implicitly – reject rational approaches to study the foreign policy cooperation of the EC/EU and basically

argue that regular meetings and the mutual understandings may upgrade the lowest common denominator.

Most scholars emphasize the increasing number of meetings which has an impact on identities: this does not mean that national perspectives and identities have completely disappeared but it does imply that supranational identity coexist with other identities which, in turn, may foster the establishment of common positions. Coordination reflex is one of the buzzwords of the EPC/CFSP; it was already visible in the Copenhagen Report of July 1973. The second report on European foreign policy cooperation already recognized that "Member States have been able to consider and decide matters jointly so as to make common political action possible. This habit has also led to the *"reflex" of co-ordination* among the Member States which has profoundly affected the relations of the Member States between each other and with third countries. This *collegiate sense* in Europe is becoming a real force in international relations" (CVCE, 2013). Prior to taking a position, Member States consult each other and they take the preferences of others into account. This does not mean there were no cases where Member States fearlessly defended their national interests. Indeed, there have been at least four instasnces when Member States were unable to adopt a common position due to the fearless defence of national interest: (1) the recognition of Macedonia; (2) the dispute with Morocco in 2002; (3) the wide schism over Iraq in 2003; and (4) the recognition of Kosovo since February 2008 (Wong and Hill, 2011b: 216). However, these are regarded as an exception rather than the rule. Most scholars in this approach highlighted the weaknesses of rational approaches (both realism and liberalism) as they all emphasize, depending on their approaches, the importance of belonging to a community, the intensification of socialization, the value of arguments, the interconnections between national and European level, persuasion and mutual trust in each other's information and intentions.

Otto von der Gablentz claims that despite the intergovernmental nature of foreign policy cooperation "the connotation of normal international practice is grossly misleading" (Gablentz, 1979: 694). Philippe de Schoutheete suggests that European foreign policy cooperation is not only a "*communauté d'information*" but also a "*communauté de vue*" and a "*communauté d'action*" (De Schoutheete, 1980). Wolfgang Wessels similarly argues that "even if EPC shares […] conceptual elements with historically familiar forms of diplomatic cooperation, the intensity and quality of EPC activities, however, go beyond these accepted concepts in the way that

makes this characterization appear no longer applicable in any satisfactory way" (Wessels 1982, 14). Wessels also notes that many actors, while maintaining their national loyalties, orient themselves to develop common positions. He also adds that despite the fact there are no legal enforcement possibilities, sanctions do exist for non-compliant behaviour in the form of "group expectations of mutuality" (Wessels 1982, 15). Reaching consensus has been at the centre of Member States' consultations and thus they have been able to move away from the lowest common denominator (Gablentz, 1979; Nuttall, 1992: 314). Simon Nuttall adds that political directors called each other by their first names and for European Correspondents esprit de corps could be considered very strong leading to personal friendship (Nuttall, 1992).

Jacob C. Øhrgaard argues that despite the intergovernmental character of CFSP, there is a degree of integration in this field. One of the features of this field is the regularity and intensity of the process, which implies a deviation from traditional intergovernmental meetings. The regular meetings resulted in a reflex of coordination and automatic consultation with the partners. EPC/CFSP established, similar to the acquis communautaire, an acquis politique which indicates the commitment of the Member States to cooperate. "If a common position had previously been agreed on a particular issue, it would be very difficult for a member state to change its position without seriously jeopardizing its credibility with its partners" (Øhrgaard, 1997: 21).

Christopher Hill and William Wallace criticize the rational approach to international relations by declaring that the preparations of common work by different member states lead to consensus building. Many officials are socialized within only the European Political Co-operation meaning that they have little "national experience", taking the exchange of sensitive information as granted. 'The liberal institutionalists' image of rational policy-makers bargaining with each other within established regimes leaves too little room for this engrenage effect […] Officials and ministers who sit together on planes and round tables in Brussels or in each other's capitals begin to judge 'rationality' from within a different framework from that they began with' (Hill and Wallace, 1996: 12). The result is not a federal state but a clear indication of moving away from state-to-state relations. Despite the low intensity cooperation, external relations have become an interwined system. In conclusion, changing diplomatic habits have transformed old national sovereignty toward a collective endeavour (Hill and Wallace, 1996: 12). Federica Bicchi also struggles with the feeling 'we need to go 'beyond intergovernmentalism', although it is not clear how best we can do so' (Bicchi, 2011: 1115). Bicchi suggests viewing

the EU officials as a community of practice which shares a practice of communication and collective learning. COREU network, according to Bicchi, provides excellent empirical evidence for showing the important role of communication. Establishing a community of practice, member states transcend – with the COREU – national boundaries and they establish a common European practice (Bicchi, 2011).

David Allen also calls to attention the fact that Member States are pushed to work more closely in Brussels. The Council Presidencyis increasingly relies on the work of the Council Secretariat. 'The faces and voices associated with the foreign policies of the EU's Member States in key regions of the world were 'Brusselised' and even collectivised' (Allen, 1998: 57). According to Kenneth Glarbo, rationality cannot be totally rejected but social constructions need to be taken into account to give a comprehensive picture of EPC/CFSP history. Social integration is one of the features of day-to-day practices of foreign policy cooperation (Glarbo, 1999: 649–50). Helene Sjursen argues 'there is something else going on inside the second pillar of the EU' and that "membership has modified the unlimited effects of states' self-interest, even within the area of 'high politics'" (Sjursen, 2002: 37). This empirical observation – which holds that membership modifies states' behaviour – poses a great challenge for realism for three reasons: it is difficult to explain (1) why member states comply with common positions if there is no gain for them; (2) why member states do not wish to return to the stricter European Political Cooperation; and (3) why member states seek to consensus in a policy area where the effectiveness of common actions is questionable. According to Sjursen, a "norm of consultation" can be experienced in CFSP meaning 'the expectation that individual interests must be curbed and occasionally give way to common positions' (Sjursen, 2002: 40). Sjursen concludes that, contrary to the assumptions of realism, the CFSP has evolved from a community of information to a community of views and then a community of action (Sjursen, 2002: 49-50).

Michael E. Smith argues that norms facilitate reaching common positions as they reorient states toward a problem-solving style of behaviour, this being the dominant tendency in CFSP (as opposed to bargaining which is discouraged in CFSP). Smith distinguishes between four norms: (1) regular communication and consultation on foreign policy issues; (2) the confidentiality of discussions; (3) treating everyone, smaller and bigger member states, equally and, therefore, always seeking consensus; and (4) the secrecy of talks. Two indicators may show adaptation:

(1) élite socialization implying a certain level of trust among key players, a 'club-like atmosphere; and (2) bureaucratic adaptation meaning changes in national foreign ministries (Michael E. Smith, 2000: 617). Smith criticizes Waltz's balance-of-power theory claiming that EU foreign policy cannot be fully understood from a structural realist perspective. Smith holds the view that liberalism also fails to fully understand EU foreign policy as it is too indeterminate and cannot explain the extensive cooperation experienced in foreign policy. Smith proposes five basic assumptions of the new institutional theory: (1) the perspective implies bounded rationality as states do not have all the information for optimal decisions; (2) preferences and interests can be shaped by institutions; (3) external pressures do not necessarily lead to changing institutions; (4) institutions may lead to path dependency; and (5) sensitive policy areas are most difficult to have institutionalized. Institutionalization can be explained by three factors: a functional logic; a logic of normative appropriateness; and socialization. Smith determines five stages of institutionalization: the intergovernmental forum, information-sharing, norms, organisations, and governance. He notes that not only prominent members of the elite meet in Brussels but so do lower level officials as well, meaning that transgovernmental networks and socialization cannot be overlooked. Smith points out that despite the fact that EPC was a pure intergovernmental cooperation from the 1970s, the exchange of information and the willingness to build consensus fostered cooperation. Instead of a pure intergovernmental bargaining, three stages – information-sharing, norms, and organizations – transformed foreign policy cooperation and reached the highest institutionalized form, i.e., governance (Michael Eugene Smith, 2004: 37–49).

Ben Tonra's work, studying the impact of the CFSP on Danish, Duthc and Irish foreign policy, can be considered a breakthrough in the Europeanization literature. Tonra heavily criticizes the traditional approaches to international relations arguing "for traditional international relations theory, [the study of European Foreign and Security Policy] is almost an empirical embarrassment. EFSP is exceptional in so far as it represents an attempt by several European states to coordinate national foreign policies, to construct a common policy in the field of foreign affairs, security and ultimately defence, and to act visibly, decisively and collectively in support of this policy" (Tonra, 2001). According to Tonra, politics cannot be approached from a rational point of view and, therefore, European Foreign Policy cannot be seen, from the perspective of the member states, as a forum where some member states win whereas others lose. Tonra offers

two counter-arguments against realism: (1) European Foreign Policy has a perceptible impact on the member states; and (2) member states see European Foreign Policy as being greater than the sum of the participants. Through socialization, member states are able to establish shared understanding on common problems (Tonra 2001). Tonra argues that change in Irish foreign policy should not be seen as a mere socialization effect but more as a 'structural socialization' meaning "bureaucratic units and their occupants adapt themselves to incorporate the expectations and procedures of the collective policy-making system" (Tonra, 1999: 153). He explicitly builds on Wendt's social theory and claims that interests, values and beliefs are central to the analysis of the CFSP. National interests are not fixed; instead they are evolving and changing over the negotiations as a result of membership. CFSP creates a 'we feeling' meaning the member states attach themselves to a community (Tonra, 2003: 749).

Christopher Hill and Reuben Wong look at the question of "how national foreign policies in the EU affect common EU positions in international politics; while at the same time how these same national foreign policies are to some extent 'Europeanized' into more convergent, coordinated policies". They define Europeanization in three different ways: (1) downloading implies that EU membership affects national policy positions; (2) uploading means that member states project their views and preferences to the supranational level; and (3) crossloading denotes a bi-directional process that leads to policy convergence, preferences or identity. Europeanization is a long-term process entailing a sense of community and a shared identity which lead them to stick and make defection rare. According to the authors, seven factors promote Europeanization of national foreign policies: institutions and treaties, socialization, leadership, external federators, politics of scale, legitimization of global role and geo-cultural identity. In their book-length study written by multiple authors, they find that every single Member State has been, more or less, Europeanized: while Germany, Spain, Slovenia and France show significant Europeanization, Germany and Italy stand on the other side showing substantially less but still Europeanized foreign policy (Wong and Hill, 2011a, 2011b).

Based on 139 questionnaires, Nicola Chelotti asks the question of how national officials perceive their role in the foreign policy committees of the EU. One of the findings of the investigation is that national officials have both supranational and intergovernmental orientations. Therefore, the socialization thesis is partially confirmed: "the number of years spent in the Council is a relatively strong explanatory variable of a supranational attitude" (Chelotti, 2015:

206). Second, it was found that large member states are not more likely to develop a national outlook and small member states do not assume a more pro-European orientation. The main conclusion is "it may be possible that EU foreign and defence policy comes to more than the lowest common denominator of member states' exogenously defined positions, and is […] formulated according to common, European insights" (Chelotti, 2015: 207).

We can conclude here that theories of EU foreign policy are largely dominated by constructivist views. They basically argue that the shared norms as well as the common socialization of EU officials facilitate the decision-making procedures built on unanimity. They suggest that CFSP has moved away from traditional intergovernmentalism given the presence of the above mentioned factors which help decision-makers to overcome the dilemma of thinking merely in terms of national interests. The argument of this research, however, is that EU Member States do in fact bargain with each other in the field of foreign and security policy. In this sense, this policy field works just like others do: EU Member States do have pre-fixed interests and do have red lines. As the case of the sanctions imposed against Russia shows, EU Member States accepted only decisions that do not harm their fundamental national interests.

3.2 The Special Legal Nature of EU Foreign Policy

In this subchapter, we investigate the special legal nature of EU foreign policy and its implications on the ability of the Member States to enact measures at the national level. In general, EU Member States have a relative freedom to design foreign policy which is based on national – rather than EU – interest. It remains clear, however, that they are constrained by EU law in formulating foreign policy which completely disregards the obligations accepted at the EU level. This subchapter explores how EU law constrains the Member States in the formulation of a national foreign and security policy, but also recognizes that it also enables them to act unilaterally at the international level if certain conditions are met. The subchapter also contributes to a better understanding of EU sanctions policy which is inextricably linked to CFSP.

In the EU, external relations policies are constitutionally separated. The CFSP/CSDP (as well as enlargement and neighbourhood policy) are codified by the TEU, whereas all other external actions are codified by the TFEU, such as sanctions or commercial policy. This duality reflects

the preferences of the Member States that wished to keep CFSP/CSDP separated from other, 'communitarized' external actions with a view to underlining the unique nature of foreign, security and defence policy. Despite this duality, however, it remains clear that the imposition of sanctions serves foreign and security policy objectives. Indeed, Treaty provisions on sanctions policy make it clear that restrictive measures cannot be imposed if EU Member States fail to adopt a Decision within the framework of the CFSP.

Against this background, the special legal nature of the CFSP should be analysed to gain a better understanding on sanctions policy. The primary aim of this subchapter is to explore why the CFSP remains a 'strange animal' and the implications of this special legal nature on the ability of the Member States to formulate an independent foreign policy. What is the link between foreign and sanctions policy? What are the key features of the CFSP that can also be found in sanctions policy? Finally, what are the key differences between them?

EU foreign policy has always been treated as a distinctive policy area due to its special legal regime. In particular, legal scholarship has been divided over the question of whether the constitutional principles of the EC/EU, such as direct effect or supremacy, can be applied in the area of CFSP/CSDP. Prior to the Lisbon Treaty, the EC had clear priority over the EU Treaty. Former Article 1(3) EC Treaty provided:

> [t]he Union shall be founded on the European Communities, supplemented by the policies and forms of cooperation established by this Treaty

In light of the Treaty provisions, the majority of legal scholars saw the EC pillar as the supranational part of the EU in which Member States used qualified majority voting with the strong involvement of the European Commission and Parliament as well as the establishment of a new legal order with its hallmarks, such as direct effect or supremacy. The CFSP and the JHA, on the contrary, were described policy areas based on intergovernmentalism, located completely outside the new legal order. In the second and third pillars, unanimity prevailed, supranational institutions were weak and international law dominated over Community law principles. The EU Treaty did not make references to the two hallmarks of the 'new legal order', the principle of primacy and direct effect. In fact, the contracting parties agreed not to adopt legislative acts under the second and third pillars. The Member States continued their cooperation in foreign

policy issues on an intergovernmental basis under the thin roof of the EU (Curtin and Dekker, 2011: 161–63).

Others observed a complete fusion between the EC and the second as well as third pillars and argued that the different pillars were governed by one legal regime. Accepting the legal unity thesis means that the constitutional principles developed under the EC Treaty, such as supremacy, loyalty or direct effect, should also be invoked within the framework of the CFSP. In particular, Koen Lenaerts and Tim Corthaut claim "[t]he same reasons that led the Court in *Costa v ENEL* to proclaim the primacy of EC law are easily transposed" to the second and third pillars (Lenaerts and Corthaut, 2006). However, the CJEU has not been able to deliver judgments on the potential application of constitutional principles due to the lack of jurisprudence in CFSP/CSDP. Armin von Bogdandy and Martin Nettesheim similarly claim that "the 'unity thesis' asserts that the de lege lata the [EU] can be considered one entity from the point of view of the organisation, its actions and its law" (Bogdandy and Nettesheim, 1996: 281). Bogdandy claimed that "[t]he terms 'Communities' and 'pillars of the European Union' do not demarcate different organizations, but only different capacities with partially specific legal instruments and procedures. All the Treaties and the secondary law form a single legal order" (von Bogdandy, 1999: 887). A more moderate version of the pro-unity thesis was advanced by De Witte with its French gothic cathedral metaphor. In his seminal study, he argued that the EC was the central nave alongside the "somewhat lower and somewhat darker side aisles" of the CFSP and the JHA by retaining a separate legal regime (De Witte, 1998: 58). Deirdre Curtin and Ige Dekker famously considered the Union a 'layered international organisation' with a unitary character (Curtin and Dekker, 2011: 156).

EU Member States decided, after the failed Constitutional Treaty, to retain the division between the TEU and TFEU maintaining the differences between the pre-existing EC and EU Treaties (Cremona, 2012: 40–41). After the entry into force of the Lisbon Treaty, however, Curtin and Dekker confirmed the trend towards greater unity. They now argue "the Lisbon Treaty have made more visible than ever before the unity of the organization in its constitutional architecture of a single international legal person that, at the same time, is based on a firm alliance of the Member States" (Curtin and Dekker, 2011: 185). The EC was replaced and succeeded by a single Union and, based on Article 1(3) TEU and 1(2) TFEU, the two Treaties have acquired the same legal value. This change confirms the views of some prominent scholars who argued

well before the entry into force of the Lisbon Treaty that there were not two separate legal orders but one single Union founded on two Treaties.

The TEU and the TFEU are now bound more closely together than the EU and EC Treaties. In fact, there are many cross-references in both Treaties. In EU external actions, for instance, a cross-reference can be found in sanctions policy: the imposition of economic and financial sanctions on the basis of Article 215 TFEU is explicitly linked with a CFSP Council Decision adopted on the basis of Article 29 TEU. Similarly, there is now a single set of objectives for EU external actions, regardless of whether a policy is codified by the TEU or the TFEU (Cremona, 2012: 46). The Lisbon Treaty also confirmed the trend toward greater unity by explicitly recognising the legal personality of the EU (Art. 47 TEU) and by creating institutional bridge across the various areas of EU external actions with the reinforced position of the HR and the establishment of the EEAS (Eeckhout, 2011: 166).

Undoubtedly, the three pillars were abolished by the Lisbon Treaty. However, despite greater unity, it would be entirely misleading to argue that the old characteristics of the second pillar would have fully disappeared after the entry into force of the Lisbon Treaty. In particular, it seems that the second pillar was merely removed in name only: the CFSP has virtually retained most of the old characteristics. One of the clearest legacies of the EC and EU Treaties is the retention of the CFSP (and the CSDP) in the TEU while all other external actions were codified in the TFEU. In the failed Constitutional Treaty, the CFSP was placed in Part III among other EU external actions. The Lisbon Treaty, however, separated the CFSP from other external actions despite the clear intention to establish a more coherent foreign policy after Lisbon. In fact, this separation reflects on the distinct nature of the CFSP: placing it in the TEU aims at demonstrating that the EU has distinct competences in this policy area (Cremona, 2012: 49–50). Robert Schütze observed "the Union – even after Lisbon – suffers from a 'split personality' […] it has a general competence for its 'common foreign and security policy' (CFSP) within the TEU; and it enjoys various specific external powers within the TFEU" (Schütze, 2012: 189).

TEU	**TFEU**
Chapter 1 – General Provisions	Title I – General Provisions
Chapter 2 – Specific Provisions on the CFSP • Section 1 Common Provisions • Section 2 CSDP	Title II – Common Commercial Policy
	Title III – Cooperation with Third Countries and Humanitarian Aid
	Title IV – Restrictive Measures
	Title V – International Agreements
	Title VI – Union's Relations with International Organizations and Third Countries and Union Delegations
	Title VII – Solidarity Clause

Table 2: The Union's External Policies – a split personality (Schütze, 2012: 191).

In this regard, EU foreign policy is often characterized as a multi-faceted and a multi-method policy area. The former refers to the fact that EU foreign policy cannot be reduced to CFSP/CSDP matters. They are part of external actions but, as Table 2 shows, the EU has also the ability to conclude international agreements, impose sanctions or regulate international trade. The CFSP, established by the Maastricht Treaty, has clearly been the main platform for developing and implementing the diplomatic dimension of EU external actions but other policies, particularly the common commercial policy, were also at the disposal of the Member States as a tool to influence their external environment. On the other hand, the multi-method nature means that EU external actions are governed both by intergovernmental and Community method as well as 'hybrid methods'. The TEU mainly defined unanimity as the main decision-making method and determines the European Council and the Council as key actors in CFSP/CSDP. On the contrary, external actions defined by the TFEU are mainly governed by the 'Community method'. There are hybrid methods as well: for instance, the European Parliament merely has consenting power in the conclusion of international agreements, whereas it must only be informed on the imposition of sanctions (Keukeleire and Delreux, 2014: chap. 1).

One of the most obvious indications that the CFSP retained its intergovernmental traits is evidenced by Article 24(1) TEU (Piris, 2010: 260–63). It provides:

> The common foreign and security policy is subject to specific rules and procedures. It shall be defined and implemented by the European Council and the Council acting unanimously, except where the Treaties provide otherwise. The adoption of legislative acts shall be excluded. The common foreign and security policy shall be put into effect by the High Representative of the Union for Foreign Affairs and Security Policy and by Member States, in accordance with the Treaties. The specific role of the European Parliament and of the Commission in this area is defined by the Treaties. The Court of Justice of the European Union shall not have jurisdiction with respect to these provisions, with the exception of its jurisdiction to monitor compliance with Article 40 of this Treaty and to review the legality of certain decisions as provided for by the second paragraph of Article 275 of the Treaty on the Functioning of the European Union.

The reference to 'specific rules and procedures' in Article 24(1) TEU is a form of expression holding that CFSP remains a distinct form of cooperation compared to EU external actions (Cremona, 2012: 51). This reference, *per se*, is not entirely explained by the Treaty, but the rest of the paragraph makes it clear why the CFSP is specific. By emphasizing the European Council, the Council and the HR, the CFSP has clearly acquired different nature. Based on Article 24(1) TEU, the European Council and the Council – in other words: the Member States – remain the main actors in CFSP/CSDP issues. Intergovernmentalism is further reinforced by the fact that foreign, security and defence related questions are voted unanimously. Interestingly, the requirement of unanimity as well as the exclusion of legislative acts are reiterated in Article 31(1) TEU.

The fact that EU Member States do not adopt legislative acts is, in some sense, a reiteration that there are no judicial tools to review the decisions within the framework of the CFSP. It also ensures that the Council, in particular the Foreign Affairs Council, can hold closed and confidential meetings. Otherwise, the Council is under legal obligation, based on Article 16(8) TEU, to meet in public when it deliberates and votes on legislative acts. Declaration 41 further declares 'in accordance with Article 31(1) of the Treaty on European Union, legislative acts may not be adopted in the area of the [CFSP]'. The exclusion of the adoption of legislative acts also refers to the distinction from the 'Community method' as it aims to eliminate ordinary and special legislative procedures from the CFSP (Eeckhout, 2011: 478). Legal acts are adopted by

ordinary and special legislative procedures involving at least the Parliament and the Council (Articles 289(1) TFEU and Art. 289(2) TFEU). CFSP decisions, however, cannot have legal effects in relations to third parties with direct applicability in the Member States. This means that regulations adopted under the TFEU cannot be compared with CFSP decisions given the lack of direct effect and the principle of primacy. The exclusion of legislative acts, therefore, can also be understood that CFSP acts do not have direct effect and do not prevail over national law (Eeckhout, 2011: 482).

Despite the consensus that CFSP retained most of its legal characteristics, traditional intergovernmentalism may oversimplify the nature of this policy area. Indeed, it was already argued that the CFSP has evolved "from a purely intergovernmental system based on consensus and international law into a fully-fledged system based on treaty law which includes institutions that operate under the rule of law and which have been given law-making powers" (Gosalbo Bono, 2006: 393). Peter Van Elsuwege also takes similar position by claiming "the CFSP [has transformed] from a purely intergovernmental system based on general international law into a fully integrated part of EU law" (Van Elsuwege, 2010: 998). Van Elsuwege bases his arguments on the observation that the CFSP is an integral and equivalent part of the EU's external actions and the fact that the CJEU does have some jurisdiction in the area of CFSP. Furthermore, the Lisbon Treaty limited the impact of the requirement of unanimity by widening the issues to be decided by qualified majority voting and it also strengthened enhanced cooperation in the field of CFSP (Van Elsuwege, 2010: 995-997), best demonstrated by the recent activation of the Permanent Structured Cooperation (PESCO) between 25 Member States.

The "specific role[s]" of the European Commission and the Parliament as well as the limited jurisdiction of the CJEU are further codified in other provisions. The European Commission clearly does not have an exclusive monopoly to submit proposals to the Council. Based on Article 30(1), it can only propose CFSP Decisions to the Council with the support of the HR.

The European Parliament is principally consulted by the HR. Article 36 TEU provides:

> The High Representative of the Union for Foreign Affairs and Security Policy shall regularly consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and the common security and defence policy and inform it of how those policies evolve. He shall ensure that the views of

> the European Parliament are duly taken into consideration. Special representatives may be involved in briefing the European Parliament.
>
> The European Parliament may address questions or make recommendations to the Council or the High Representative. Twice a year it shall hold a debate on progress in implementing the common foreign and security policy, including the common security and defence policy.

Thus the European Parliament is, in practical terms, excluded from CFSP/CSDP. Neither the HR nor the Member States are under legal obligation to take into account the opinion of the European Parliament.

Similarly, the CJEU is principally excluded from the area of CFSP. However, based on Article 24(1) TEU, the CJEU does have judicial powers to interfere in foreign, security or defence issues. First, the 'mutual non-affection clause' empowers the CJEU to scrutinize legislative actions by EU institutions to determine whether the implementation of the CFSP affects the application of non-CFSP external actions and vice versa. In other words, the CJEU plays key role in the delineation between external relations policies defined by two different treaties providing for different decision-making procedures. Article 40 provides:

> The implementation of the common foreign and security policy shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union competences referred to in Articles 3 to 6 of the Treaty on the Functioning of the European Union.
>
> Similarly, the implementation of the policies listed in those Articles shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union competences under this Chapter.

Thus, the distinct nature of the CFSP is reinforced by the 'mutual non-affection clause' as well, albeit within a unitary structure (Koutrakos, 2012: 189–90). Article 40 TEU is, however, different from its predecessor, Article 47 EU for a number of reasons.[52] Former Article 47 EU protected the primacy of the Community legal order. As AG Mengozzi argued, 'if an action

[52] Article 47 EU provided that 'nothing in this Treaty shall affect the Treaties establishing the European Communities or the subsequent Treaties and Acts modifying or supplementing them.'

could be undertaken on the basis of the EC Treaty, it must be undertaken by virtue of that Treaty'.[53] The Court of Justice confirmed the separation by declaring that the Union and the Community are 'integrated but separate legal orders'.[54] Thus, the EC Treaty had priority over CFSP powers, also meaning that EC legal bases should have been used where EC and CFSP objectives were equally important. The new article (1) separates policies and institutional powers instead of separating the two treaties, (2) aims at maintaining the 'special rules and procedures' of the CFSP by preserving the different 'procedures and the extent of the powers of the institutions' in the different areas of EU external actions, (3) no longer covers the Euratom Treaty, and (4) being a completely new paragraph, the second part of the article, with a more balanced approach, reciprocally protects the CFSP which can be seen as an implication of the equal value of the Two Treaties declared in Article 1 of both the TEU and TFEU. Article 40 TEU removes the Community priority but delimitation has not become easier between CFSP and other EU powers. One of the difficulties in finding the correct legal basis is that a single set of objectives has been determined for all external action (Cremona, 2012: 54–58; Eeckhout, 2011: 180–86). The Court of Justice faces an almost impossible duty in making the delimitation between the different areas of EU external actions (Van Elsuwege, 2010: 988).

The second area in which the CJEU can interfere is the judicial review of sanctions imposed against individuals and entities. Based on Article 275 TFEU, the CJEU can also review the legality of CFSP sanctions imposed against individuals and entities. Individuals continue to bring challenges against EU sanctions before the CJEU, covering cases of the use of inappropriate legal basis or the lack of evidence against certain individuals (Eckes, 2012: 2014).

The EU's competence to define and implement the CFSP/CSDP has remained vague compared to exclusive and shared competences of the EU. Article 1 TEU declares that the Member States have conferred competences on the EU to attain objectives they have in common. Under Articles 2-6, the TFEU specifies the nature of these competences. Exclusive competences under Article 2(1) TFEU refer to policy areas where "only the Union may legislate and adopt legally binding acts". Shared competence under Article 2(2) TFEU means that both the EU and the Member States may legislate and adopt legally binding acts but the Member States can exercise

[53] Case C-91/05 *Commission v Council* (2008) ECLI:EU:C:2008:288, Opinion of AG Mengozzi, para 116.
[54] Joined cases C-402/05 P and C-415/05 Yass*in Abdullah Kadi and Al Barakaat International Foundation v Council and Commission* (2008) ECLI:EU:C:2008:461, para 202.

their competence if and only if the EU has not exercised its competence. However, Article 2(4) TFEU gives less tangible answers concerning the EU's competence in CFSP/CSDP. It only declares '[t]he Union shall have competence, in accordance with the provisions of the [TEU], to define and implement a common foreign and security policy, including the progressive framing of a common defence policy'. It is clear that the EU does not have exclusive competences in CFSP/CSDP since these areas are not listed in Article 3(1) TFEU. It was not entirely clear, however, whether the EU has shared competence in CFSP/CSDP. One of the reasons to exclude CFSP/CSDP from the shared competences is the pre-emptive effect determined in Article 2(2) TFEU and the wish to indicate (again) the distinct nature of the CFSP from the 'communitarized' EU competences (Craig, 2004: 333; Eeckhout, 2011: 171). Thus, the CFSP can be considered as a sui generis competence that shares the key features of both shared and complementary competences (Cremona, 2008: 65). But it is still difficult to assess the precise nature of that competence (Cremona, 2003: 1354). Declarations 13 and 14 annexed to the Lisbon Treaty reaffirm the assumption that pre-emption does not apply to CFSP. Further, they indicate that the EU will not replace the Member States as international actors. Not categorizing CFSP as an exclusive, shared or supporting competence, the Treaty drafters have given the CFSP a separate status with the aim of developing its own identity but leaving the unanswered question of whether the principles of the 'supranational' EC Treaty – e.g. loyalty, direct effect or primacy – apply to the CFSP (Cremona, 2012: 53).

It is clear that the CFSP is an EU competence. However, the TFEU is silent on the precise nature of EU's competences in the fields of CFSP/CSDP. The Treaty drafters decided to define the peculiar nature of this competence in Article 24(1) TEU. The first paragraph of this provision provides:

> The Union's competence in matters of common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union's security, including the progressive framing of a common defence policy that might lead to a common defence.

Prior to the entry into force of the Lisbon Treaty, old Article 11(1) TEU determined specific CFSP objectives which had important roles in choosing the appropriate legal basis for external actions (Baere, 2008: 101–8; Denza, 2002: 130; Wessel, 1999: 50). The TEU now clearly

avoids precisely defining the issues that fall under the CFSP. The broad scope ("all areas of foreign policy") does not facilitate policy-makers' choices whether an issue falls under the CFSP or other EU external actions. A significant difference, however, can be seen between the totally undefined CFSP and the relatively precise definition of the CSDP (Eeckhout, 2011: 167–71). Article 24(1) TEU only stipulates that the CFSP covers all areas of foreign policy and extends to all questions relating to the Union's security. It is clear that the scope of the CSDP and its content are much more defined. According to Article 42(1) TEU, the CSDP provides the EU with an operational capacity drawing on civilian and military assets which can be used for peace-keeping, conflict prevention and strengthening international security. Article 42(2) TEU further specifies that the CSDP includes the progressive framing of a common defence policy if the European Council unanimously so decides. In addition, Article 43(1) TEU stipulates that the tasks include joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping and crisis-management. One of the consequences of the relatively undefined content of the CFSP and the introduction of overall objectives for EU external actions is that they make it more difficult to determine the scope of the CFSP.

The idea that CFSP acts do not affect the ability of the Member States to pursue a foreign policy based on national preferences originates in the intergovernmental nature of the EPC. However, the CFSP has increasingly moved closer to the Community legal order and has interacted with the EC within a unitary EU legal order (Hillion and Wessel, 2008: 79–80). Although Declarations 13 and 14 annexed to the Lisbon Treaty still confirm that the TEU provisions on CFSP, including the creation of the HR and the establishment of the EEAS will not affect the responsibilities and powers of the Member States, EU Member States are bound by the constitutional principles, such as the principle of loyalty, as well as by the acts adopted within the framework of the CFSP. In fact, the CFSP is not an à la carte and ad-hoc form of cooperation. According to Cremona, the principle of loyal cooperation, as expressed in Article 4(3) TEU, refers to both Treaties and "there is nothing to indicate that it would not apply to all Union policy fields, including the CFSP" (Cremona, 2012: 53). Cremona claims that the additional loyalty clause, Article 24(3) TEU, does not deviate from Article 4(3). The emphasis on the support of the CFSP in Article 24(3) "can be seen to counterbalance the fact that the Commission does not have enforcement powers in relation to the CFSP, rather than replacing the general loyalty clause"

(Cremona, 2012: 53). Peter van Elsuwege argues that Article 24(3) TEU may seem redundant compared to Article 4(3) TEU. However, he claims that the importance of this distinction should not be overestimated for four different reasons: (1) the EU's action in international affairs is steered by a single set of objectives and institutional framework, (2) Member States' sovereignty has been limited given that Article 28(2) TEU declares that once a CFSP decision is adopted, it will commit them in the positions they adopt and in the conduct of their activity, (3) Advocate Mazák has already assessed former Article 24(3) TEU by declaring that there is a strengthened obligation to act in good faith which is reflected in the straightforward wording – "shall support", "shall comply" and "shall refrain" – of current Article 24(3) TEU and (4) the Court's holistic approach – in the Pupino and Segi cases – in applying the general EU principles suggests that the importance of the distinction between Article 4(3) TEU and Article 24(3) TEU should not be overestimated (Van Elsuwege, 2010: 990-991).

Marcus Klamert argues that the principle of solidarity prevails in the CFSP which reflects the distinct nature of the CFSP. Article 24(3) TEU, the only reference to loyalty in the TEU and TFEU, obliges the Member States to "support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity". This article is often considered in the literature as the solidarity clause acting as the predominant concept on the CFSP. Article 21(1) declares that the Union action on the international scene shall be guided by the principle of equality and solidarity. In the same vein, Article 24(2) calls on the Union to "conduct, define and implement a common foreign and security policy, based on the development of mutual political solidarity among Member States". Article 32 TEU also provides also for mutual solidarity and a broad obligation to consult with other member states before "undertaking any action on the international scene or entering into any commitment which could affect the Union's interests" where the only sanction is peer pressure. The principle of solidarity "is rather a political than a legal concept" (Klamert, 2014: 40). Article 24(3) TEU is "not enforceable before the Court of Justice" which makes this principle "very much different from loyalty, which is the basis for distinct obligations for the Member States and which is enforceable before the Court of Justice" (Klamert, 2014: 40).

In the Pupino judgment, a trans-pillar application of the principle of loyalty may have emerged. In this case, an Italian kindergarten teacher was accused of having caused injuries to pupils.

The judge was asked to take testimonies from eight children within the framework of an exceptional procedure but the lack of sexual abuse prevented the launch of this special procedure. Given that the tribunal thought this was incompatible with Articles 2, 3 and 8 of Council Framework Decision 2001/220/JHA of 15 March 2001, it referred the case to the Court for a preliminary ruling. The primary question was whether an act taken on the basis of Title VI of the EU Treaty had the same effects as Community directives. The Court held that "[t]he binding character of framework decisions, formulated in terms identical to those of the third paragraph of Article 249 EC, places on national authorities, and particularly national courts, an obligation to interpret national law in conformity with Community law".[55] One of the implications of this judgment to the CFSP is that all national legislation, as far as possible, should comply with relevant CFSP acts and citizens should be able to take legal actions against their governments should they not ensure the enforcement of this legal principle (Baere, 2008: 208). The Court also rejected that the principle of loyalty would not apply to non-Community areas. It held that '[i]t would be difficult for the Union to carry out its task effectively if the principle of loyal cooperation, requiring in particular that Member States take all appropriate measures, whether general or particular, to ensure fulfilment of their obligations under European Union law, were not also binding in the area of police and judicial cooperation in criminal matters, which is moreover entirely based on cooperation between the Member States and the institutions.'[56] Thus, the Court suggested that the principle of loyalty can be applied outside the first pillar, possibly inclduing in the CFSP.

Prior to the entry into force of the Lisbon Treaty, the Council could choose between Joint Actions and Common Positions. The Court confirmed the binding character of a Common Position. In the *Segi* case, a Third Pillar Common Position was under examination, but the Court's findings might be transposed to the CFSP given that the Common Position was equally based on both CFSP and PJCC provisions. The Court held that "all measures adopted by the Council, whatever their nature or form, which are intended to have legal effects in relation to third parties"[57] must be subject to control by the Court of Justice and "requires the compliance of the Member States by virtue of the principle of the duty to cooperate in good faith, which means in

[55] Case C-105/03 *Criminal proceedings against Maria Pupino* (2005) ECLI:EU:C:2005:386, para 37.
[56] Case C-105/03 *Criminal proceedings against Maria Pupino* (2005) ECLI:EU:C:2005:386, para 42.
[57] Case C-355/04 P *Segi, Araitz Zubimendi Izaga and Aritza Galarraga v Council of the European Union* (2007) ECLI:EU:C:2007:116, para 53.

particular that Member States are to take all appropriate measures, whether general or particular, to ensure fulfilment of their obligations under European Union law".[58] Article 25 TEU replaces Joint Actions and Common Positions with decisions which can define actions to be undertaken by the Union or positions to be taken by the Union. Article 31 TEU stipulates that decisions are taken acting unanimously, except where the TEU provides otherwise. There are uncertainties concerning whether this refers to decisions in the sense of Article 288 TFEU though the ambiguity of the Treaty text may imply that the two types of decisions are not the same legal instruments (De Witte, 2008: 90). Given their non-legislative nature, they are not subject to the principles of Protocol 2, namely to subsidiarity and proportionality. Nor is the Council required to meet in public in accordance with Article 15(2) TEU because in foreign policy decision-making procedures, it does not vote on legislative acts. It is suggested, however, that once a CFSP decision has been adopted, it will limit, in accordance with Article 28(2), the freedom of the Member States in designing and implementing their individual policies (Eeckhout, 2011: 171; Van Vooren and Wessel, 2014: 382–94; Wessel, 2015: 4–5). Furthermore, Article 29 TEU declares that the Member States ensure that their national policies conform with Council decisions. Article 32 TEU stipulates that the Member States consult each other within the European Council and the Council on any matter of foreign and security policy of general interest. The Member States, according to Article 34(1) TEU, coordinate their action in international organizations and at international conferences and uphold the Union's positions in such forums. Where not all the Member States are represented, those which do take part uphold the Union's positions. Article 34(2) TEU further specifies that the Member States which are members of the UNSC will defend the positions and the interests of the Union.

The conclusion is that CFSP has clearly moved away from the early traditional intergovernmental concept of the EPC. Early attempts to establish a cooperation in foreign policy were only possible due to the ability of EC Member States to retain their competences in this field. Progressively, however, the CFSP turned into a formal policy area of the EU which was then further institutionalized by successive Treaty changes. EU Member States are now clearly more constrained by the provisions of the TEU than ever before. At the same time, the drafters of the Treaties sought to retain as many competences as possible and to remain the main actors of international relations and security. Thus, they have retained the right to formulate national

[58] ibid para 52.

foreign policies in certain cases, while they are constrained by primary and secondary EU law to go against common decisions reached in the Council.

3.3 The Limited Member State Freedom in EU Sanctions Policy[59]

In this subchapter, we will investigate the legal nature of EU sanctions policy and will contrast it with the CFSP. In fact, the use of economic and financial sanctions is principally an EU competence. The link between economic sanctions and the Common Commercial Policy, an EU exclusive competence, clearly limits the ability of the Member States to enact national measures. This, in turn, prevents Member States from pursuing a foreign and security policy which is merely based on national preferences. Due to the fact that EU Member States can enact national measures in sanctions policy in exceptional circumstances only, they are encouraged to reach a compromise at the EU level. Otherwise, the EU would not be capable of acting at the international level in the field of sanctions policy, thus raising questions of credibility which may further widen the famous capability-expectations gap (Hill, 1993).

Economic sanctions are often understood as commercial policy measures but are used to achieve foreign and security policy objectives (Maresceau, 2009; Portela, 2012, 2014). This dual nature of economic sanctions brought long and complex debates on whether the imposition of EC/EU restrictive measures fall within Member State or EC/EU competences. The root causes of this tension originates from the fact that while commercial policy has been a wide EC/EU competence, foreign and security policy has been dominated by the Member States. The dual nature of economic sanctions is still reflected in the Treaties and the imposition of restrictive measures follows the so-called two-step procedure (Beaucillon, 2014; Bohr, 1993: 265–68; Eeckhout, 2011: 503–6; Koutrakos, 2006: 428–33, 2015: 495–495; 504–8; Pieter Jan Kuijper et al., 2015: 215–16; Portela, 2012). This procedure entails the adoption of a Council Regulation on the basis of Article 215 TFEU which is preconditioned on a CFSP Decision based on Article 29 TEU. The establishment of this procedure was preceded by a number of legal

[59] This subchapter (3.3) is based on my book chapter published in 2019, see (Szép, 2019a). Please read a more comprehensive version of this chapter here: Szép V. (2019) Foreign Policy Without Unilateral Alternatives?. In: Varju M. (eds) Between Compliance and Particularism. Springer, Cham. https://doi.org/10.1007/978-3-030-05782-4_15

debates and, therefore, it is necessary to examine under the malleable constitutional configuration of EU external actions containing the separate rules of the CCP and CFSP how the interactions between the Member States and the law play out.

This subchapter explores the possibilites of the Member States to pursue domestically driven interests within the field of economic and financial sanctions. It demonstrates that Member States are seriously constrained by EU law in adopting measures of an economic nature at the domestic level in the field of sanctions policy. Thus, it also shows how EU Member States are always encouraged to apply sanctions collectively, otherwise, they would be unable to act collectively in the face of global threats.

3.3.1 The competences of imposing sanctions in the early days of European integration: the prevalence of EC Member States?

The Member States implemented UN Security Council Resolutions in quite different times and ways in the mid-1960s. In this initial period of sanctions policy, both the Member States and EC institutions considered the application of sanctions regimes as the 'reserved domain' of the Member States (Kuyper, 1975: 233–35). Given that the implementation of UN sanctions was considered as a foreign policy competence, EC Member States implemented international law obligations through national legislations on the basis of (current) Article 347 TFEU.[60]

In early 1980s, some Member States suggested to rely on (current) Article 207 TFEU – one of the provisions governing the EC's commercial policy – when imposing sanctions against Iran (Kuyper, 1982: 144–46). However, at the end of the foreign ministers meetings of April and May 1980, Member States rejected the use the EC's commercial competences and adopted national legislations to impose sanctions against Iran (Hill and Smith, 2002: 317–20). A few months later, the adoption of economic sanctions was carried out through a compromise solution consisting of a regulation adopted on the basis of (current) Article 207 TFEU which was preconditioned on an unanimously adopted political decision in the framework of EPC, a prac-

[60] Article 347 TFEU reads as follows: "Member States shall consult each other with a view to taking together the steps needed to prevent the functioning of the internal market being affected by measures which a Member State may be called upon to take in the event of serious internal disturbances affecting the maintenance of law and order, in the event of war, serious international tension constituting a threat of war, or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security."

tice used from 1982 until the entry into force of the Maastricht Treaty. EC Member States decided in early 1982 to reduce the imports from the USSR on the basis of (current) Article 207 TFEU[61] but was – for the first time in the EC history – based on a prior EPC foreign policy decision. The same procedure was applied against Argentina in April 1982 when a commercial policy measure was adopted on the basis of (current) Article 207 TFEU which had been underpinned by a prior EPC foreign policy decision.[62]

The possibilities for the Member States to adopt unilateral measures outside EC law was the subject matter of a number of key litigations before the Court of Justice. In fact, these cases pre-dated the practice under the Maastricht Treaty where it was acknowledged by subsequent treaty changes that the application of economic sanctions was an EC/EU competence. In *Werner*[63] and *Leifer*,[64] both of which concerning the export of dual-use goods, the Court principally ruled out the possibility to adopt unilateral commercial policy measures even if they pursue foreign and security policy measures. In *Werner*, the German authorities refused to issue a licence to export vacuum-induction smelting, cast oven and inductions spools to Libya on the ground that those goods jeopardized the foreign and security policy interests of the country. In *Leifer*, the German authorities brought criminal proceedings against three persons after having violated the Regulation on Foreign Trade. They delivered plant, plant parts and chemical products to Iraq between 1984 and 1988 without the necessary export licences. The annex attached to the Regulation on Foreign Trade provided that licence was required to export those goods. The Court of Justice was asked to rule on the question whether (current) Article 207 TFEU precluded national provisions on foreign trade requiring a licence for the export of dual-use goods. More particularly, the question was raised whether (current) Article 207 TFEU covers only measures with commercial policy objectives or its scope extends to commercial policy measures with foreign and security policy objectives.

[61] Council Regulation (EEC) 596/82 of 15 March 1982 amending the import arrangements for certain products originating in the USSR (1982) OJ L72/15
[62] Council Regulation (EEC) 877/82 of 16 April 1982 suspending imports of all products originating in Argentina (1982) OJ L102/1
[63] Judgment of 17 October 1995, *Fritz Werner Industrie-Ausrüstungen GmbH v Federal Republic of Germany,* Case C-70/94, ECLI:EU:C:1995:328.
[64] Judgment of 17 October 1995, *Criminal proceedings against Peter Leifer, Reinhold Otto Krauskopf and Otto Holzer,* Case C-83/94, ECLI:EU:C:1995:329.

The Court referred to Opinion 1/78[65] and considered that the implementation of commercial policy measures should be non-restrictive. Therefore, it argued that measures whose effect was to prevent or restrict the export of certain products could not be treated as falling outside the scope of the common commercial policy on the ground that they had foreign policy and security objectives. Even if EC Member States retained their competences in the field of foreign and security policy, they cannot adopt unilateral commercial policy measures given the EC's wide competences in this field. The Court argued that Article 11 of Council Regulation (EEC) No 2603/69 of 20 December 1969 allows some deviations from the common rules (e.g. on the ground of public security or protection of health) and measures of commercial policy were only acceptable if they fall within these exceptions.[66]

The awkward relationship between foreign and commercial policy and the scope of (current) Article 207 TFEU were raised in *Centro-Com*.[67] The Court of Justice was yet again asked to interpret (current) Article 207 TFEU, now in the light of a Council regulation prohibiting trade between the Community and the Republics of Serbia and Montenegro. This sanctions regime gave effect to UN Security Council Resolution 757 (1992) imposing sanctions against the Federal Republic of Yugoslavia (FYROM). This Resolution was implemented by Council Regulation (EEC) No 1432/92 of 1 June 1992 prohibiting trade between the European Economic Community and the Republics of Serbia and Montenegro. In accordance with UN Security Council Resolution 757 (1992), Article 1(b) of the Council Regulation prohibited the export to the Republics of Serbia and Montenegro of all commodities and products originating in or coming from the Community. However, as Article 2(a) provided, exception was applied to commodities and products intended for strictly medical purposes and foodstuffs if, in accordance with Article 3, prior authorization had been granted by the competent authorities of the Member States. After receiving the approval of the UN Sanctions Committee as well as the prior authorization of the Italian authorities, Centro-Com, a company governed by Italian law, exported fifteen consignments of pharmaceutical goods and blood-testing equipment from Italy to Montenegro. The

[65] Opinion of 4 October 1979, *Opinion given pursuant to the second subparagraph of Article 228(1) of the EEC Treaty - International Agreement on Natural Rubber*, Opinion 1/78, ECLI:EU:C:1979:224.
[66] Judgment of 17 October 1995, *Criminal proceedings against Peter Leifer, Reinhold Otto Krauskopf and Otto Holzer*, Case C-83/94, ECLI:EU:C:1995:329, paras 9-29; Judgment of 17 October 1995, *Criminal proceedings against Peter Leifer, Reinhold Otto Krauskopf and Otto Holzer*, Case C-83/94, ECLI:EU:C:1995:329, paras 9-30.
[67] Judgment of 14 January 1997, *The Queen, ex parte Centro-Com Srl v HM Treasury and Bank of England*, Case C-124/95, ECLI:EU:C:1997:8.

Bank of England had earlier noticed that it was willing to debit Serbian and Montenegrin accounts if exports served medical or humanitarian purposes and those exports were approved by the UN and the competent national authorities. The Bank of England, after having received application from a bank account held by the National Bank of Yugoslavia with Barclays Bank, authorized the payments of eleven consignments and transferred the amount to Centro-Com. The payment for the rest of the four consignments, however, was refused on the ground that the authorities had been misled about the description of the goods and the reliability of the documents. As a consequence, the Treasury decided that those goods could only be exported from the UK so that the authorities could exercise effective control over goods exported to FYROM. Further permission to debit Serbian and Montenegrin accounts was therefore refused.

The Court of Appeal, being uncertain of whether the action of the Treasury was compatible with (current) Article 207 TFEU and the sanctions regulations, referred the question to the Court of Justice for a preliminary ruling. It first examined the relationship between measures of foreign and security policy. Referring to the fact that the Member States retained their power to exercise control over foreign and security policy, the UK argued that it acted within the limits of its own competences. However, the Court referred to the principle established in *Werner*, that those competences should have been exercised in a manner consistent with EU law and respected the acts and rules adopted under (current) Article 207 TFEU.[68] Then, the Court examined the scope of the commercial policy and the relevant acts pursuant to (current) Article 207 TFEU. According to the UK Government, the restrictions on the release of funds did not constitute measures falling within the scope of the common commercial policy. The Court, however, held that those measures should be compatible with Council Regulation (EEC) No 2603/69 of 20 December 1969 establishing common rules and exports. More particularly, the Court's opinion was that the exported goods remained subject to the Export Regulation. While Article 1 of the Export Regulation prohibited quantitative restrictions on exports, Article 11 accepted derogations, *inter alia*, on the ground of public security or public morality. The Court found that the release of Serbian or Montenegrin funds as payment for legally exported goods restricted the principle of freedom to export at the Community level which was equivalent to a quantitative restriction.[69] A further question was whether the UK could invoke Article 11 of the

[68] ibid paras 23-30.
[69] ibid paras 31-42.

Export Regulation on the ground of its public security. The Court was of the opinion that the recourse to that article could not be justified since the sanctions regulation authorized the export of medical products to FYROM. It concluded there was nothing to suggest that the system provided for by Article 3 of the sanctions regulation had not functioned properly.

It can be seen that unilateral Member State actions were often accepted in the initial period of sanctions policy. However, as the case law shows, a number of legal questions was raised after witnessing the development of commercial policy. In this period, we moved from unilateral actions to the (partial) acceptance that economic sanctions could not be separated from the principles underpinning commercial policy. Acknowledging that economic sanctions were linked with an exclusive EC competence had profound consequences on unilateral Member State action. Even before the entry into force of the Maastricht Treaty, the law indicated that the EC had extensive powers in the application of trade measures, even if they had foreign or security policy objectives.

3.3.2 The Maastricht Treaty and further competence related questions

The Treaty codified the 'two-step procedure' that had been in use before the adoption of the Maastricht Treaty. Recourse to Article 228a EC (301 EC from Amsterdam) – which allowed the interruption or reduction of economic relations with one or more third countries – was made conditional upon adopting a corresponding decision in the framework of the CFSP.[70] The scope of this provision principally covered the prohibition of imports and exports and sanctions on transport services. In accordance with the procedure provided for in Article 228a EC, Article 73g EC[71] (Article 60 EC since Amsterdam) was used to prohibit financial transactions with the target state.[72] Furthermore, the introduction of a Community law obligation was a response to the dilemma that had affected decision-making in the previous decades concerning whether the Community or the Member States should implement UN Security Council Resolutions

[70] Article 228a provided: '[w]here it is provided, in a common position or in a joint action adopted according to the provisions of the Treaty on European Union relating to the common foreign and security policy, for an action by the Community to interrupt or to reduce, in part or completely, economic relations with one or more third countries, the Council shall take the necessary urgent measures. The Council shall act by a qualified majority on a proposal from the Commission.'

[71] Article 73g(1) provided: 'If, in the cases envisaged in Article 228a, action by the Community is deemed necessary, the Council may, in accordance with the procedure provided for in Article 228a, take the necessary urgent measures on the movement of capital and on payments as regards the third countries concerned.'

[72] see (Koutrakos 2001)

(Kuijper, 2003; Kuyper, 1993; Lenaerts and De Smijter, 1998: 447–49), a legal problem that had existed since the 1970s (Kuyper, 1975). The introduction of specific legal bases was also unavoidable as the EU and the Member States had to ensure that they are able to comply with their obligations under international law in a situation where the Member States were bound individually by UN Security Council resolutions, including sanctions decided at the international level, but competences for commercial policy were with the Union (Kuijper, 2003; Kuyper, 1975; Piet J. Kuyper, 1993; Lenaerts and De Smijter, 1998).

Although the EU has now extensive competences to adopt economic sanctions, the Member States are still allowed, under certain conditions, to adopt trade measures at national level. Indeed, in an early case, the question of applying unilateral trade embargo was addressed by the Court. Greece, which strongly objected the idea of a unified Macedonia and its use of symbols after the breakup of Yugoslavia, applied an embargo against the former Republic of Macedonia (FYROM) in February 1994 covering all goods except for food and pharmaceutical products. While the number of European countries was growing in recognizing the new independent state, Greece perceived the symbolic politics of Macedonia as an attack against its territorial integrity and decided to take unilateral trade measures against that Republic. In response, the Commission almost immediately brought an action against Greece on the ground that it failed to fulfil its obligations under (current) Article 207 TFEU and under secondary law vis-à-vis imports to and exports from the Community. In its defence, the Greek Government referred to earlier practice of sanctions policy, including measures taken against Southern Rhodesia in the 1960s when recourse to (current) Article 347 was widely accepted by the Council and the Commission as well as the Member States. It also based its argument on the wording of (current) Article 347 TFEU which required only prior consultation and omitted references to consequences.

AG Jacobs considered that the trade measures of Greece were incompatible with Community law obligations. The Member States surrendered their power to adopt unilateral trade measures restricting trade vis-à-vis third states. Moreover, a measure, irrespective of its purpose, affecting trade with a non-member country falls within the scope of (current) Article 207. Besides, Greece failed to demonstrate, in accordance with (current) Article 347 TFEU, that civil disturbances would have truly taken place without the introduction of trade embargo. It only made vague and unsubstantiated arguments about disturbances of public order. Greece was, therefore, not entitled to invoke (current) Article 347 TFEU on that ground. However, AG Jacobs argued

that there were no judicial applicable criteria which would have enabled the Court to assess the nature of international tensions and the threat of war. The Court could not adjudicate on the substance on the dispute between Greece and FYROM. The absence of judicial applicable criteria led AG Jacobs to conclude that it would have been wrong to rule that Greece could not have invoked (current) Article 347 TFEU on the ground that there had been no serious international tension constituting a threat of war. It was further added that (current) Article 347 TFEU was a recognition that the Member States retained their competences in the formulation of their own foreign policy. They could still decide, based on their foreign and security policy interests, whether they want to recognize third states and what sort of relationship they sought to establish with them. AG Jacobs suggested to dismiss the application of the Commission by concluding that the embargo introduced by Greece affected only a tiny percentage of the total volume of Community trade with low perceptible impact on competition in the Community.

Despite that AG Jacobs delivered a fairly positive opinion to Greece, the option to promote Member State particularism through the use of Article 347 TFEU may be severely limited for several reasons. Indeed, the Court confirmed its 'wholly exceptional character'[73] which can only be invoked in extremely serious situations going beyond existing exceptional clauses defined by the Treaties. Article 347 TFEU is designed to maintain a 'reserve of sovereignty' for states, sovereign subjects of international law, in order to protect their sovereignty in exceptional cases by taking individual measures which bypass the procedures laid down in the Treaties. Also, collective sanctions cannot, in principle, be justified on the basis of Article 347 TFEU. It would be contrary to the Treaties as the Member States would be able to eschew Article 215 TFEU, a competence established to impose EU-wide sanctions. Furthermore, the implementation of UN sanctions could not be justified either by relying on Article 347 TFEU because they had abandoned the practice of unilateral implementation decades ago and created specific legal bases in order to comply with their international law obligations. The 'inter-pillar' procedure would also be undermined in cases where only a number of Member States invoke Article 347 TFEU. It would be tantamount of misusing the powers of the EU if a group of Member States bypassed the procedures established by the Treaties (Koutrakos, 2000: 1342)

[73] Judgment of 15 May 1986, *Johnston*, Case 222/84, ECLI:EU:C:1986:206, para. 27.

Under certain conditions, the Member States are still able to pursue their own national preferences in accordance with their foreign and security policy objectives. However, as could be seen, unilateral actions in the area of economic sanctions are strictly limited. Recourse to Article 347 TFEU is not only restricted because its use would be tantamount to altering the constitutional configuration of EU sanctions policy. The unilateral imposition of trade measures is also limited because Article 347 TFEU can only be invoked under specific circumstances. As it stipulates, measures can only be adopted "in the event of serious internal disturbances affecting the maintenance of law and order, in the event of war, serious international tension constituting a threat of war, or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security". If these requirements are not fulfilled, the Member States are not entitled to invoke that Article and, therefore, need to negotiate the measures they seek to establish with each other, in accordance with Article 215 TFEU, at the EU level.

3.4 Actors and Policy-Making in EU Foreign and Sanctions Policy

This subchapter seeks a better understanding on actors and policy-making procedures in EU foreign and sanctions policy. First, it shows how EU foreign-policy making is traditionally understood, and, more importantly, contrasts it with the case of EU sanctions imposed against Russia (see also subchapter 4.1). Second, due to the inextricable link between CFSP and sanctions policy, both policy domains are presented and contrasted with one other. It shows the similarities and differences between the CFSP and sanctions policy in this regard.

More importantly, this subchapter is contrasted with chapter 4.1. The main argument here is the role of the European Council in (foreign) policy-making should be revisited. According to the old wisdom, which will be demonstrated in this subchapter, the European Council determines the overall objectives of EU (external actions) and provides strategic objectives for it. However, as the case of the sanctions imposed against Russia shows, the role of the European Council has changed in the last couple of years. Chapter 4.1 will show that while the European Council has retained its traditional role, it is now involved in day-to-day policy-making more than ever. In the field of sanctions, this means that the Conclusions adopted after European Council meetings now explicitly contain policy instruments – such as sanctions – which are expected to be

implemented by other EU institutions. The novelty is not that the European Council is involved in EU external relations; in fact, EU Heads of State and Government have always shaped EU foreign policy. They, however, are now explicitly formulating policy proposals with the expectation that other EU institutions, notably the Commission and the Council, comply with their demands.

3.4.1 Actors in EU Foreign and Sanctions Policy

According to the old wisdom, there is a clear distinction between the European Council and the Council in terms of their responsibilities in (foreign) policy-making processes. The European Council provides guidelines and adopts strategic decisions in the EU. The Conclusions adopted after European Council meetings work as compasses: they show the goal to be achieved but EU institutions are left free to determine how to achieve a particular policy objective. Therefore, the Council is free to decide, according to this old wisdom, which policy instrument is best to achieve the objective laid down in the Conclusions adopted by EU Heads of State and Government.

This is precisely what John Peterson famously described as the framework of analysis in EU policy-making procedures (Peterson, 1995: 71; Peterson and Bomberg, 1999: chap. 1). Based on this traditional understanding, three different levels are distinguished:

1. *History-making decisions* determine the ways in which the EU operates by changing EU treaties or by specifying its long-term priorities. These decisions are taken at the highest political level, at a 'super-systemic' level, with the aim, among others, of altering the EU's legislative procedures, rebalancing the power relationship between EU institutions or changing the EU's remit. History-making decisions can take three principal forms: they may revise the EU's treaties as a result of an intergovernmental conference (IGC), they can be taken by the Heads of State or Government in the European Council to initiate broad, strategic decisions about the EU's agenda, priorities and finances or they may be the result of legal decisions provided by the Court of Justice which can make history by setting out the limits of the EU's powers.
2. *Policy-setting decisions* are taken at a 'systemic' level – e.g. in the Council – with the aim of determining different policy alternatives. The question often asked at this level

is: what should be done? Occasionally, however, history-making and policy-setting decisions are not neatly separated and the difference between them may become blurred. The European Council is sometimes involved in detailed decisions, for example, on milk quotas or expenditure. Yet, most of the time, the Heads of State or Government focus on questions that transcends day-to-day EU policy procedures.

3. *Policy-shaping decisions* determine, rather than decide, policy details and are taken by Council working groups, national civil servants or the Commission. In other words, once a political decision has been reached, experts start to work out the technical aspects of that decision (Peterson, 1995: 71; Peterson and Bomberg, 1999: chap. 1).

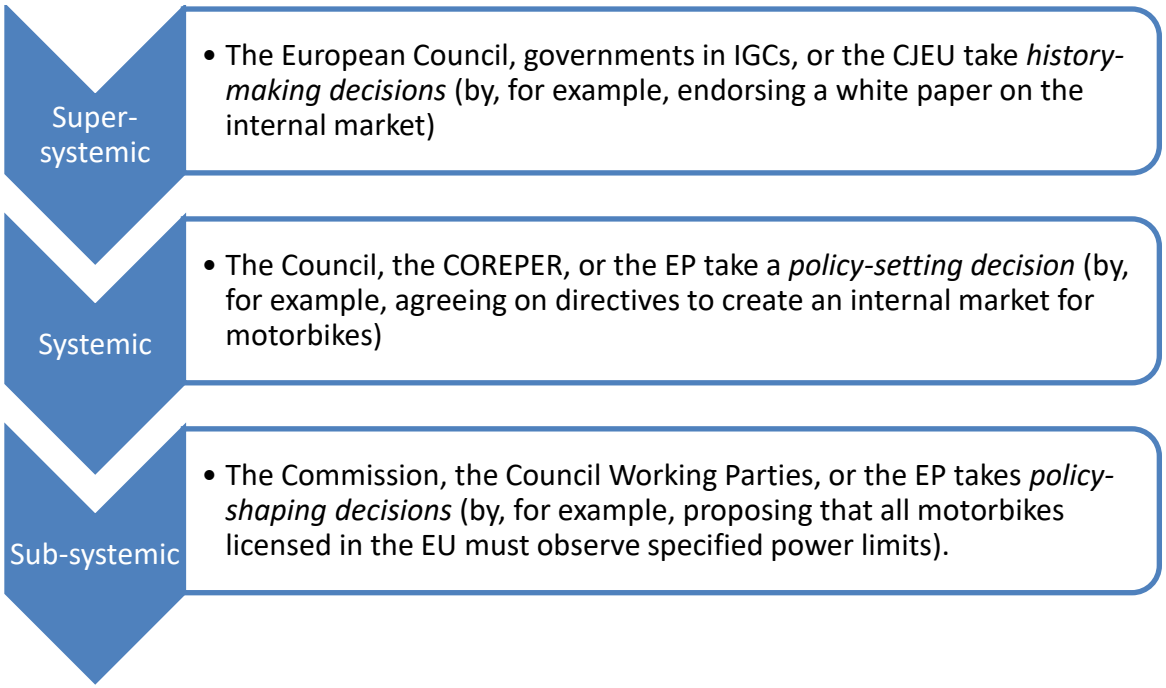

Figure 1: Peterson's and Bomberg's (linear) model of EU decision-making (Peterson and Bomberg, 1999: 5)

While Peterson's framework for analysis offers a powerful insight to understand EU policy-making procedures, including EU foreign policy-making, his model, as will be shown in chapter 4.1, is no longer valid in EU sanctions policy. The main difference in today's policy-making procedures is that the European Council took over the role of the Council. EU Heads of State

are involved in EU policy-making procedures more than ever. Since the entry into force of the Lisbon Treaty, they are now *explicitly determining the policy tool* to be adopted by legislative institutions. In the area of sanctions, the European Council explicitly states in its Conclusions that sanctions, as a specific policy instrument, need to be adopted by the Council. In other words, the Council, at least in these cases, does not have the freedom to determine which policy tool is best to attain a certain objective. In these cases, the Council can only determine the technical and legal details of a particular sanctions regime. However, it cannot go against the will of the European Council in the sense that it must adopt sanctions.

The reasons that led to the increased importance of the European Council are detailed in Chapter 4.1. Suffice to say here that the European Council is involved in EU sanctions policy more than ever. EU Heads of State and Government are *explicitly* calling on other EU institutions, notably the Commission and the Council, to adopt sanctions regimes. This research does not make the argument that the European Council is a new actor in EU external actions. EU Heads of State and Government have always expressed their preferences on EU foreign policy. The novelty is that the Conclusions adopted by them now contain *specific policy proposals* (instead of general policy directions) which are then expected to be adopted by the Council.

Before showing how the case of Russian sanctions deviates from the traditionally understood policy-making mode, this section shows how EU foreign-policy making works. It focuses on the European Council and the Council but also other traditional actors (such as the Commission or Parliament) as well as relatively new bodies (such as the EEAS) which will also be presented.

3.4.2 European Council

Although it was only the Lisbon Treaty that codified the existence of the European Council into primary EU law, regular meetings between Heads of State and Government have been held since 1975. The European Council, based on Article 15(2) TEU, brings together EU Heads of State and Government of the Member States, including its own president and the European Commission's president as well as the High Representative of the Union for Foreign Affairs and Security Policy. Article 15(3) and the Rules of Procedure of the European Council also make clear that EU leaders hold a meeting twice every six months (European Council, 2016). Foreign ministers do not participate in the meetings since the entry into force of the Lisbon Treaty. However, they were replaced by the HR who, according to Article 15(2) TEU, takes

part in every meeting. Article 15(5) provides that the president of the European Council is elected for two-and-a-half-year term which is renewable one time. Herman Van Rompuy, the first full-time president was re-elected by the Member States, just as Donald Tusk, current president of the European Council. Prior to the establishment of the position of the first permanent president, it was chaired by the head of government of the country which held the rotating presidency. The president of the European Council, based on Article 15(6) TEU, has four main tasks to fulfil: he/she chairs the European Council and drive its work forward, he/she ensures the preparation and continuity of the work of the European Council in cooperation with the President of the Commission, and on the basis of the work of the GAC, he/she facilitates cohesion and consensus within the European Council. Finally, he/she presents a report to the EP after each meeting of the European Council.

Article 15(1) TEU determines one of the main responsibilities of the European Council. It provides:

> The European Council shall provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof. It shall not exercise legislative functions.

A similar general obligation can be found in Article 22(1) TEU, a provision located in the general provisions on EU's external actions, which provides:

> […] the European Council shall identify the strategic interests and objectives of the Union.

Based on Article 22(1) TEU, the European Council can adopt Decisions but, generally, it carries out its responsibilities by adopting 'Conclusions' after its meetings. As Article 15(1) TEU provides, Decisions are not legally binding instruments but they are politically important. In fact, the European Council sets out the future policy direction of the EU, including both 'internal' and 'external' dimensions as well. The main responsibilities of the President are detailed in Article 15 of the TEU: one of the main tasks is to "ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the powers of the High Representative of the Union for Foreign Affairs and Security Policy". In practice, it was visible, for instance, at high-level meetings, such as the G8 or G20 meetings

where, along with the President of the European Commission, Herman van Rompuy always appeared to represent the Union (Keukeleire and Delreux, 2014: 64).

Article 26(1) TEU provides that the European Council "[identifies] the Union's strategic interests, determine[s] the objectives of and define[s] general guidelines for the [CFSP], including for matters with defence implications. It [adopts] the necessary decisions". In practice, almost every European Council meeting was followed by a Conclusion containing guidelines on EU external actions. These guidelines may trigger actions to be taken by the HR/Commission and the Council in the field of CFSP/CSDP. The latter two institutions determine the policy measures to be taken based on the general guidelines provided by the European Council. The second paragraph of Article 26(1) TEU is inserted so that the President of the European Council is able to convene extraordinary meetings if international developments require actions at the highest political level of the EU.[74]

The European Council is clearly a key institution in foreign policy formulation. Several articles from the TEU refer to CFSP/CSDP issues. First, the European Council identifies the strategic interests and objectives of the Union (Article 22 of the TEU). Second, it is responsible for defining general guidelines and adopting decisions for CFSP/CSDP issues (Article 26 TEU). If necessary, the President of the European Council may convene an extraordinary meeting to solve international crisis (Article 26 TEU). Third, member states determine common approach within the European Council and the Council on any matter of foreign and security policy (Article 32 TEU). Fourth, Article 42 of the TEU declares that common defence policy can be brought into action provided that the European Council acts unanimously (Article 42 TEU).

3.4.3 Council

Article 16(1) TEU provides that the 'Council […], jointly with the [EP], exercise[s] legislative and budgetary functions. It [carries] out policy-making and coordinating functions as laid down in the Treaties'. It is consisted, based on Article 16(2) TEU, of 'a representative of each Member State at ministerial level, who may commit the government of the Member State in question

[74] It provides : "If international developments so require, the President of the European Council shall convene an extraordinary meeting of the European Council in order to define the strategic lines of the Union's policy in the face of such developments."

and cast its vote'. Although the Lisbon Treaty gives a narrow definition of the Council by referring only to ministers, the Council is also often described as a layered organization where the ministers are only one, although highly important, level of decision-making. Often, decisions may be taken at other levels depending whether the representatives of each Member State are able to agree on a certain policy issue. Decisions can also be taken by the COREPER (*Comité des Représentants Permanents*) or by other senior preparatory bodies while acknowledging the dozens of working groups which support the legislative work of the Council.

Article 16(6) provides that the Council meets in different configurations, two of which are predefined by the Lisbon Treaty:

> The General Affairs Council shall ensure consistency in the work of the different Council configurations. It shall prepare and ensure the follow-up to meetings of the European Council, in liaison with the President of the European Council and the Commission.
>
> The Foreign Affairs Council shall elaborate the Union's external action on the basis of strategic guidelines laid down by the European Council and ensure that the Union's action is consistent.

Apart from the GAC and FAC, eight other configurations exist. These are decided upon by the European Council with two-third majority of the Member States. Clearly, the FAC is the most important platform to design and adopt decisions with regard to CFSP/CSDP. The FAC is generally composed of Ministers of Foreign Affairs but EU Member States can decide to replace them with a Minister or Deputy Minister for European Affairs. Defence ministers also join the FAC works twice a year. The FAC, quite exceptionally, is chaired by the HR instead of the rotating presidency. Yet, "where [it is] necessary, [the HR may] ask to be replaced by the member of that configuration representing the Member State holding the six-monthly Presidency of the Council" (European Council, 2016).

The PSC (Political and Security Committee or *Comité politique et de sécurité*) is a key preparatory committee for CFSP/CSDP. It was setup in 2001. Article 38 TEU provides:

> a Political and Security Committee shall monitor the international situation in the areas covered by the common foreign and security policy and contribute to the definition of policies by delivering opinions to the Council at the request of the Council or of the High Representative of the Union or Foreign Affairs and Security Policy or on its own initiative. It shall also monitor the implementation of agreed policies, without prejudice to the powers of the High Representative.
>
> Within the scope of this Chapter, the Political and Security Committee shall exercise, under the responsibility of the Council and of the High Representative, the political control and strategic direction of the crisis management operations referred to in Article 43.
>
> The Council may authorise the Committee, for the purpose and for the duration of a crisis management operation, as determined by the Council, to take the relevant decisions concerning the political control and strategic direction of the operation.

The PSC delivers its opinions in CFSP/CSDP, coordinates, supervises and monitors all the working groups which deal with CFSP questions and examines the draft conclusions of the GAC. The PSC also sends guidelines to the Military Committee (EUMC). The Nicolaidus Group, which is the equivalent of the Antici and Mertens Group, is responsible for preparing the meetings of the PSC.

Article 26(2) TEU provides "the Council [frames] the [CFSP] and [takes] the decisions necessary for defining and implementing it on the basis of the general guidelines and strategic lines defined by the European Council". The Treaty of Lisbon states that only 'decisions' can be adopted by the Council. The replacement of joint actions and common positions, however, does not mean that the old distinction is completely abandoned (Eeckhout, 2011: 470). The Council, on the basis of Article 28(1) TEU, '[adopts] the necessary decisions. [These decisions] lay down their objectives, scope, the means to be made available to the Union, if necessary their duration, and the conditions for their implementation'. Article 28(2) TEU states that once a decision has been adopted, EU Member States are obliged to take it into account when they conduct their own foreign policies. Article 29 TEU, however, provides that the Council '[adopts] decisions which [define] the approach of the Union to a particular matter of a geographical or thematic nature. Member States [ensure] that their national policies conform to the Union positions'.

It should be noted, as mentioned above, that (foreign) ministers are not the only actors capable of adopting acts necessary for the formulation of EU foreign policy. The level of decision-making depends on the sensitivity of the issue in question. In general, ministers are needed where more legitimacy or authority is needed to adopt a certain decision. However, the role of the COREPER, or even Working Parties, should not be underestimated. Article 240(1) TFEU defines the role of the COREPER. It provides:

> 1. A committee consisting of the Permanent Representatives of the Governments of the Member States shall be responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the latter. The Committee may adopt procedural decisions in cases provided for in the Council's Rules of Procedure.

The COREPER divides the agenda into two parts: if it is able finish a discussion then it sends the particular question as an 'A' item to the ministers' agenda indicating that an agreement is reached and needs no further debate at the ministerial level. Any item can be reopened to the request of any Member State. Agenda 'B' items are sent to the ministerial level due to the failure to reach an agreement at the COREPER or Working Party level or the issue concerned is too sensitive to be taken at lowest levels. Nevertheless, it is estimated that 70-75 per cent of issues are decided at the Working Party level (Simon, 2013: 112). The importance of the COREPER is specified by an ambassador who argued that: "if we have to take it to the Council, there is a sense that we have failed" (Peterson and Helwig, 2017: 316). COREPER meets in two formats: while COREPER II includes the ambassadors, COREPER I is comprised of deputies. Though the main aim of the COREPER is clearly to put national interest on the table, the European Commission also takes part at the sessions.

Given the intergovernmental nature of CFSP, the Council is undeniably at the centre of policy-making and has, jointly with the European Council, a leading role in the formulation of EU foreign policy. The Council is led by foreign ministers who may act autonomously or, on the basis of the guidelines of the European Council, follow EU leaders' instructions. Whatever the situation is, EU leaders determine the overall strategic framework whereas the Council chooses between different policy options and adopts tools which best serve the overall strategic framework of the EU defined by the European Council.

3.4.4 Commission

In EU external actions, the Commission's role does not differ from other policy areas in terms of its right to initiate proposals for legislative purposes. In most cases, the Commission submits a proposal which is then negotiated by the Council and/or the European Parliament. In CFSP/CSDP, however, the Commission clearly lacks the monopoly to submit (non-legislative) proposals. Article 24(1) TEU provides that:

> The specific role of the European Parliament and of the Commission in this area is defined by the Treaties.

Article 30(1) TEU further specifies that proposals cannot be submitted by the Commission alone. The Commission is, in fact, only one actor of the many that can submit proposals. Article 31(1) TEU provides that:

> Any Member State, the High Representative of the Union for Foreign Affairs and Security Policy, or the High Representative with the Commission's support, may refer any question relating to the common foreign and security policy to the Council and may submit to it, respectively, initiatives or proposals.

Declaration 14 annexed to the Treaties further reaffirms that the Member States sought to limit the role of the Commission in CFSP/CSDP issues. It provides that

> The Conference also notes that the provisions covering the Common Foreign and Security Policy do not give new powers to the Commission to initiate decisions nor do they increase the role of the European Parliament.

Another important responsibility of the Commission is the external representation of the EU. Article 17(1) TEU provides:

> With the exception of the [CFSP], and other cases provided for in the Treaties, it shall ensure the Union's external representation.

Here as well, the Commission's right to represent the interests of the Union is largely reflected in the Union's competences conferred by the Member States in the different fields of EU external relations. Thus, the Commission represents the EU in areas which fall within the exclusive

competences, such as trade or competition policy. A recent example was the negotiation between US President Donald Trump and European Commission President Jean-Claude Juncker.[75] In areas of exclusive competences, such as trade or customs union, the Commission represents the Union externally. International agreements, based on Article 218 TFEU, are usually negotiated by the European Commission while the role of the Council is limited to authorization of negotiations and adopting negotiation Directives and conclusions. In the area of shared competences, both the Commission and the Member States have the competences to represent. In the area of CFSP, both the President of the European Council and the HR/VP can represent the EU. The difference is that the former represents the EU at the level of Heads of State and Government, whereas the latter represents the EU at the ministerial level.

3.4.5 HR/VP and the European External Action Service

The EEAS was established after the entry into force of the Lisbon Treaty. It was established by Council Decision 2010/427/EU according to which

> EEAS will support the High Representative, who is also a Vice-President of the Commission and the President of the [FAC], in fulfilling his/her mandate to conduct the [CFSP] of the Union and to ensure the consistency of the Union's external action as outlined, notably, in Articles 18 and 27 TEU. The EEAS will support the High Representative in his/her capacity as President of the [FAC], without prejudice to the normal tasks of the General Secretariat of the Council. The EEAS will also support the High Representative in his/her capacity as Vice-President of the Commission, in respect of his/her responsibilities within the Commission for responsibilities incumbent on it in external relations, and in coordinating other aspects of the Union's external action, without prejudice to the normal tasks of the Commission services.[76]

Based on Article 13 TEU, the EEAS is not an institution of the EU which reduces its power to shape decision-making procedures. The EEAS is an autonomous body, separate from the Council and the Commission and is placed under the autonomy of the HR. The EEAS was established

[75] Trump set for trade tug-of-war with EU's Juncker, *BBC*, 24 July 2018
[76] Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service (2010) OJ L 201

with a view to increase the coherence of EU external actions while leaving the competences of Member States unaffected in the field of international relations. In other areas, such as development policy or external energy policy, both the EEAS and the Commission were given different responsibilities while commercial policy has remained the sole competence of the Commission.

Closely linked to the EEAS is the existence of the currently 139 EU delegations in the world. They represent the Union in third countries and at international organizations (Article 221(1) TEU). These delegations are placed, similarly to the EEAS, under the authority of the HR and they must act in close cooperation with the diplomatic and consular missions of the member states (Article 221(2) TEU). They are also charged with formulating and implementing a common approach (Article 32 TEU), exchanging information, carrying out joint assessments and defining the EU's positions and actions and contributing to the protection of every EU citizen in the territory of third countries (Article 35 TEU).

The HR, appointed by the European Council and approved by the President of the Commission, conducts the CFSP/CSDP (Article 18(2) TEU). The FAC is the only Council configuration in which the incumbent rotating Presidency does not take its seat. Instead, the HR presides over the FAC (Article 18(3) TEU). The HR, on the other hand, is one of the Vice-Presidents of the European Commission. This phenomenon is often referred to as 'double-hatted' due to his/her positions in both the Council and the Commission. The HR is a bridge between the intergovernmental Council and the supranational Commission. She/he coordinates every aspects of EU external actions (Article 18(4) TEU).

The responsibilities of the HR are defined in different provisions of the TEU and can be divided into four different areas: decision-making, implementation, representation and consistency (Keukeleire and Delreux, 2014: 77–81). The HR may submit initiatives with regard to the CFSP/CSDP (Article 30 TEU) and has to regularly inform the EP and ensure that the EP's view is duly taken (Article 36 TEU). She/he is also charged with the implementation of the CFSP decisions (Article 27(1) TEU). The HR represents the Union before third parties and articulates the positions of the EU in international fora (Article 27(2) TEU). Finally, the HR, along with the Council and the Commission, is responsible for ensuring consistency between the different

areas of the EU's external action (Article 21(3) TEU). The HR – and the Council – ensure(s) the unity, consistency and effectiveness of actions taken by the Union (Article 26(2) TEU).

3.4.6 European Parliament

The traditional view on the power of the European Parliament regarding CFSP/CSDP is that it has relatively small influence on the outcome of the decisions. Indeed, the competences of the European Parliament in foreign, security and defence policy have remained weak. However, as in the case for the Commission, its impact largely varies depending on whether an issue falls within EU or Member States competences. In commercial policy, for instance, the EP has co-legislative status whereas international agreements cannot be concluded without the consent of the MEPs.

In CFSP/CSDP, the European Parliament is regularly consulted by the HR (Article 36 TEU). One of the most important committees in this regard is the Committee on Foreign Affairs (AFET). It works closely with four committees of which two are its subcommittees: the Sub-committee on Human Rights (DROI) is in charge of the protection of human rights outside the EU and the Subcommittee on Security and Defence (SEDE) is responsible for scrutinising the working of the CSDP. Two other important committees can be connected to the external actions of the EU: first, International Trade (INTA) has become an important committee of the EP since trade agreements can only be accepted with the consent of the EP; second, Development (DEVE) is responsible for international development around the world. Given their budgetary leverage, Budgets (BUDG) and Budgetary Control (CONT) have also become important actors in shaping the external aspects of the EU.

EP delegations have become key foreign policy actors. Based on Article 212 of the Rules of Procedure, the European Parliament, on a proposal from the Conference of Presidents, sets up interparliamentary delegations and determines their nature and the number of members who are elected for the duration of the parliamentary term. There are currently 41 delegations which maintain relations and exchange information with parliaments located in third countries. Joint Parliamentary Committees, provided for by Article 214 of the Rules of Procedures, are charged with elaborating and working on association agreements or accession negotiations with third

states. Parliamentary Cooperation Committees are involved in negotiations related to the development of the European Neighbourhood Policy (European Parliament, 2019). Delegations are particularly keen to acquire knowledge on human rights protection and democratic progress.

The EP has two major instruments to exert its influence in EU external actions. First, the EP has consent power in the area of international agreements. The EP has veto power over several types of international agreements: association agreements, cooperation agreements, financial protocols, trade agreements, etc. Given that the European Commission is aware of the possibility that the European Parliament may reject an international agreement, the former is encouraged to take into account the views of the MEPs. Otherwise, the European Parliament may reject international agreements as it happened in the case of the Anti-Counterfeiting Trade Agreement (ACTA). This was the first case after the entry into force of the Lisbon Treaty in which the majority of the MEPs decided to withdraw their support from an international agreement (European Parliament, 2012). The second major instruments in the hands of the MEPs is their budgetary power regarding foreign policy instruments. One of such well-known cases was the EP's initiative to establish the European Instrument for Democracy and Human Rights in 1994 and the MEPs' subsequent willingness to increase the funds available for it (Keukeleire and Delreux, 2014: 85–88).

3.4.7 The Court of Justice of the European Union

Article 19 TEU provides that the CJEU ensures 'that in the interpretation and application of the Treaties the law is observed'. With regard to CFSP/CSDP issues, however, the CJEU has been virtually excluded. Article 24 TEU provides that the CJEU 'shall not have jurisdiction with respect to [the TEU provisions on CFSP/CSDP]'. Article 275 TFEU reiterates that the CJEU 'shall not have jurisdiction with respect to the provisions relating to the [CFSP] nor with respect to acts adopted on the basis of those provisions'. The exclusion of the CJEU was not introduced by the Lisbon Treaty: the Maastricht Treaty also made it clear that the judicial review of foreign policy measures is prohibited under EU law.

There are, however, two exceptions in which the decisions made by the CJEU are relevant regarding to the Common Foreign and Security Policy. First, the Court have jurisdiction to monitor compliance with Article 40 of the TEU which means that the conduct of foreign policy cannot have impact on the procedures and the powers of the institutions [Art 40 of the TEU].

Second, and more importantly, the CJEU – in accordance with the fourth paragraph of Article 263 TEU – can review the legality of restrictive measures against natural or legal persons]. In other words, a person or entity may submit a request and challenge the Council's decision in accordance with the conditions laid down in Article 275(2) and Article 263(4) and (5) TFEU. This latter power of the CJEU was introduced before the Treaty of Lisbon: one of the most well-known cases is the judgement regarding the Kadi case in which the Court annulled a Council regulation freezing the funds and assets of the Saudi Arabian businessman.[77]

3.4.8 Policy-Making in EU Foreign and Sanctions Policy

The EU adopts sanctions in order to attain the objectives laid down in Article 21 TEU. Article 21(1) TEU provides that

> The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

Article 21(2) TEU enumerates several objectives for EU external actions and provides that:

> The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to:
>
> (a) safeguard its values, fundamental interests, security, independence and integrity;
> (b) consolidate and support democracy, the rule of law, human rights and the principles of international law;
> (c) preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders;

[77] Joined cases C-402/05 P and C-415/05 Yassin Abdullah Kadi and Al Barakaat International Foundation v Council and Commission (2008) ECLI:EU:C:2008:461

(d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;
(e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;
(f) help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;
(g) assist populations, countries and regions confronting natural or man-made disasters; and
(h) promote an international system based on stronger multilateral cooperation and good global governance.

The Lisbon Treaty thus defines a set of overall objectives for EU external actions instead of setting out specific CFSP and non-CFSP objectives. It may seem that the scope of the CFSP can no longer be determined but Piet Eeckhout argues that the objectives laid down by Article 21(2) TEU can be clearly divided. Objectives (d) to (g) refer to areas such as trade or development policy, objective (c) concerns the preservation of peace or international security falling within CFSP competences, while objectives (a), (b), and (h) are of cross-sectoral nature. Sanctions are often imposed to attain objectives (b) and (c) (Eeckhout, 2011: 169).

Proposals for restrictive measures are submitted to the Council in the forms of Council Decisions and Regulations. Draft legal acts are submitted by the HR/EEAS and/or the European Commission. The reason the latter is also involved is that restrictive measures are not only CFSP issues. Indeed, proposals for sanctions covering trade or economic areas fall within EU competences and are thus drafted by Commission officials (Giumelli, 2019). The political aspects and the parameters of the restrictive measure are discussed in the relevant regional working party. In the case of Eastern European countries, this is the Working Party on Eastern Europe and Central Asia. Any discussion on the restrictive measures in a working party is assisted by sanctions experts from the EEAS and officials from the Commission and the Council Legal Service. If necessary, the PSC deliberates on the proposal and provides political orientation to the working parties concerned, especially on the type of measures selected for further proceedings. If it is indispensable, the Heads of Missions – who work in the state concerned – are

invited to provide their advice on the sanction. Furthermore, the Commission services provide advice on measures which fall under the competence of the Union.

All legal, technical and horizontal characteristics of the sanctions are discussed by the RELEX which is also a working party of Foreign Relations Counsellors. The EEAS proposes Council Decision concerning restrictive measures covering mostly arms embargoes and travel bans. However, Council Regulation defining the specific measures falling under the competence of the Union is proposed by the Commission. Both Council Decisions and Regulations are presented in RELEX for discussion. The two legal acts should be submitted to COREPER and formally adopted by the Foreign Affairs Council at the same time. The Council first adopts a CFSP Decision under Article 29 TEU. If this CFSP Decision provides for the reduction or interruption of economic or financial relations, the Council adopts sanctions on the basis of Article 215 TFEU.

In summary, the provisions of the Lisbon Treaty leave the impression that the negotiations on sanctions are only conducted in the Council. This research, however, raises the argument that the European Council has promoted itself to ultimate-decision maker in EU sanctions policy. As it will be shown in the next chapter, the European Council not only make strategic decisions and sets out the future of the EU but is, more than ever, involved in day-to-day policy-making. This research does not argue that the European Council is a new actor in EU foreign policy. It recognizes that it has always been part of EU external actions. It does argue, however, that EU Heads of State and Government are now explicitly stating in the Conclusions (adopted after 'EU summits') that sanctions must be imposed against third actors which it never did before the entry into force of the Lisbon Treaty.

4. The European Union Reacts to the Ukrainian Crisis[78]

4.1 Sanctions in Three Phases and the Leading Role of the European Council

The previous subchapter (3.4) showed how foreign policy-making in the EU is traditionally understood. In this understanding, the Council is in the dominant position with EU foreign ministers where day-to-day policy-making is designed, whereas the European Council determines the basic strategic framework under which the EU operates its foreign policy. One of the reasons for this shift is the decreasing importance of foreign ministers. (Lehne, 2015). EU Heads of State and Government are now, more than ever, involved in day-to-day foreign policy, including the right to decide on the imposition of sanctions against third actors.

The European Council has promoted itself as the ultimate decision-making institution in EU sanctions policy for more than a decade. Indeed, the case of the EU's sanctions imposed against Russia was one of the first episodes in which EU leaders explicitly called on other EU institutions, notably in the Conclusions, to impose sanctions against third actors. It should be noted here that the European Council has always insisted on determining the basic directions of EU foreign policy. The novelty, however, is that EU Heads of State and Government now explicitly refer to sanctions, as specific foreign policy instruments, in their Conclusions and expect the Commission and the Council to prepare the necessary legislative acts with a view to impose sanctions against a particular actor (Szép, 2019b: 2).

This change in EU foreign policy-making can easily be linked with the wider trend in EU politics. Indeed, this new role of the European Council is completely in line with New Intergovernmnetalism, as proposed mainly by Uwe Puetter. The main observation of New Intergovernmentalism is that the European Council has become the centre of political gravity since the entry into force of the Maastricht Treaty but especially since the Lisbon Treaty. Its traditional role, in which it provided general political guidance on the future of the EU, has remained intact. But the European Council now manages day-to-day policy-making as well. It now often insists on making final decisions on sensitive (foreign) policy issues implying that decisions in key areas in the Council can only be taken if political agreement had been reached between EU

[78] This chapter is partly built on my previous article published, see: (Szép 2019b)

Heads of State and Government (Fabbrini and Puetter, 2016; Puetter, 2012, 2015, 2016; Szép, 2019b: 2–3).

More than ever, the European Council interferes in the formulation of EU restrictive measures. This research collected all Conclusions adopted by the European Council since 1993. Based on an overview and analysis of these Conclusions, it is possible to make the argument that EU Heads of State and Government almost never referred to sanctions, as a specific tool of foreign policy, let alone instructed other EU institutions to adopt such measures. If the term 'sanctions' did appear in these Conclusions, they served the purpose of acknowledging that restrictive measures were imposed by the foreign ministers or that they implemented UN sanctions through the EU framework due to international law obligations. Since the entry into force of the Lisbon Treaty, however, there were at least four cases in which the European Council explicitly called on the Commission and the Council to adopt sanctions: before the Iranian nuclear deal, during the Syrian civil war and the Ukrainian crisis as well as after the Salisbury attack (Szép, 2019b: 3).

It should be noted that the imposition of sanctions may, in certain cases, still be possible without the agreement of EU Heads of State and Government. The example of the Venezuela sanctions of 2017 clearly shows the lack of interest of the European Council. In this latter case, only the Council made the decision to impose sanctions. This does not mean, however, that the argument presented on the rising importance of the European Council should be rejected. Uwe Puetter himself admits that one is unable to predict which issues attract the attention of the Heads of State and Government (Puetter, 2015: 181). Thus, instead of forecasting, this research only highlights the trend whereby the European Council is ready to take initiatives, take away the competence to decide and demonstrate its authority in the EU policy-making machinery.

The following paragraphs on policy-making in sanctions policy demonstrate that the European Council orchestrated the restrictive measures against Russia. On 20 February 2014, the Council held an extraordinary meeting to open dialogue between the Member States on the situation in Ukraine. The Council expressed its dismay at the deteriorating situation in its Eastern neighbourhood. It asked the relevant Council Working Parties to prepare targeted sanctions against those responsible for the use of excessive force, violence and human rights violations while the Member States agreed to suspend export licences on equipment and reassessed export licences

for equipment covered by Common Position 2008/944/CFSP (Council of the European Union, 2014). On 3 March 2014, the Foreign Affairs Council was reconvened for another extraordinary meeting to discuss the situation in Ukraine. The Council condemned the violation of Ukrainian sovereignty and territorial integrity by Russia as well as the use of armed forces in the neighbourhood. The EU and its Member States decided to suspend their participation in the preparation for the G8 Summit taking place in Sochi and envisaged the suspension of bilateral talks with Russia on visa matters and the New comprehensive agreement which could have replaced the current Partnership and Cooperation Agreement (PCA).

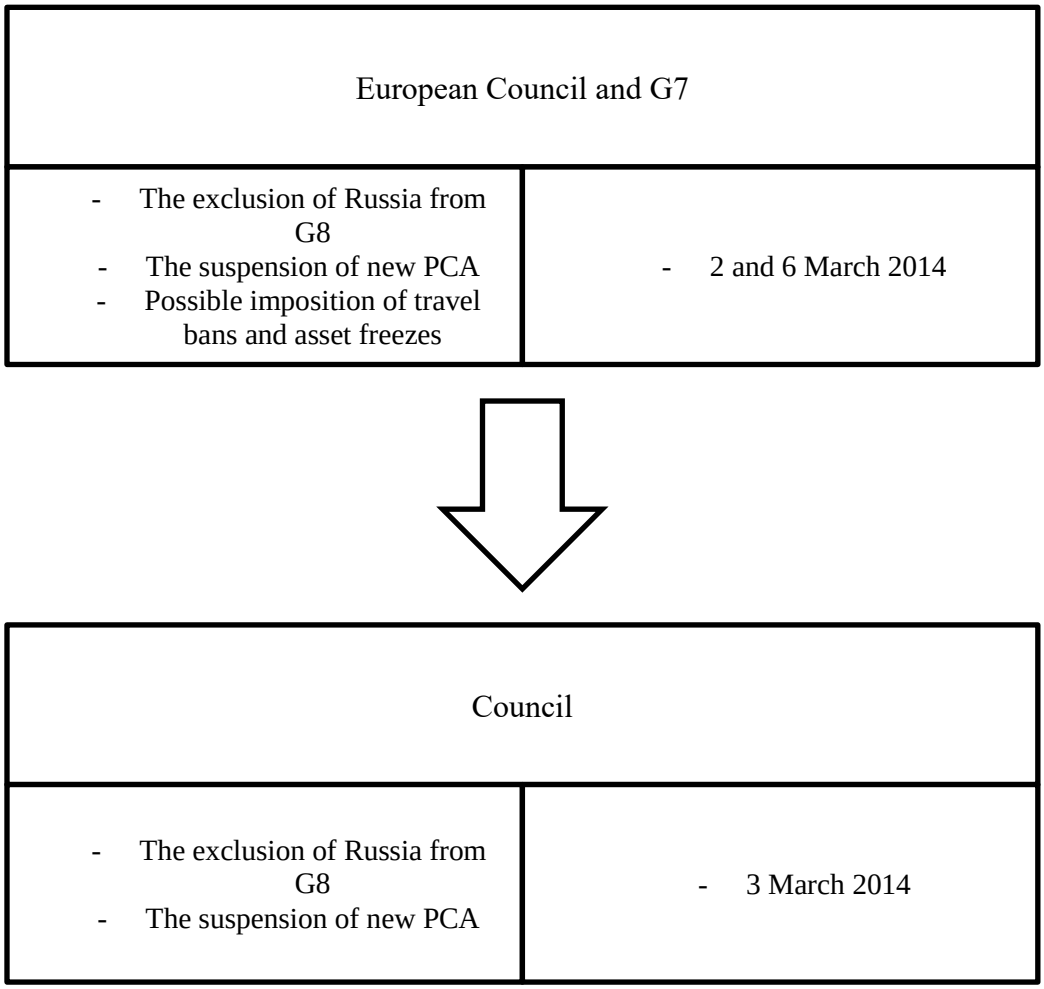

Figure 2: the European Council asks for sanctions I. (Szép, 2019b: 4)

The first set of restrictive measures decided within the framework of the Common Foreign and Security Policy (CFSP) was adopted on 5 March 2014. Decision 2014/119/CFSP provides for the freezing of funds and economic resources of 18 persons responsible for the misappropriation of Ukrainian State funds or for human rights violations.[79] An extraordinary meeting between Heads of State or Government was also convened on 6 March 2014 which declared that – in the absence of negotiations – they would ask the Commission and the European External Action Service (EEAS) to prepare targeted sanctions including travel bans and asset freezes (European Council, 2014d). On 17 March 2014, the Council approved further measures by adopting Decision 2014/145/CFSP which provided for travel restrictions and for the freezing of funds of 21 additional persons identified as responsible for undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.[80] Following a meeting of the European Council taking place on 20 and 21 March 2014, the Council amended Decision 2014/119/CFSP by adding further 12 names to the list.[81] The European Council decided to cancel the forthcoming EU-Russia Summit and agreed that Member States would not hold regular bilateral summits. The Heads of State or Government asked the Commission and the Member States to further prepare possible targeted measures that would be imposed, should the situation worsened (European Council, 2014). In view of the gravity of the situation, the Council reinforced its restrictive measures vis-à-vis four persons identified as responsible for misappropriation of state funds[82]

[79] Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (2014) OJ L 66; Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (2014) OJ L 78

[80] Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (2014) OJ L 78; Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (2014) OJ L 78

[81] Council Implementing Decision 2014/151/CFSP of 21 March 2014 implementing Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (2014) OJ L 86/30; Council Implementing Regulation (EU) No 284/2014 of 21 March 2014 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (2014) OJ L 86

[82] Council Implementing Decision 2014/216/CFSP of 14 April 2014 implementing Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (2014) OJ L 111; Council Implementing Regulation (EU) No 381/2014 of 14 April 2014 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (2014) OJ L 111

and expanded the travel ban and asset freeze to 15 persons identified as responsible for undermining the territorial integrity, sovereignty and independence of Ukraine.[83]

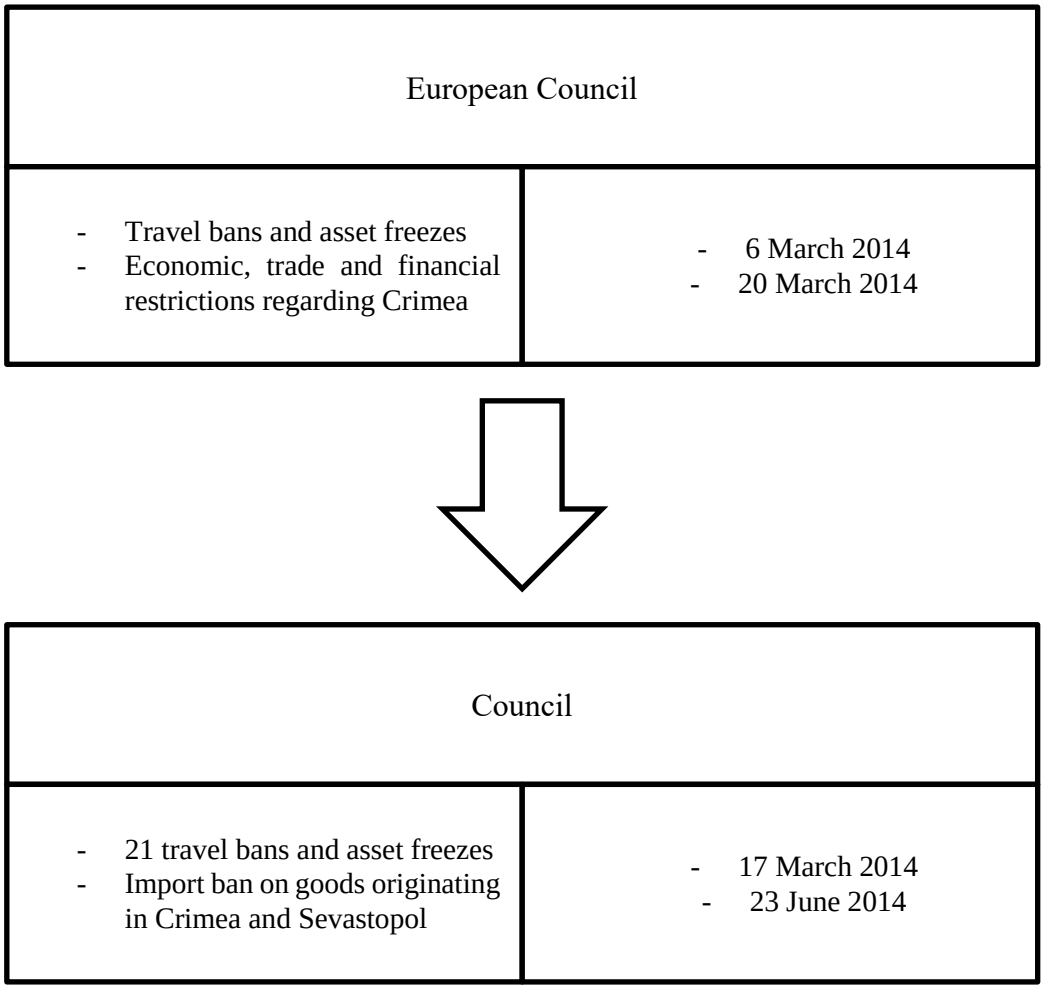

Figure 3: the European Council asks for sanctions II. (Szép, 2019b: 5)

On 12 May 2014, the Council – in line with the policy of non-recognition of the illegal annexation of Crimea – amended the listing criteria of travel restrictions and asset freezes. Travel ban should apply to persons responsible for "actively supporting or implementing actions or policies

[83] Council Implementing Decision 2014/238/CFSP of 28 April 2014 implementing Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (2014) OJ L 126; Council Implementing Regulation (EU) No 433/2014 of 28 April 2014 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (2014) OJ L 126

which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine, or stability or security in Ukraine, or which obstruct the work of international organisations in Ukraine".[84] The same amendments were applied to asset freezes with the extension to "legal persons, entities or bodies in Crimea or Sevastopol whose ownership [was] transferred contrary to Ukrainian law, or legal persons, entities or bodies which [were] benefited from such a transfer".[85] Thus, travel restrictions and asset freezes were extended to 13 new persons and 2 entities.[86]

On 23 June 2014, the Council adopted Decision 2014/386/CFPS which provides for the prohibition of the import into the Union of goods originating in Crimea or Sevastopol and the provision of financial assistance, insurance and reinsurance, related to the import of such goods.[87]

On 26-27 June 2017, the Heads of State or Government committed themselves to adopting further sanctions unless concrete steps were taken by Russia. These steps included agreement on a verification mechanism monitored by the OSCE, the return of three border checkpoints, the release of hostages and the launch of negotiation on the implementation of a peace plan (European Council, 2014b). However, in view of the gravity of the situation, travel ban and asset freeze were expanded on 11 July 2014 to 11 persons identified as responsible for undermining the territorial integrity, sovereignty and independence of Ukraine.[88] On 16 July 2014, the Heads of State or Government decided to expand sanctions to entities that are materially or financially supporting actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (European Council, 2014c).[89] In view of the decision taken in the

[84] Council Decision 2014/265/CFSP of 12 May 2014 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (2014) OJ L 137
[85] ibid.
[86] ibid.; Council Regulation (EU) No 476/2014 of 12 May 2014 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (2014) OJ L 137
[87] Council Decision 2014/386/CFSP of 23 June 2014 concerning restrictions on goods originating in Crimea or Sevastopol, in response to the illegal annexation of Crimea and Sevastopol (2014) OJ L 183; Council Regulation (EU) No 692/2014 of 23 June 2014 concerning restrictions on the import into the Union of goods originating in Crimea or Sevastopol, in response to the illegal annexation of Crimea and Sevastopol (2014) OJ L 183
[88] Council Decision 2014/455/CFSP of 11 July 2014 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (2014) OJ L 205; Council Implementing Regulation (EU) No 753/2014 of 11 July 2014 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (2014) OJ L 226
[89] European Council conclusions on external relations (Ukraine and Gaza) n.d.

European Council, the Council amended previous decision on 18 July 2014 to target legal persons, entities or bodies that are materially or financially supporting actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.[90] The European Council asked the Council to adopt a legal instrument by the end of July 2014 that would serve as a legal base for listing new persons under the enhanced criteria. The Heads of State or Government tasked the European Investment Bank to suspend the signing of new financing operations in Russia and the Member States would coordinate with the European Bank for Reconstruction and Development with a view to adopt a similar position. The Commission was tasked to reassess EU bilateral and regional cooperation programmes with Russia and possibly suspend them (European Council, 2014c).

After the downing of Malaysia Airlines MH17, the Member States asked for the acceleration of the preparation of sanctions agreed at the European Council meeting of 16 July 2014 and tasked the Commission and the EEAS to prepare further significant targeted measures (Council of the European Union, 2014). On 25 July 2014, on previous requests by the European Council and the Foreign Affairs Council, the Council amended the listing criteria to allow for the registration of natural or legal persons actively providing material or financial support to, or benefitting from, the Russian decision-makers and added 15 further persons and 18 entities identified as responsible for undermining and threatening the territorial integrity, sovereignty and independence of Ukraine.[91]

On 30 July 2014, eight persons and three entities were added to the list subjected with asset freeze and travel restrictions.[92] Furthermore, the Council prohibited the sale, supply or transfer of key equipment and technology for the creation, acquisition or development of infrastructure

[90] Council Decision 2014/475/CFSP of 18 July 2014 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (2014) OJ L 214; Council Regulation (EU) No 783/2014 of 18 July 2014 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (2014) OJ L 214

[91] Council Decision 2014/499/CFSP of 25 July 2014 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (2014) OJ L 221; Council Regulation (EU) No 811/2014 of 25 July 2014 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (2014) OJ L 221

[92] Council Decision 2014/508/CFSP of 30 July 2014 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (2014) OJ L 226; Council Implementing Regulation (EU) No 826/2014 of 30 July 2014 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (2014) OJ L 226

projects in transport, telecommunications and energy sectors in Crimea and Sevastopol. The Council also applied restrictions on key equipment and technology for the exploitation of oil, gas and minerals in Crimea and Sevastopol. Finance and insurance services related to such transactions were also prohibited.[93] On 31 July 2014, the Council prohibited the transactions in or the provision of financing or investment services or dealing in new bonds or equity or similar financial instruments with a maturity exceeding 90 days issued by state-owned Russian financial institutions with over 50% of public ownership or control (Sberbank, VTB Bank, Gazprombank, Vnesheconombank, Rosselkhozbank). The Council prohibited the sale, supply, transfer or export to Russia of arms and related material of all types, dual-use items for military use listed in Annex I to Council Regulation (EC) No 428/2009 or to military end-users in Russia and export of certain sensitive goods and technologies if they are destined for deep water oil exploration and production, arctic oil exploration and production or shale oil projects. [94]

[93] Council Decision 2014/507/CFSP of 30 July 2014 amending Decision 2014/386/CFSP concerning restrictions on goods originating in Crimea or Sevastopol, in response to the illegal annexation of Crimea and Sevastopol (2014) OJ L 226; Council Regulation (EU) No 825/2014 of 30 July 2014 amending Regulation (EU) No 692/2014 concerning restrictions on the import into the Union of goods originating in Crimea or Sevastopol, in response to the illegal annexation of Crimea and Sevastopol (2014) OJ L 226

[94] Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (2014) OJ L 229; Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (2014) OJ L 229

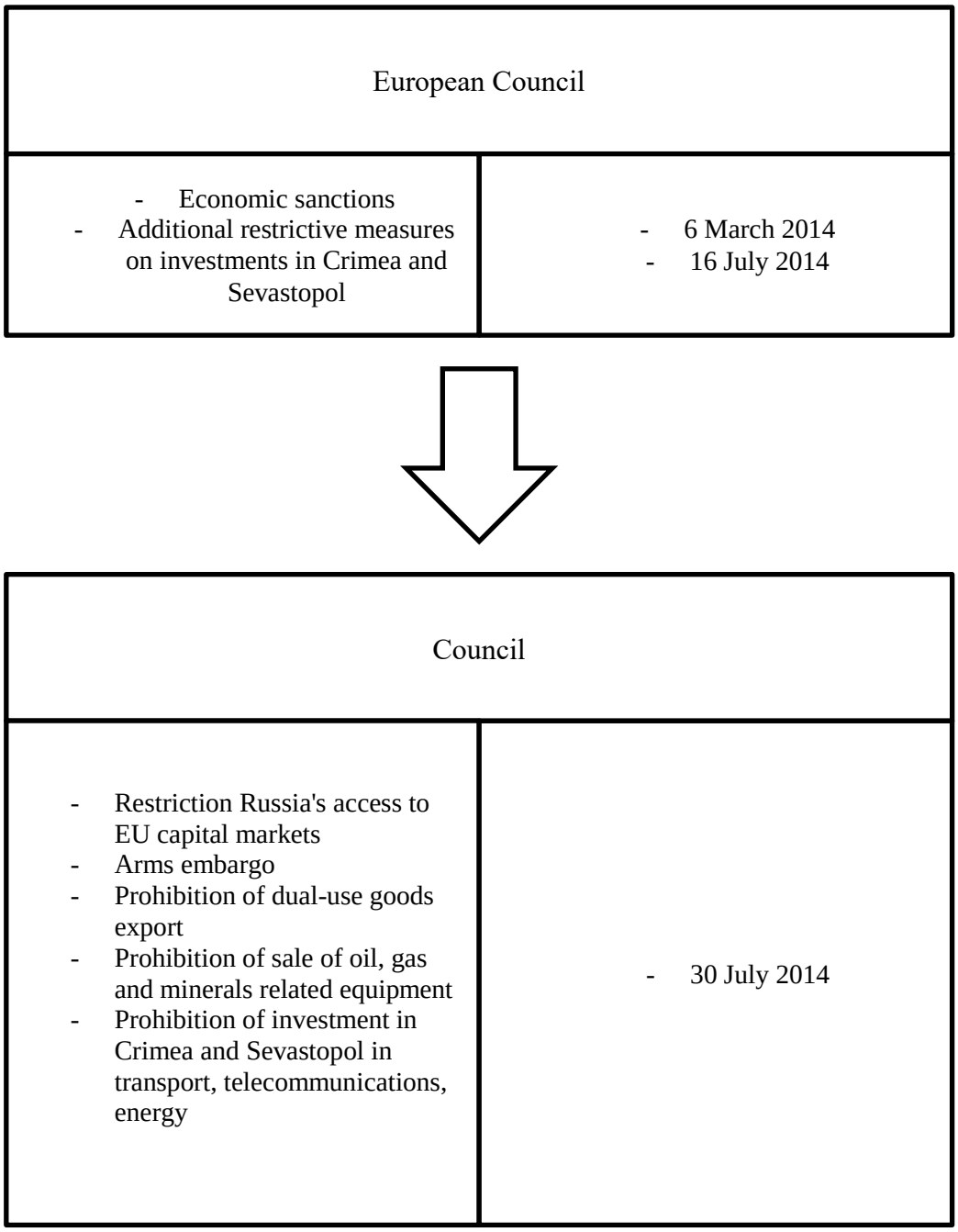

Figure 4: the European Council asks for sanctions III. (Szép, 2019b:6)

On 8 September 2014, the Council adopted a decision to expand sanctions in order to target individuals or entities conducting transactions with separatist groups in the Donbass region and thus added 24 further persons to its travel restriction and asset freeze.[95] Furthermore, the Council amended its previous decision concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine. It was prohibited to purchase or sale of provision of investment services for or assistance in the issuance of, or any other dealing with bonds, equity, or similar financial instruments with a maturity exceeding 30 days for major credit institutions or finance development institutions in Russia with over 50% of public ownership or control (Sberbank, VTB Bank, Gazprombank, Vnesheconombank, Rosselkhozbank). The Council also applied restrictions on the purchase or the sale of provision of investment services for, or assistance in the issuance of, or any other dealing with bonds, equity, or similar financial instruments with a maturity exceeding 30 days to entities engaged with activities in the conception, production, sales or export of military equipment or services. This restriction applies to three major Russian Defence companies (OPK Oboronprom, United Aircraft Corporation and Uralvagonzavod). The same restriction applies to entities publicly controlled or with over 50% of public ownership with total assets of over 1 trillion Russian Roubles whose revenues originate for at least 50% from the sale or transportation of crude oil or petroleum products. This restriction covers three major energy companies (Roseneft, Transneft and Gazprom Neft). Providing related services (e.g. brokering) was also prohibited. It was also prohibited to provide new loans or credit with a maturity exceeding 30 days to any legal person, entity or body to such organisations. The Council made restrictions on the sale, supply, transfer or export of dual use goods and technology as included in Annex I to Regulation (EC) No 428/2009 to 9 mixed defence companies (JSC Sirius, OJSC Stankoinstrument, OAO JSC Chemcomposite, JSC Kalasknikov, JSC Tula Arms Plant, NPK Technologii Maschinostrojenija, OAO Wysokototschnye Kompleksi, OAO Almaz Antey and OAO NPO Bazalt).[96]

[95] Council Decision 2014/658/CFSP of 8 September 2014 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (2014) OJ L 271; Council Regulation (EU) No 959/2014 of 8 September 2014 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (2014) OJ L 271

[96] Council Decision 2014/659/CFSP of 8 September 2014 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (2014) OJ L 271; Council Regulation (EU) No 960/2014 of 8 September 2014 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (2014) OJ L 271

After asking the EEAS and the Commission to present further proposals on new sanctions (Council of the European Union, 2014b), the Council considered on 28 November 2014 that additional 13 persons and 5 entities should have been listed.[97]

On 18 December 2014, the Council prohibited the acquisition or extension of participation in real estate, the acquisition or extension of a participation in entities, the granting of any financing to entities or for the documented purpose of financing entities, the creation of any joint venture with entities and the provision of investment services directly related to such activities in Crimea and Sevastopol. The restriction to sell, supply, transfer or export of goods and technology was extended to the prospection, exploration and production of oil, gas and mineral resources. Technical assistance or brokering in transport, telecommunications, energy sectors and the prospection, exploration and production of oil, gas and mineral resources were banned. It was also prohibited to provide services directly related to tourism activities in Crimea and Sevastopol and to provide cruise services and to enter into or call at any port situated in the Crimean Peninsula.[98]

The EU has extended many times its sanctions regime since 2015 but these extensions will not be detailed. Suffice to say here once again that the aim of the chapter was to show how the European Council was an unavoidable actor before major decisions were reached at the EU level. Without a prior political agreement between EU Heads of State and Government, the Council would not have been able to act due to the sensitive nature of the decisions.

[97] Council Decision 2014/855/CFSP of 28 November 2014 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (2014) OJ L 344; Council Implementing Regulation (EU) No 1270/2014 of 28 November 2014 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (2014) OJ L 344

[98] Council Decision 2014/933/CFSP of 18 December 2014 amending Decision 2014/386/CFSP concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol (2014) OJ L 365; Council Regulation (EU) No 1351/2014 of 18 December 2014 amending Regulation (EU) No 692/2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol (2014) OJ L 365

4.2 The Minsk Agreements: the Roles of France and Germany in the Extension of EU Sanctions

This chapter raises two important arguments on the roles of "big" EU Member States. First, France and Germany undeniably played an important role in handling the Ukrainian crisis and during the conclusions of different peace plans. Neither Germany nor France or the EU were, however, involved in the first Minsk Protocol. Yet, as the first Minsk Protocol did not produce results, a new format was needed, which was later called the Normandy format '[t]o give the new format more authority, the agreement was negotiated with the top leaders of all participating states personally' (Kostanyan - Meister, 2016: 2). This does not mean, however, that their willingness to impose sanctions against Russia would have been sufficient to reach a compromise in EU institutions. Nevertheless, they provided the necessary political authority to conduct negotiations with Russia on a peace deal. The latter often sees the EU as a "weak power" and seeks to have an equal footing with other States.

Second, an argument strongly interrelated to the first claim, the second Minsk Agreement negotiated by France and Germany became the basis for modifying the sanctions regime. EU Heads of State and Government decided, on a proposal from the European Council President Donald Tusk, to link the economic sanctions to the full implementation of the Minsk Agreement in March 2015. EU leaders also agreed to assign a specific role to Germany and France in overseeing the implementation of the Minsk Agreement given their involvement in the process of the peace deal. Donald Tusk worked with the German Chancellor and French President to propose a compromise proposal which could be accepted unanimously in the European Council. Given the sharp division between EU Member States as well as the ever-changing governments in Europe, this new political agreement would give a sense of continuity in the sanctions regime as well as provide a relatively good benchmark for Paris and Berlin. The agreement was adopted in a European Council meeting in March and was regarded a compromise between those who had pushed for a legally binding document to prolong sanctions and those who sought to delay any decision. Thus, EU Heads of State and Government agreed that "the duration of the restrictive measures against the Russian Federation, adopted on 31 July 2014 and enhanced on 8 September 2014, should be clearly linked to the complete implementation of the Minsk agreements" (European Council, 2015).

In other words, the role of France and Germany was pivotal in the EU's sanctions imposed against Russia. However, this chapter also aims to show that the role of France and Germany was not that they forced measures that would have gone against the approval of other Member Sates. Germany clearly took the leadership role and even managed to convince other hesitant Member States to accept economic measures against Russia after the downing of MH17 (Schoeller, 2020: 15). However, it would be misleading and an exaggeration to argue that Germany and France forced their will upon other Member States. No doubt that their roles were pivotal in clinching the Minsk II. Agreement and their reports submitted to the European Council on the status of the implementation were also crucial in assessing whether the sanctions could be lifted. However, as chapters 5.2 and 5.3 will show, each Member State defended its interests and reluctantly, if at all, accepted proposals by other Member States, either big or small, that would have gone against fundamental national interests.

Therefore, the main reason the EU's sanctions are not lifted against Russia is that the latter has not implemented the Minsk II. Agreement which became the cornerstone of the EU's sanctions regime against Russia. In fact, as long as Russia does not implement the Minsk Agreements, none of the Member States want to raise the question of lifting – partially or entirely – the sanctions regime. Should such be proposed by a Member State, its credibility would soon vanished thanks to the compromise made in the European Council in 2015.

4.2.1 Germany and France clinch the deal

Transnational challenges, including protracted regional conflicts or climate change, cannot be solved without meaningful cooperation between states. Large international organizations, such as the EU, WTO or NATO, which were established precisely to tackle cross-border issues, often fail to provide solutions to crises due to the differences between their members. International organizations are rarely, if ever, composed of Member States sharing the same worldviews, resources or objectives. As a result, compromise on joint actions may slow down. Even if an agreement is reached, it is often a watered-down solution reflecting mostly a lowest common denominator style decision (Moret, 2016: 1).

International governance in the 21st century provides alternative types of cooperation, such as minilateral alliances (Moret, 2016). Germany and France, for example, have clearly shown the

strongest leadership and engagement in the EU to propose meaningful solutions to the Ukrainian crisis. German leadership, accompanied by the diplomatic efforts of France, is a well-known phenomenon in EU foreign policy where roles are distributed to actors believed to have the most expertise and, in particular, authority to settle different conflicts. Behind considerations of delegating powers to different sets of actors, there is always the desire to take the most effective and legitimate actions in international relations. The power of delegation varies greatly between different policy areas: while the EU was given wide competences in external relations, particularly in the fields of trade or climate change policy, the Member States have retained most of their prerogatives in foreign and security policy. There are, however, clear Member State preferences to shift from exclusive state-centric actions to European diplomacy by strengthening the role of the HR and the establishment of the EEAS (Adler-Nissen, 2014). While the reforms introduced by the Lisbon Treaty clearly pave the way towards a more effective and coherent foreign and security policy, its provisions may lead to conflicting role expectations where uncertainties may arise in selecting the leadership in different cases.

EU foreign policy continues to be dominated by the Member States but leadership, at least partly, is now also assigned to the HR and the EEAS. The Lisbon Treaty recognizes the primary roles of the Member States in delivering proposals and implementing decisions, but there is signifcant ambiguity in the division of labour between the Member States, on the one hand, and the HR and EEAS, on the other hand. The Lisbon Treaty abolished the rotating presidency in EU foreign and security policy, but high level officials from both the Member States and the EEAS confirm that representation as well as the organization of co-ordination are still often retained by the Member States. Several of those officials explicitly mentioned the case of the Normandy format where Germany and France have been representing the EU during the talks and negotiations with Ukraine and Russia. The example of the Normandy format illustrates how dominant Member States, including the EU-3, can take a leading role in EU foreign policy and bypass the EU framework. EU Member States, under exceptional circumstances, are deemed to be more legitimate actors when contrasted with the HR. There are, however, differences between the Member States on how to upload their preferences to the EU level: while smaller Member States tend to believe that coalition-building must precede talks with the HR, dominant Member States approach the HR on a unilateral basis with their own national interest. In most cases, however, the Member States still regard themselves as internal leaders of EU foreign

policy. Once they reached an informal agreement, they approach the HR to convince him/her (Aggestam and Johansson, 2017: 13).

Indeed, EU foreign policy-making is often characterized by an informal division of labour between the Member States and the HR/EEAS or the European Commission. The delegation of different exercises is due to the view that such delgation has an effect on foreign policy outcomes as well as effective actions and legitimacy in the world. Informality is often a key component of how EU foreign policy is designed and implemented. According to Tom Delreux and Stephan Keukeleire, merely reading the provisions of the Lisbon Treaty does not allow one to grasp this informal division of labour between the Member States (Delreux and Keukeleire, 2017: 3) which has already been examined in other fields of EU politics (Christiansen and Neuhold, 2013; Kleine, 2014). The informal division of labour means that different foreign policy dossiers are carried out by different sets of actors and thus tasks are, equally or unequally, distributed among the Member States. The informal division of labour is not to be equated with directorate-like formats, agenda-setters, burden-sharing actors or general leadership. Its main aim is to have more efficient policy-making avoiding policy deadlocks such as vetoes on foreign policy decisions (Delreux and Keukeleire, 2017: 4).

In the area of crisis management, for example, every member state, at least formally, is involved in the policy-making procedure given the unanimous voting system. In practice, however, crisis management is often carried out by the EU3 – France, Germany and the UK –, especially in cases in which these authorative actors desire involvement, such as the Iran nuclear deal or the Normandy format during the Ukrainian crisis. Three factors determine why certain Member States are given tasks while others might be excluded. A set of actors can have (1) a particular interest in the question under consideration, (2) a particular expertise and knowledge about the issue, or (3) the capability to undertake a task (diplomatic, administrative, material or immaterial). Other EU Member States might be excluded simply because they, partly or completely, lack interest in a particular foreign policy dossier and they might tolerate others' intervention on the condition that they can take the lead on another issues (*diffuse reciprocity*). EU Member States can be selected by the EU, can be the result of a self-selection process or can be the combination of these two aspects (Delreux and Keukeleire, 2017: 8).

Indeed, Germany, alongside France, was willing to assume a greater role in the mediation efforts during the Ukrainian crisis from the beginning of 2014, or at least to serve as a bridge between Russia and its Western partners (Forsberg, 2016: 28). France had, in the initial stage of the crisis, an optimist attitude: it believed that the crisis could be tackled through diplomatic channels and there was no reason to apply economic coercion against Russia. Due to initial reluctance of Germany to lead the entire EU alone during the crisis and due to the fact that Berlin maintained friendly relations with Paris, France was also heavily involved in the mediation efforts. In addition, the French-German tandem seemed an efficient way to contrast US views on pouring arms into Ukraine, a move considered dangerous by both Berlin and Paris. While there was a convergence of views and a high degree of coordination between French and German officials during the Ukrainian crisis, Berlin was clearly in the driver's seat. The role of France was reduced, at least at the beginning of the crisis, to bringing together the two presidents mostly involved in the crisis, Petro Poroshenko and Vladimir Putin, in June 2014, paving the way for the Normandy format. Francois Hollande welcomed the Russian President in December 2014 and contributed to the establishment of the German-French tandem during the negotiations on the second Minsk Agreement. While France has made meaningful diplomatic contributions even before the second Minsk Agreement, it also sought to preserve its ability to retain its leadership and autonomy inside and outside Europe (Cadier, 2018: 1352).

Behind closed doors, Germany and Russia worked on a plan to broker a peaceful resolution to the Ukrainian crisis. Under the proposal of German Chancellor Angela Merkel, the international community would have recognized Crimea as part of Russia and the West would exclude the possibility of admitting Ukraine into NATO. In return, Russia would not have blocked the Association Agreement concluded between the EU and Ukraine, would have offered a long-term gas supply agreement to Ukraine and would have compensated it with a financial package for the loss of the rent that Russia had paid for stationing its fleets around the Crimean peninsula. The downing of the MH17, however, dramatically changed German views on the Ukrainian crisis and ended the implementation of this grandiose peace plan.[99]

While the pivotal roles of Germany and France were undeniable during the crisis, three different formats of negotiations were established with the aim of providing a (permanent) solution to

[99] Land for gas: Merkel and Putin discussed secret deal could end Ukraine crisis | The Independent n.d.

the conflict: Geneva, Normandy and Minsk. The Geneva format included the EU, represented as an organization by the HR/VP, the USA, Ukraine and Russia but failed to de-escalate the conflict with the measures agreed within the framework of G8 and G20 (Shelest, 2016). In April 2014, the four agreed to talk in Geneva. After a seven-hour long negotiation, the US, Russia, Ukraine and the EU agreed on measures aimed at de-escalating the crisis in Ukraine. They agreed that responsibility to carry out the agreement would be given to the OSCE. The US even foresaw the lifting of sanctions should Russia comply with the agreement. The deal contained provisions on the disarmament of illegal armed groups, halting violence, giving amnesty to protesters and granting transfer competences to the OSCE in implementing the agreement and a constitutional reform in Ukraine.[100] EU foreign ministers held also an exchange of views with the Swiss chairperson in office, Didier Burkhalter on the role of the OSCE in Ukraine. The Foreign Affairs Council welcomed the deployment of OSCE/ODIHR observation mission, re-confirmed its full commitment to the Geneva Joint Statement and welcomed the presentation of the proposals by the OSCE Chairmanship for Ukraine as well as his plans to implement them (Council of the European Union, 2014c).

After unsuccessful attempts to de-escalate the crisis, Germany and France, representing the EU, and Ukraine as well as Russia established the Normandy format. The trilateral contact group, composed of Ukraine, Russia and the OSCE, negotiated the first Minsk Agreement in which the EU and its Member States were excluded from negotiations. After experiencing the worsening situation in the Donbas region, another attempt was made by the Normandy format, hereafter referred to as the Minsk format, to conduct a new round of negotiations on the second Minsk Agreement (Elgström et al., 2018). In order to provide the new format with authority, the second Minsk Agreement was negotiated personally with the top leaders of selected states (Kostanyan – Meister, 2016). The prominent roles of Germany and France, however, did not remain uncontested within the EU: Poland sought to have a seat at the table due to its historical relations with and knowledge of Russia. The trilateral contact group, therefore, continued its work simultaneously with the new Minsk format (Elgström et al., 2018).

Although the role of the OSCE had been continuously diminishing since the end of the Cold War and though it had been sidelined in European politics, it suddenly regained relevance and

[100] Ukraine crisis: Geneva talks produce agreement on defusing conflict, *The Guardian*, 17 April 2014

importance with the Ukrainian crisis. It was decided that OSCE would be involved in the crisis management by deploying monitoring missions in Ukraine and by contributing to the facilitation of negotiations on the implementation of the Minsk Agreements. The involvement of the OSCE was also acceptable to Moscow given that decisions were taken unanimously and thus it could continue to promote its own interests through the OSCE. Didier Burkhalter, the Swiss minister holding the rotating position of chairman in office at OSCE, proposed in February 2014 to the UN Security Council to establish a contact group in Ukraine. The Special Monitoring Mission was established in March while the first group of people to monitor the situation in Ukraine was on the ground shortly thereafter. In February 2014, the foreign ministers of the Weimar Triangle, composed of Poland, Germany and France, offered a peaceful transition to former Ukrainian President Viktor Yanukovych. This peace plan, however, almost immediately failed due to the unexpected escape of Yanukovich and the subsequent collapse of his regime. Moreover, Russia was not willing to accept the prominent role of Poland in the conflict resolution thus making the Weimar Triangle an obsolete solution. In May 2014, the chairman in office negotiated with Vladimir Putin on a peace plan resulting in a brief round of talks headed by German Wolfgang Ischinger. In June 2014, Russia and Ukraine along with the OSCE agreed to establish a Trilateral Contact Group headed by OSCE Envoy Heidi Tagliavini. While this Contact Group served the purpose, among others, of establishing a structured dialogue with the separatists, it was unable to cope with the ever-growing conflict (Lehne, 2015b).

The Normandy format was established on 6 June 2014 comprising Germany, France, Russia and Ukraine. On French and German initiatives, they met on the margins of the 70th anniversary of D-Day with the primary aim of resolving the most challenging European security crisis since the end of the Cold War. French President Francois Hollande invited President Petro Poroshenko at the last minute in an effort to reconcile the interests of the two countries and to guarantee peace in the European continent. The Heads of State of Ukraine and Russia held their first meeting since the annexation of Crimea and agreed on arranging detailed talks on a ceasefire between the two countries.[101] German Chancellor Angela Merkel and French President Francois Hollande called on Russian President Vladimir Putin to implement Ukrainian President Petro Poroshenko's peace plan and agreed with Putin during a telephone conversation that the ceasefire in Ukraine would be extended. The Franco-German intervention was followed by

[101] Putin, Ukraine leader break crisis ice at D-Day event, *Reuters*, 7 June 2014

a meeting between the foreign ministers of France, Germany, Russia and Ukraine in Berlin on 2 July 2014. They adopted the so-called Berlin Declaration in which the four reiterated their commitment to sustain peace and stability in Ukraine and agreed that the OSCE Special Monitoring Mission in Ukraine should observe the ceasefire (Federal Foreign Office, 2014).

Since the beginning of the crisis, the main EU policy instrument was the imposition of different types of sanctions which have had limited impact and effect on Russia's behaviour in Ukraine. From another point of view, however, the EU was able to achieve consensus on an issue that created deep division between the Member States which had fundamentally different interests vis-à-vis Russia (Szép, 2015b). Merkel commanded centre stage during the crisis partly thanks to being the most senior leader in Europe. Merkel was also believed to have a personal impact on Putin given their shared experience in Cold War politics. Its allies also insisted on having German leadership during the Ukrainian crisis as the US, the UK and France were mainly preoccupied with the turmoil in the Middle East. Merkel grasped the situation and took the leadership in handling the Ukrainian crisis with recent experience in managing another EU crisis, the Eurozone crisis. While Merkel was celebrating her 60th birthday with nearly 700 guests at Konrad Adenauer House in Berlin, the crisis reached a turning point: she was informed on the crash of a Malaysia Airlines flight with 298 passengers flying over Ukraine. This was a unifying moment for the EU Member States as the conflict turned from a low-level turmoil to a real war situation claiming the lives of innocent civilians. Merkel, horrified by the events in Ukraine, decided to send a strong signal indicating her disapproval over the behaviour of separatists. Leaders of the CDU made it clear that the shooting down of MH17 made a qualitative difference in the conflict due to the fact that civilians died. Merkel warned Putin that further economic sanctions would be imposed if a proper investigation were not carried out.[102]

German Chancellor Angela Merkel, as a quasi-leader of EU foreign policy in the Ukraine crisis, had more than forty telephone calls and several personal meetings with Russian President Vladimir Putin between the eruption of the crisis and the second Minsk Agreement. Putin reproached her for having enlarged the EU and NATO towards the East and for having ignored international law in the cases of Afghanistan, Iraq and Libya. Merkel attempted to better understand Putin but failed to realize what concessions Putin was really looking for. It was clear that

[102] Battle for Ukraine: How the West Lost Putin, *Financial Times*, 2 February 2015

Putin sought to restore Russia's spheres of influence but Merkel was at a loss to divine how he wanted to realize this grandiose plan. The German Chancellor could not understand how a situation like that in Ukraine could happen in Europe 25 years after the fall of the Berlin Wall. Despite this dismay, senior German officials believed that Russia was going to be develop liberal democracy with functioning market economy. The meeting of the G20 in Australia in late 2014 was a turning point because most Western leaders realized that they had been illusory when hoping that Russia would become a like-minded country. For months after Brisbane, the two leaders were barely in touch with each other indicating that the differences between the two were more visible than at any point since the end of the Cold War. Additionally, the first Minsk Agreement brokered in September 2014 was clearly dying as the conflict mounted almost every day. Diplomacy broke down, as several EU leaders, diplomats and officials confirmed what was already clear: the West immediately ruled out the use of military force or even supplying Ukraine with arms.[103]

The inability of the Trilateral Contact Group to provide a meaningful solution to the crisis led states to believe that they have to step into the process. They realized that a group with more authority needed to be established. This was later called the Normandy format consisting of France, Germany, Russia and Ukraine. Negotiations within the framework of the Normandy format paved the way to the first Minsk Agreement. The Trilateral Contact Group adopted the first Minsk Agreement on 5 September 2014 with the primary aims of de-escalating the conflict. The OSCE was given the responsibility to monitor the ceasefire and the Ukrainian-Russian border. The agreement, however, did not deliver results except for a partial exchange of prisoners. The Minsk Agreement, despite its failures, remained a frame of reference as the Normandy format and the members of the Trilateral Contact Group were committed coming to a agreement. The second Minsk Agreement, signed on 12 February 2015, retained identical elements from the first Minsk Agreement but specified the details of each element and provided a number of timelines. The role of the OSCE was prominent during the implementation of the second Minsk Agreement but the decisions were made by the members of the Normandy format within the OSCE framework (Lehne, 2015b).

[103] Battle for Ukraine: How the West Lost Putin, *Financial Times*, 2 February 2015

Ukrainian President Petro Poroshenko and Russian President Vladimir Putin met, for the first time since the establishment of the Normandy format, in Minsk in late August 2014. Belarus was regarded as a relatively neutral actor for both Russia and Ukraine, as it seemed an ideal place to pave the way to a truce deal between Ukraine and pro-Russian separatists.[104] The Ukrainian President announced, after a telephone conversation with the Russian President, in early September that he would order a ceasefire provided that talks are successful in Minsk (Walker, 2014). Adopted within the framework of the Trilateral Contact Group, Russia and Ukraine concluded their first emblematic agreement – Minsk I – on 5 September 2014. The first Minsk Agreement, signed by representatives of Ukraine, Russia and the OSCE (Second President of Ukraine Leonid Kuchma, Russian Ambassador Mikhail Zubarov, Ambassador Heidi Talyavini) as well as two formal leaders of the "republics (Alexander Zakharchenko and Igor Plotnitsky) contains 12 elements:

1.	Ensure the immediate bilateral cessation of the use of weapons.
2.	Ensure monitoring and verification by the OSCE of the regime of non-use of weapons.
3.	Implement decentralization of power, including by means of enacting the Law of Ukraine "With respect to the temporary status of local self-government in certain areas of the Donetsk and the Lugansk regions" (Law on Special Status).
4.	Ensure permanent monitoring on the Ukrainian-Russian state border and verification by the OSCE, together with the creation of a security area in the border regions of Ukraine and the Russian Federation.
5.	Immediately release all hostages and unlawfully detained persons.
6.	Enact a law prohibiting the prosecution and punishment of persons in connection with the events that took place in certain areas of the Donetsk and the Lugansk regions of Ukraine.
7.	Conduct an inclusive national dialogue.
8.	Adopt measures aimed at improving the humanitarian situation in Donbass.

[104] Belarus hopes to benefit as host of Ukraine-Russia talks, The Guardian, 26 August, 2014

9.	Ensure the holding of early local elections in accordance with the Law of Ukraine "With respect to the temporary status of local self-government in certain areas of the Donetsk and the Lugansk regions" (Law on Special Status).
10.	Remove unlawful military formations, military hardware, as well as militants and mercenaries from the territory of Ukraine.
11.	Adopt a program for the economic revival of Donbass and the recovery of economic activity in the region.
12	Provide personal security guarantees for the participants of the consultations

Table 3: Protocol on the results of consultations of the Trilateral Contact Group[105]

However, this ceasefire was never implemented and it collapsed completely with the battle over Debaltseve in January 2015. In order to prevent an escalation, another round of negotiations started within the Normandy format consisting of Germany and France as well as Ukraine and Russia. The four leaders adopted a Set of Measures to Implement the Minsk Agreements.

[105] Protocol on the results of consultations of the Trilateral Contact Group with respect to the joint steps aimed at the implementation of the Peace Plan of the President of Ukraine, P. Poroshenki and the initiatives of the President of Russia, V. Putin n.d.

1.	Immediate and comprehensive ceasefire in certain areas of the Donetsk and Luhansk regions of Ukraine and its strict implementation as of 15 February 2015, 12am local time.
2.	Withdrawal of all heavy weapons by both sides by equal distances in order to create a security zone of at least 50km wide from each other for the artillery systems of caliber of 100 and more, a security zone of 70km wide for MLRS and 140km wide for MLRS Tornado-S, Uragan, Smerch and Tactical Missile Systems (Tochka, Tochka U): -for the Ukrainian troops: from the de facto line of contact; -for the armed formations from certain areas of the Donetsk and Luhansk regions of Ukraine: from the line of contact according to the Minsk Memorandum of Sept. 19th, 2014; The withdrawal of the heavy weapons as specified above is to start on day 2 of the ceasefire at the latest and be completed within 14 days. The process shall be facilitated by the OSCE and supported by the Trilateral Contact Group.
3.	Ensure effective monitoring and verification of the ceasefire regime and the withdrawal of heavy weapons by the OSCE from day 1 of the withdrawal, using all technical equipment necessary, including satellites, drones, radar equipment, etc.
4.	Launch a dialogue, on day 1 of the withdrawal, on modalities of local elections in accordance with Ukrainian legislation and the Law of Ukraine "On interim local self-government order in certain areas of the Donetsk and Luhansk regions" as well as on the future regime of these areas based on this law. Adopt promptly, by no later than 30 days after the date of signing of this document a Resolution of the Parliament of Ukraine specifying the area enjoying a special regime, under the Law of Ukraine "On interim self-government order in certain areas of the

	Donetsk and Luhansk regions", based on the line of the Minsk Memorandum of September 19, 2014.
5.	Ensure pardon and amnesty by enacting the law prohibiting the prosecution and punishment of persons in connection with the events that took place in certain areas of the Donetsk and Luhansk regions of Ukraine.
6.	Ensure release and exchange of all hostages and unlawfully detained persons, based on the principle "all for all". This process is to be finished on the day 5 after the withdrawal at the latest.
7.	Ensure safe access, delivery, storage, and distribution of humanitarian assistance to those in need, on the basis of an international mechanism.
8.	Definition of modalities of full resumption of socio-economic ties, including social transfers such as pension payments and other payments (incomes and revenues, timely payments of all utility bills, reinstating taxation within the legal framework of Ukraine). To this end, Ukraine shall reinstate control of the segment of its banking system in the conflict-affected areas and possibly an international mechanism to facilitate such transfers shall be established.
9.	Reinstatement of full control of the state border by the government of Ukraine throughout the conflict area, starting on day 1 after the local elections and ending after the comprehensive political settlement (local elections in certain areas of the Donetsk and Luhansk regions on the basis of the Law of Ukraine and constitutional reform) to be finalized by the end of 2015, provided that paragraph 11 has been implemented in consultation with and upon agreement by representatives of certain areas of the Donetsk and Luhansk regions in the framework of the Trilateral Contact Group.
10.	Withdrawal of all foreign armed formations, military equipment, as well as mercenaries from the territory of Ukraine under monitoring of the OSCE. Disarmament of all illegal groups.
11.	Carrying out constitutional reform in Ukraine with a new constitution entering into force by the end of 2015 providing for decentralization as a key element (including a reference to the specificities of certain areas in the Donetsk and Luhansk regions, agreed with the representatives of these areas), as well as adopting permanent legislation on

	the special status of certain areas of the Donetsk and Luhansk regions in line with measures as set out in the footnote until the end of 2015.
12.	Based on the Law of Ukraine "On interim local self-government order in certain areas of the Donetsk and Luhansk regions", questions related to local elections will be discussed and agreed upon with representatives of certain areas of the Donetsk and Luhansk regions in the framework of the Trilateral Contact Group. Elections will be held in accordance with relevant OSCE standards and monitored by OSCE/ODIHR.
13.	Intensify the work of the Trilateral Contact Group including through the establishment of working groups on the implementation of relevant aspects of the Minsk agreements. They will reflect the composition of the Trilateral Contact Group.

Table 4: Package of Measures for the Implementation of the Minsk Agreements[106]

The roles of Germany and France are pivotal in overseeing the implementation of the second Minsk Agreement. They, within the Normandy format, meet with Ukraine and Russia on a regular basis to assess whether the agreement has been implemented and, therefore, how the EU sanctions regime should be adjusted. As long as there is no progress in the implementation of the Minsk Agreement, there is no lifting of EU sanctions. There are nearly always discussions at the EU level on how to proceed with the sanctions, but there is a consensus as well as a European Council Conclusion holding that sanctions are linked to the implementation of the Minsk Agreements.

There are different types of meetings between the members of the Normandy format. There are, for example, ministerial level meetings, such as the one which took place on 11 June 2018. Minister for Europe and Foreign Affairs Jean-Yves le Drian travelled to Berlin and met with the German co-mediator as well as Ukraine and Russia on the sidelines of ceremonies marking the D-Day Landing. French President Emannuel Macron wanted to see progress on the political, humanitarian, economic, and security fronts. This was the first meeting since 2017 to revitalise the truce agreement. German Foreign Minister Heiko Maas also emphasized the importance of moving forward after 16 months of non-implementation. There are evidences that "lower level" of negotiations also took place which are more technical in nature. In these cases, the political

[106] Full text of the Minsk agreement, *Financial Times*, 12 February 2015

directors or deputy foreign ministers of the four foreign ministries met with each other to discuss the implementation of the Minsk Agreements. Germany is still committed to continuing the negotiations within the framework of the Normandy format.[107] France and Germany regurlarly update their fellow EU Member States on the implementation of Minsk Agreements on the sidelines of European Council meetings.

Germany and France clearly played a decisive role in the negotiations on the Minsk Agreement. Their assessment of the conflict is a benchmark for other EU Member States on whether or not they can lift the current sanctions regime. However, it would be an overstatement to argue that France and Germany acted against the will of other EU Member States and forced measures which would have gone against their will.

5. Empirical Research

This final chapter is divided into two parts. In the first part, it overviews how the EU responded the major crises occurring in Russia in the past. In fact, many times the EU considered the imposition of sanctions but nearly always decided to reject to impose them due to different political and economic reasons. The case of the Ukrainian crisis was one of the first episodes in EU sanctions policy in which the Member States decided collectively to impose CFSP sanctions against Russia since the end of the Cold War. In the second part, I examine the trade preferences of the Member States vis-à-vis Russia. Overviewing the trade preferences of the Member States, it comes as no surprise that they protected their vital commercial interests and sought to impede sanctions that, if introduced, would have fundamentally hurt the vital national interests of the Member States.

[107] Germany stands for preserving 'Normandy format' of Donbas settlement, *Unian*, 6 April 2019

5.1 The role of sanctions in EU-Russia relationship between 1990 and 2019

This subchapter will not provide a general overview of EU-Russia relations, thus avoiding long and perhaps irrelevant descriptions on the special relationship, however special it is in many ways. It will, however, show how hesitant the EU was pre-2014 when it considered the use of CFSP sanctions against Russia in the face of major crises. With the exception of the 2014 Ukrainian crisis, the EU sought to avoid the imposition of sanctions against Russia due to different political and economic reasons. In fact, imposing sanctions against Russia was unprecedented in the sense that no state of its size had been subject to major economic and financial sanctions (Gould-Davies, 2018: 5).

However, 2014 was not the first time that the EU tried or even introduced coercive measures against Russia (Forsberg and Haukkala, 2016: chaps 5 & 6). This chapter demonstrates that, apart from the Ukrainian crisis, the EU has always been reluctant to impose sanctions against Russia in major crisis. The two Chechen Wars and the Georgian crisis show that EU Member States sought to avoid the imposition of CFSP sanctions. During the first Chechen War, the EU suspended the PCA, which can be understood as some type of sanctions, but it was clearly reluctant to impose economic and financial sanctions against Moscow. In other crisis, such as the Georgian crisis, some Member States explicitly raised the possibility of imposing CFSP sanctions against Russia. Then French President Nicolas Sarkozy, who held the Council Presidency at that time rejected the idea of imposing sanctions against Moscow and argued for a peaceful solution through diplomatic dialogue and mediation.

This chapter also shows that the EU has adopted completely new types of sanctions regimes against Russia or is currently preparing them. In fact, the EU not only imposed sanctions against Russia due to the Ukrainian crisis: it also applied restrictive measures for the use of chemical weapons on UK territory and is preparing a new sanctions regime for gross violations of human rights. The novelty is that the EU decided to impose sanctions against ‘persons and entities involved in the development and use of chemical weapons anywhere, regardless of their nationality and location’ (Council of the European Union, 2019). In this sense, the EU decided not to amend the existing sanctions regime imposed against Russia. Instead, it created a specific sanctions regime in order to facilitate an agreement within the framework of the CFSP.

It should be noted that the imposition of sanctions is not completely new phenomenon in EC/EU-Russian/Soviet relations. The declaration of martial law in Poland in December 1981 triggered EC sanctions despite different Member States views on the situation: after long negotiations, EC Member States decided to cut imports from the Soviet Union in mid-March 1982. They reduced the imports of certain products by 50 to 75 percent by amending the import arrangements for certain products originating in the USSR on the basis of (current) Article 207 TFEU. [108]

Nevertheless, the main lesson is that we are now witnessing a new phase of EU-Russia relations. The EU and its Member States were always reluctant to use measures which could have seriously deteriorated the relations with Russia. The collective decisions reached at EU level since 2014 to impose sanctions against Russia show that EU Member States were ready to pay the price of imposing sanctions against Russia while they also understood that political relations would also be deteriorated for the foreseeable future. This is now mitigated by the fact that the EU is creating new types of sanctions regimes which do not specifically target countries, such as Russia, but instead individuals and entities irrespective of their geographical locations (Portela, 2019).

5.1.1 The first and second Chechen Wars

The basic principles that guided the EU through the Ukrainian crisis were the principles of international law and those of the OSCE. The sovereignty of each state, while recognizing self-determination and autonomy, was untouchable and overrides separatist endeavours aiming at breaching that basic principle. The consequences for Chechnya was that the EU recognized its ambition to exercise more autonomy but not at the price of endangering the territorial integrity of Russia. The EU, under no circumstances, would have recognized Dzhokhar Dudayev's Chechnya as a sovereign state because it would have risked Russia's right to defend its territorial integrity. The support of the EU can also be interpreted as the 'West' was willing to preserve stability and security in Europe through guaranteeing the success of a nuclear power capable of sustaining stability in the region by not being too vocal about the basic values that the EU and its Member States deemed important. The EU's aim was to find a political rather than a military

[108] Council Regulation (EEC) 596/82 of 15 March 1982 amending the import arrangements for certain products originating in the USSR (1982) OJ L72/15

solution to the crisis, halt combats and guarantee the OSCE's presence while delivering humanitarian aid to those in needs (Forsberg and Herd, 2015).

While the EU was indeed ready to step up for Russia's territorial integrity, it did not hide its negative opinion regarding Russian military activity taking place in Chechnya. Some of the Member States even raised the possibility of imposing sanctions against Russia. For example, German Economics Minister Gunter Rexrodt said '[i]f the Russian government does not respect the principles that we expect of them, then we will not and cannot rule out economic sanctions' (Kuzio, 1996: 99–100). According to German Defence Minister Volker Rühe, violating treaties and norms could not be left without a response as it would have risked the EU losing its credibility. Germany Finance Minister Theo Waigel argued that aids were conditional upon the reform process undertaken in Russia. Scandinavian states were some of the most vocal EU members to propose the imposition of sanctions. Denmark, for instance, suspended a bilateral military cooperation agreement with Russia and backed the idea of imposing political and economic sanctions as well. It also supported the non-ratification of the Partnership and Cooperation Agreement. Swedish Foreign Minister Lena Hjelm-Wallen said '[a] civilized society does not solve conflicts in a way that causes so much human suffering, casualties and material destruction' (Kuzio, 1996: 99). Although the possible application of 'CFSP sanctions' was indeed raised amongst the Member States, as some of the leaders suggested, the idea of imposing restrictive measures was soon rejected on the ground that the application of those measures would not have contributed to solving the crisis while it would have also been a wrong message. It was believed that the imposition of sanctions would deteriorate the relationship with Yeltsin's Russia. As Western diplomat said: '[w]e still want to give Yeltsin a chance. We're not going to get into a row with him over a self-proclaimed, troublesome republic in a region on the fringes of his country' (Kuzio, 1996: 97).

The EU chose not to break its relations with Russia but, in order to make its discontent be heard, decided to postpone the ratification of the Partnership and Cooperation Agreement that had been signed in June 1994, however, it did not shut down existing bilateral funding programs, such as Technical Aid Commonwealth of Independent States. According to the assessment of the European Commission published in May 1995, Russia, while it did not fulfil all the criteria set in the PCA, made some progress in relations to Chechnya. This led the EU sign the interim

treaty with Russia in July 1995 with the aim of normalizing relations between the two while always reminding Russia of its international law obligations.

The hostilities between Russia and Chechnya were formally recognized on 12 May 1997 with the signature of peace deal called 'Treaty of peace and principles of relations between the Russian Federation and the Chechen Republic of Ichkeria'. The EU welcomed the peace deal 'as further significant steps towards reconciliation, political and economic cooperation and lasting peace in Chechnya' (European Commission, 1997). The relationship between the EU and Russia was also strengthened by the ratification of the PCA which was enacted in December 1997.

Although 'CFSP sanctions' were considered to be imposed against Russia, the willingness of the Member States to apply economic or commercial sanctions was mainly excluded on the ground that the impact of restrictive measures could backfire.[109] The EU was not prepared to pressure Russia too much on the conflict to avoid isolating Russia from the European security order (Forsberg and Herd, 2005: 463). The imposition of EU sanctions was also hindered by the reluctance of the United States which had been unwilling to apply economic sanctions against Russia (Maass, 2017: chap. 2). However, EU Member States were contemplating the suspension of Russia's most favoured nation status. Moreover, Germany, which had been an enthusiastic supporter of Russia's G8 membership back in 1997, along with the other six members, was contemplating the war conducted in Chechnya as grounds for suspending Russia's membership in the organization (Makhkety, 1999). While 'CFSP sanctions' were clearly not imposed, the Heads of State and Government, meeting at the European Council summit held between 10 and 11 December 1999 in Helsinki, decided to suspend some of the provisions of the Partnership and Cooperation Agreement and restricted TACIS to specific priority areas, such as the support for human rights, the rule of law, civil society and nuclear safety (European Parliament, 1999). The latter measures, while they clearly required EU competences as well, are tantamount to imposing sanctions even if the impact of those measures on Russia was limited and though they were instead designed to signal disagreement. The decision to suspend some of the PCA provisions, promoted primarily by France and Germany, was a tough formu-

[109] Putin rebuffs Chechnya warnings, *BBC*, 7 December 1999

lation of the EU position but the declaration failed to indicate which provisions should be suspended and whether the Commission had taken already actions in that regard (Forsberg and Herd, 2005).

While Russia's disproportionate actions in Chechnya were condemned by all EU Member States, though some of them were louder while others were more reluctant to express their dissatisfaction. The turning point of the crisis was the ultimatum declared by Russia. The leaflets dropped over the city of Grozny warned inhabitants that those who did not leave the city within a few days would be considered terrorists and bandits and would be attacked by artillery and by air.[110] In order to strengthen diplomatic pressure on Russia, UK Foreign Secretary Robin Cook called in the Russian Ambassador Yuri Fokine. It was stated '[the Russian Ambassador was] told in no uncertain terms what Europe and the UK think about the five-day ultimatum'.[111] The ultimatum was strongly condemned by the UK as it endangered the life of civilians and, according to the Foreign Secretary, did not serve Russian security interests either. The Foreign Secretary welcomed the idea of withholding £400m IMF financial aid to Russia. From the UK's perspective, fighting against terrorism, while a legitimate objective in itself, could not be attained by threatening an entire population. As Milosevic was condemned vigorously for what he had done in Kosovo, equally, Moscow could not evade strong criticism and possible counteractions.[112] However, Prime Minister Tony Blair was sceptical about the imposition of sanctions: 'I believe we in the [EU] should never forget that a closer partnership between the EU and Russia is in the interests of all our peoples and in the interests of the continent we share.'[113]

France was one of the vocal opponents of Russia's actions in Chechnya and was amongst the harshest critics (Emerson et al., 2005: 18). French Foreign Minister Hubert Védrine, while strongly condemning Russian activities, called on other EU Member States to express loudly their opinions, as he felt that he had failed to convince reluctant partners to adopt similar hardline positions. Védrine argued 'we might have to go further [if no progress was made]' suggesting that he was ready to propose the introduction of EU-wide sanctions (Forsberg and Herd, 2005: 464). Similarly to UK Foreign Secretary, Hubert Védrine recognized Russia's right to preserve its territorial integrity and to fight against terrorism but ruled out the use of force.

[110] Flee or die, Chechens warned, *The Guardian*, 7 December 1999
[111] UK condemns Chechnya ultimatum, *BBC*, 7 December 1999
[112] Russia will pay for Chechnya, *BBC*, 7 December 1999
[113] Blair calls for Chechnya probe, *BBC*, 11 March 2000

Although the imposition of economic sanctions was considered, Jacques Chirac declined the possibility to impose Europe-wide economic and financial sanctions against Moscow in order to avoid worsening economic situation of ordinary Russian people. The plan was to force the Kremlin in a friendly manner to change its behaviour.[114] France, for its part, envisaged the refusal to sign the Charter for European Security – a document which aimed at strengthening the OSCE's ability to prevent conflicts and to settle and rehabilitate societies ravaged by war and destruction – as Russia had violated some of its principles. The charter could only be signed after Moscow agreed to give international organizations a political and humanitarian role in the Chechen conflict.[115]

Finnish Foreign Minister Tarja Halonen's voice was strengthened by the fact that Finland held the EU Presidency in the second half of 1999. While Finland condemned Russian actions in Chechnya, it was unwilling to provoke confrontation with its biggest neighbour (Maass, 2017: chap. 2). According to Halonen, the EU did not want to speak up at the beginning of the crisis out of sympathy for Russia.[116] She reiterated that the EU did not call into question Russia's right to defend its territorial integrity in the region but was strongly concerned about its intervention in Chechnya after having seen the violence taking place in different cities.[117] The Finnish Foreign Minister admitted that the EU could do little to halt the Russian offensive but raised the possibility of refusing to sign of some of EU international agreements as a way to express the EU Member States' dismay over the crisis.[118]

Foreign ministers discussed the Chechen issue within the framework of the General Affairs Council. They expressed their deepest concern over the Russian military campaign in Chechnya while reiterating the position that the EU respects Russian territorial integrity and supports the fight against terrorism under certain conditions (Council of the European Union, 1999). EU External Relations Commissioner Chris Patten voiced similar concerns as he also drew attention to the civilians suffering and dying in Chechnya.[119] Patten further added that '[Russia's actions are] inevitably going to affect our relations if you behave in Chechnya in ways which is totally disproportionate to the understandable problem that you have got there […] [y]ou

[114] Le sommet de l'OSCE s'est achevé hier à Istanbul; la Russie a évité l'isolement, *Le Figaro*, 1999
[115] Russian concession on Chechnya, *BBC*, 19 November 1999
[116] Talks fail, invading Chechnya in Cards, *The Moscow Times*, 30 September 1999
[117] Russian Sends Ground Troops Into Chechnya, Raising Fears, *The New York Times*, 1 October 1999
[118] UK condemns Chechnya ultimatum, *BBC*, 7 December 1999.
[119] EU: Declaration Condemns Russia's Actions In Chechnya, *RFERL*, 9 December 1999

can't go on as though it is business as usual'[120]. This statement suggested that the commissioner sought to withdraw EU aid initiatives designed to enhance certain Russian sectors.

The Heads of State and Government held a summit between 10 and 11 December 1999 in Helsinki and decided to take action against Russia, mainly on the area of trade and aids. The declaration issued by the European Council condemned the intense bombardments of Chechen cities and the ultimatum set by Russia. It emphasized that the pursuit of preserving Russia's territorial integrity was a legitimate aim, however, the destruction of cities and the violence against their inhabitants were unacceptable. The Heads of State and Government called upon the Russian authorities to refrain from carrying out the ultimatum, to end the bombing and the use of force against the Chechen population, to allow for the safe delivery of humanitarian aid and to start a political dialogue with the Chechen authorities. As long as the Russian authorities did not give reassuring answers, the European Council decided that the EU's Common Strategy on Russia be reviewed, some of the provisions of the Partnership and Cooperation Agreement should be suspended while applying trade provisions narrowly and limiting TACIS to specific priorities such as support for human rights, the rule of law or civil society and nuclear safety (European Council, 1999). It further noted that '[t]he [EU] does not want Russia to isolate herself from Europe' but it must live up to its obligations in order to be able to uphold the strategic partnership with the EU. According to Chris Patten, '[the declaration on Chechnya] is not just a firm condemnation of Russian behaviour […] we have looked at our existing instruments for cooperation with Russia, we've gone through them all, and we've proposed reviewing or suspending parts of them. And it seems to me that in the context of the relationship we've tried to develop in the last few years, this goes a pretty long way […] I repeat that I don't think that any of our citizens in the [EU] think that we can proceed as though it was business as usual'.[121]

It took no more than a half a year for the EU to reconsider its policies and lift the sanctions. As Tuomas Forsberg and Graeme P. Herd argue, 'the EU has sacrificed a coherent and systematic advancement of its normative agenda in favor of strengthening its relations with the Russian Federation […] [generating] short-term political capital for policy makers at the expense of undercutting the role, function, and integrity of key EU institutions over the longer term.' (Fors-

[120] Ambassador summoned over Chechnya crisis, *The Independent*, 7 December 1999
[121] EU: Declaration Condemns Russia's Actions In Chechnya, *RFERL*, 9 December 1999

berg and Herd, 2005: 455). Indeed, Vladimir Putin's election as a president of the Russian Federation gave the perception that both sides could overcome the uncertainties which marked the presidency of Yeltsin (Maass, 2017: 36). British Prime Minister Tony Blair's visit to Russia in March 2000 'was seen as a starting gun for an intra-European race for the economic fortunes and investment opportunities in Russia' (Forsberg and Haukkala, 2016: 82). Another factor which had an effect on improving EU-Russia relations was the terrorist attacks of 11 September 2001. The widespread view became that the fight against terrorism was a legitimate purpose pursued by the Russian Federation (Forsberg and Haukkala, 2016: 132–33) and while the European Council softened its language regarding Russia's actions in the region, it called for a political solution to the Chechen crisis several times.

5.1.2 Georgian War

The hostilities between Georgia and Russia started well before 7 August 2008, the date which is considered the point of no return in the war. Two factors likely contributed to the eruption of crisis. First, the recognition of Kosovo's independence, which was insulting to Russia since the 1990s, encouraged it to 'take revenge' and recognize separatist movements which serve its interests as a resurgent power in global politics. Second, and more importantly, the idea of giving NATO membership to Georgia and Ukraine significantly contributed to the Russia's perception that its self-interest in the region is not respected considering the enlargement of the military alliance as a direct security threat. It expressed its serious discontent towards further NATO enlargement indicating its red lines in the 'common neighbourhood'. On 7 August 2008, however, tensions between Georgia and Russia reached the tipping point when they blamed each other for the commencement of the aggression. While Russia argued that Georgia committed violence in South Ossetia, the 'West' blamed Moscow for distributing passports in order to be able to promote its foreign policy interests abroad. Despite that the circumstances of the beginning of the war are contested, it seems likely that Georgian military operation in South Ossetia largely contributed to the outbreak of the war and the Russian intervention in Georgia (Forsberg and Haukkala, 2016: 162–63).

The Member States were divided over the question of how to best respond to the crisis unfolding in Georgia. At the beginning of the crisis, the possibility of imposing sanctions was not entirely excluded. However, it was also clear that the EU should not apply measures similar to those

that had been imposed against Iran or Zimbabwe.[122] France and Germany, the two decisive actors in the EU, were more understanding of Russia's actions in Georgia. Both condemned the disproportionate Russian military action and the violation of Georgian territorial integrity and sovereignty. However, they put more emphasis on maintaining an open dialogue and good relations with Russia. In contrast, the United Kingdom, Sweden and the 'new comers', particularly Poland and the Baltic states urged a tougher response, including the possibility to apply restrictive measures against Moscow. It should be noted that pragmatic considerations were also raised among the 'new comers'. For example, Hungary, while condemning Russia's actions in Georgia, did not support the imposition of economic and other types of sanctions against Moscow.[123]

French Foreign Minister Bernard Kouchner supported the idea of 'having monitors, […] European controllers [and] facilitators […] on the ground' since this was the European way of handling the crisis. Initially, sanctions were also considered against Russia but no details were published concerning the type of restrictive measures that may have been imposed. One of the impediments of the imposition of EU sanctions was that some Member States were unwilling to jeopardise their mutually beneficial relationship with Moscow.[124] The French President admitted that relations between the EU and Russia were going through a challenging time. The crisis has created mistrust between the two sides. But new divisions in Europe, especially a new Cold War would be a historical mistake according to Sarkozy. Russian military intervention was disproportionate, but he was confident that he and President Medvedev would be able to speak frankly in the future. He emphasized the importance of listening to each other and expressed his belief in maintaining partnership and dialogue instead of imposing sanctions, even if some Member States were pushing for adopting restrictive measures against Russia (Sarkozy, 2008).

Initially, Kouchner did not deny the possibility of imposing sanctions against Russia given that those measures were the outcome of the negotiations with EU partners but emphasized that his country did not support such measures:

[122] EU threatens sanctions against Russia, *The Guardian*, 28 August 2008
[123] Túl sokáig hallgatott Gyurcsány a grúz háború idején, *Kitekintő*, 16 September 2011
[124] EU threatens sanctions against Russia, *The Guardian*, 28 August 2008

‘I do not want to prejudge the issue before the EU summit on Georgia has taken place […] "[b]ut we will work hard with our 26 partners to draft a strong statement that signifies our refusal to accept the situation in Georgia. France does not support breaking off relations with Russia. This will have to be sorted out through negotiation. This will take time, we are not deluding ourselves.’[125]

Germany also sought an amicable resolution with Russia and did not wish to antagonize the Kremlin.[126] It did not want to damage its relations with Russia and see the interruption of the flow of gas and oil to Europe.[127] It stood by Georgia’s territorial integrity and welcomed the ceasefire by supporting the French initiative to deploy international peacekeepers but did not want to have a discussion on using other instruments to force Russia out of the region. Both German Foreign Minister Frank-Walter Steinmeier and Chancellor Angela Merkel argued against a blame game and making final judgments on the actors involved in the conflict. They both sought to play a constructive role to stabilize the South Caucasus and keep the dialogue with the Russian government open rather than make one-sided condemnations.[128] Poland and Italy were in favour of deploying international forces. The latter was even wiling to send 1.000 soldiers to the region. The Finnish Foreign Minister said that the question of future EU-Russia relations would certainly be part of a broad and tough discussion.

Lithuanian Foreign Minister Petras Vaitiekunas agreed with the opinion that such an act is un-acceptable and should not be left without consequences and a proportionate response.[129] The view of Estonian Foreign Minister Urmas Paet overlapped with his Lithuanian counterpart by declaring that he is convinced that the war in Georgia would affect EU-Russia relations. The EU and its Member States cannot act as if nothing happened. Idealism could not be continued with regard to Russia.[130] British Foreign Secretary David Miliband, contrary to his French and German counterparts, was more uncertain about whether the relationship between the EU and Russia could continue as if nothing had happened. He saw the use of force as unacceptable and wanted Russia to hear that message by imposing harsher instruments. Swedish Foreign Minister

[125] EU threatens sanctions against Russia, *The Guardian*, 28 August 2008
[126] Analysis: EU Under Pressure to Be Tough With Russia, *DW*, 13 August 2008
[127] EU threatens sanctions against Russia, *The Guardian*, 28 August 2008
[128] Analysis: EU Under Pressure to Be Tough With Russia, *DW*, 13 August 2008
[129] (EU Mulls Sending Peacekeepers to Monitor Georgia Ceasefire n.d
[130] Analysis: EU Under Pressure to Be Tough With Russia, *DW*, 13 August 2008

Carl Bildt agreed entirely with his British counterpart by condemning Russia's disproportionate use of force.

The European Council held an extraordinary meeting on 1 September 2008 in order to find a collective response to the Georgian war. Sarkozy called for calm and dismissed the possibility of launching of a new Cold War and imposing sanctions. President Commission Barroso and High Representative Solana also declared that sanctions will not be imposed if Russia complies with EU demands.[131] The EU's main response to the crisis was the postponement of the scheduled negotiations on a reinforced Partnership and Cooperation Agreement with Russia, a move supported by Member States more hostile towards Russia as well, such as the United Kingdom and Poland. It also appointed an EU Special Representative for the crisis in Georgia. It strongly condemned the disproportionate reaction of Russia and its unilateral decision to recognise the independence of Abkhazia and South Ossetia. However, the willingness to maintain close relationship is reflected in the Presidency Conclusions of the Extraordinary European Council meeting: "The European Council considers that given the interdependence between the European Union and Russia, and the global problems they are facing, there is no desirable alternative to a strong relationship, based on cooperation, trust and dialogue, respect for the rule of law and the principles recognised by the United Nations Charter and by the OSCE" (Council of the European Union, 2008). President Medvedev, Prime Minister Putin and Russian NATO representative Dmitry Rogozin expressed their satisfaction at not having sanctions imposed.[132]

On 15 September 2008, the EU decided to establish a European Union Monitoring Mission (EUMM) in Georgia which began its operation on 1 October 2008. It worked closely with the UN and OSCE in order to oversee compliance with the six-point Sarkozy-Medvedev Agreement and subsequent implementing measures throughout Georgia. It aims at contributing to long-term stability throughout Georgia and the surrounding region and stabilizing the situation in full compliance with the Sarkozy-Medvedev Agreement. It was tasked with stabilization, normalization, confidence building and information dissemination towards EU institutions.[133]

[131] L'UE reporte ses négociations avec la Russie, *Le Monde*, 2 September 2008
[132] Nato urged to bolster Baltic defence, *Financial Times*, 2 September 2008
[133] Council Joint Action 2008/736/CFSP of 15 September 2008 on the European Union Monitoring Mission in Georgia, EUMM Georgia (2008) OJ L 248

5.1.3 New Developments in EU Sanctions Policy: Human Rights and Chemical Weapons Sanctions Regimes

Sergei Magnitsky was a 37-year-old lawyer who was seriously injured, deprived of medical care, and left to die in a Russian prison nearly twelve months after investigating an enormous fraud case allegedly carried out by Russian officials to the amount of $230 million. After the death of Sergei Magnitsky, Hermitage Capital head Bill Browder aimed to convince US and EU leaders to adopt sanctions against serious human rights violators. With bipartisan support, the House approved the Sergei Magnitsky Rule of Law Accountability Act[134] in 2012 with a 365-43 vote. The Senate voted 92-4. The act aimed at imposing asset freezes and travel bans against Russian persons suspected of serious human rights violations in relation to the Sergei Magnitsky affair. A few years later, the US Congress adopted the Global Magnitsky Human Rights Accountability Act of 2016 allowing the imposition of the same types of measures on any individual anywhere in the world guilty of serious human rights violations.[135]

The EU, for a long time, was unwilling to establish a US-type Magnitsky legislation. The European Parliament called on the Council to establish a common EU list of persons responsible for the death of Sergei Magnitsky and to impose an EU-wide visa ban on these persons and freeze their financial assets. It proposed 32 officials be put on that list and urged Russia to undertake a credible and independent investigation.[136] The European Parliament threatened the EEAS with vetoing the EU-Russia visa treaty if the latter failed to take legislative steps.[137] Other EU institutions, particularly the EEAS and the Council, were reluctant to satisfy the requests of the European Parliament. During the 2013 EU-Russia summit, the Magnitsky affair was not even raised for fear of damaging relations with Russia. The Magnitsky affair was regarded as an internal Russian matter.[138]

Despite the reluctance of EU Member States to adopt an EU-wide sanctions regime against Russian human rights abusers, individual EU Member states sought to apply travel bans and

[134] Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012
[135] Global Magnitsky Human Rights Accountability Act
[136] European Parliament recommendation of 23 October 2012 to the Council on establishing common visa restrictions for Russian officials involved in the Sergei Magnitsky case (2012/2142(INI)) n.d.; European Parliament recommendation to the Council of 2 April 2014 on establishing common visa restrictions for Russian officials involved in the Sergei Magnitsky case (2014/2016(INI)) n.d.
[137] Russian officials: Banned by the US, on holiday in the EU, *EUObserver*, 10 June 2013
[138] EU: Magnitsky case is 'internal' matter for Russia, *EUObserver*, 31 May 2013

asset freezes against the persons concerned. Several TDs and Senators from Ireland, for example, called on the government to mirror the US Magnitsky Act. Maxim Peshkov, the Russian ambassador to Ireland, however, threatened Ireland stating that the move may have negative influence on a joint agreement being negotiated between the two sides.[139] Other EU countries were successful in adopting such measures. Estonia imposed travel bans against Russian human rights abusers in December 2016. Estonia amended its 1998 Obligation to Leave and Prohibition on Entry Act which pronounces that if 'there is information or good reasons to believe' that the persons were involved in the 'death or serious damage to health of a person', they should not be allowed to enter the country (Rettman, 2016). Lithuania joined Estonia one year later and passed a Magnitsky Act-type law unanimously. It allows the interior minister to refuse the entry of people suspected of breaching human rights (Rettman, 2017).

Almost 10 years after the death of Sergei Magnitsky, the EU was ready to adopt a new type of EU sanctions regime based on a Dutch proposal. The Netherlands floated the idea of introducing the so-called EU Human Rights Sanctions Regime. Traditional EU sanctions regimes are geographically limited and, therefore, politically more loaded. The proposed sanctions regime could be used against human rights violators globally, unrelated to their countries of origin. For example, EU Member States which could be reluctant to impose additional sanctions against Russia might be easier to convince with targeted sanctions.[140] Finally, EU foreign ministers adopted the new human rights sanctions regime on the 70th anniversary of the adoption of the Universal Declaration of Human Rights. It was agreed that the EEAS would propose legislative acts to the Council in the first half of 2019. The idea of naming the new sanctions regime 'the Magnitsky law' was dropped for political reasons but Dutch prime minister Mark Rutte requested that it be referred to informally as 'the Magnitsky law'.[141]

Another development in EU sanctions policy was related to the so-called Salisbury attack. On 4 March 2018, Sergei Skripal and his daughter, Yulia, were poisoned with a nerve agent called Novichok and found unconsciousness on a bench in the city of Salisbury. The Foreign and

[139] Russia forced Ireland's hand on Magnitsky case, *Irish Times*, 4 May 2013
[140] Critical mass of EU states back new human rights sanctions, *EUObserver*, 27 November 2018; Netherlands Proposes New EU Human Rights Sanctions Regime, *Radio Free Europe*, 19 November 2018; Dutch flesh out proposal for EU human rights sanctions, *EUObserver*, 19 November 2018
[141] Rutte: New EU sanctions are informal 'Magnitsky law', *EUObserver*, 13 December 2018; France and Germany back Dutch on human rights sanctions, *EUObserver*, 10 December 2018; EU gives green light to new human rights sanctions, *EUObserver*, 10 December 2018

Commonwealth Office requested technical assistance from the Organisation for the Prohibition of Chemical Weapons. It confirmed that Novichok, a nerve agent developed by Russia, was used to assassinate Sergei and Yulia Skripal. Prime Minister Theresa May said that it is highly likely that Russia was responsible for the attack.

The UK Government gathered evidence and concluded that Mr Skripal and his daughter were poisoned with Novichok, a military-grade nerve agent technologically developed by Russia. Prime Minister Theresa May, therefore, foresaw a range of measures to be taken (UK Government, 2018). As part of a response, the UK expelled, under the Vienna Convention, 23 Russian diplomats. This was the biggest expulsion since the end of the Cold War signalling the UK's major disappointment with regard to events taking place in Salisbury. The Government also decided to protect the country against hostile state activity and envisaged the possible detention of persons suspected of committing harmful activities in the UK. The Government also committed itself to regularly checking private flights, customs and freight. In addition, it was decided to freeze Russian state assets where evidence shows that they might be used against the UK. Prime Minister Theresa May also announced that the country would suspend all planned high-level bilateral contacts between the UK and Russia, including, for example, the refusal to take part in the World Cup in Russia. Finally, the government decided to deploy tools of national security with the aim of countering threats of hostile state activity (Council of the European Union, 2018d).

The UK Government sought to convince its European allies to impose similar measures against Russia and to coordinate their response. Persuading other EU Member States seemed a challenging task because there were doubts about the UK's diminishing influence in the face of Brexit. Germany and France were the first EU Member States to express their solidarity with the UK but strongly discouraged the use of economic sanctions. High Representative Federica Mogherini reassured Britain of offering support if needed while Commission Vice-President Frans Timmermans also expressed the institution's full solidarity with the UK and his wish to have a collective European effort to punish those responsible. Diplomats, however, expressed their reservations on adopting further economic sanctions against Russia because keeping the existing sanctions regime was already quite challenging. While Britain and France aimed at persuading other EU Member States to impose additional measures but Italy, Hungary and Greece rejected this proposal (Council of the European Union, 2018d).

The Foreign Affairs Council strongly condemned the attack against Sergei and Yulia Skripal and expressed its unqualified solidarity with the UK but did not take action against Russia (Council of the European Union, 2018d). EU Heads of State and Government also gathered in Brussels and condemned the attack in Salisbury. The European Council agreed with the UK's assessment that Russia was highly likely to have been involved in the attack but did not call on the Council to impose additional measures against Russia (European Council, 2018). The only decision at the EU level, though unprecedented, was the recall of EU ambassador from Russia.[142] It was not long, however, before the EU ambassador to Russia returned to Russia: less than three weeks later, Markus Ederer was in Moscow again representing the EU in Russia.[143] Some EU Member States coordinated with the UK in expelling Russian diplomats from their countries. Sixteen EU Member States, including France and Hungary, expelled Russian diplomats, whereas some non-EU countries, such as the US or Canada also adopted similar measures.

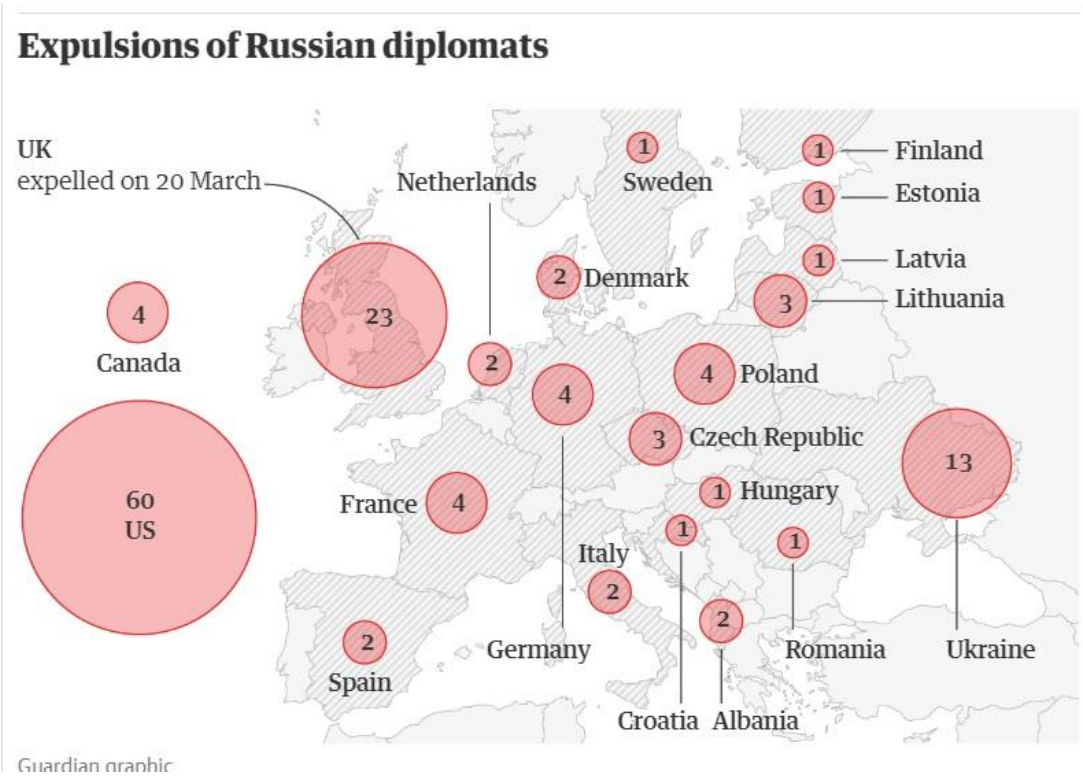

Figure 8: Explusion of Russian diplomats[144]

[142] Germany and France promise new Russia sanctions, *EUObserver*, 23 March 2018; Russian diplomats risk EU expulsions over UK attack, *EUObserver*, 23 March 2018
[143] EU Ambassador Back in Moscow After Recall, *Radio Free Europe*, 13 April 2018
[144] Western allies expel scores of Russian diplomats over Skripal attack, *The Guardian*, 27 March 2018

Meanwhile, the EU was also preparing its collective response to the use and proliferation of chemical weapons. In its conclusions, the European Council called on the Council to establish a new EU sanctions regime capable of fighting chemical, biological, radiological and nuclear-related threats during the summer of 2018 (European Council, 2018b). The Commission and the Member States created a common list of chemical materials and launched a dialogue with the private sector to reduce the possibility of terrorists acquiring chemical substances.[145] The Council announced the adoption of a new sanctions regime in mid-October. This new sanctions regime created a new legal basis for the EU to address the use and the proliferation of chemical weapons and impose sanctions against persons and entities involved in these types of activities regardless of their nationality and location.[146] Sanctions are imposed in the forms of travel bans and asset freezes while EU persons and entities are also prohibited from making funds available to those listed (Council of the European Union, 2018e). The UK asked fellow EU Member States to include, as the first listings, the two Russian military intelligence officers believed to be involved in the Novichok poisoning of Sergei Skripal and his daughter, Yulia.[147] In January 2019, EU ambassadors agreed to apply sanctions against four Russian military intelligence officers deemed responsible for planning and executing chemical attacks in Europe, including the assassination attempt against Sergei Skripal and his daughter. On 21 January 2019, the Foreign Affairs Council listed the first nine persons and one entity under the new EU chemical weapons sanctions regime, of which four Russians were directly connected with the Salisbury attack.[148]

As this subchapter has demonstrated, the EU was, for a very long time, reluctant to apply sanctions against Russia. The recent development in EU sanctions policy, especially the establishment of 'horizontal sanctions regimes', also proves a point: the EU, after the Ukrainian crsis, is still reluctant to apply more sanctions against Russia. With these new horizontal sanctions regimes, it is now able to target individuals irrespective of their nationalities and thus is also able not to 'shame and name' Russia, as the use of chemical weapons in 2018 on UK soil also

[145] Communication from the Commission to the European Parliament, the European Council and the Council: Seventeenth Progress Report towards an effective and genuine Security Union 2018
[146] Council Decision (CFSP) 2018/1544 of 15 October 2018 concerning restrictive measures against the proliferation and use of chemical weapons (2018) OJ L 259; Council Regulation (EU) 2018/1542 of 15 October 2018 concerning restrictive measures against the proliferation and use of chemical weapons (2018) OJ L 259
[147] EU sanctions Skripal suspects, Russia calls move groundless, *Reuters*, 21 January 2019
[148] Council Decision (CFSP) 2019/86 of 21 January 2019 amending Decision (CFSP) 2018/1544 concerning restrictive measures against the proliferation and use of chemical weapons (2018) OJ L 18I

demonstrated. At the same time, it is also clear that the Ukrainian crisis represented a new type of challenge for the EU which, as it escalated further and futher, could not be left without answer. The annexation of the Crimean Peninsula, the destabilization of Eastern Urkaine and, most notably, the downing of flight MH17 triggered a consensus at the EU level to impose sanctions against Russia, even if those measures perfectly reflect the red lines of EU Member States. In other words, they managed to reach a compromise in the Council but EU Member States only accepted measures which do not harm their fundamental foreign and economic interests.

5.2. Mapping out Member State Trade Preferences

The aim of this subchapter is to explore the trade preferences of EU Member States with regard to Russia. This contributes to a better understanding of the interviews of the last subchapter (5.3). In this sense, this section complements the interviews with knowledge of trade preferences which played a fundamental role in the design of the Russian sanctions regime. The ultimate aim of the EU was to establish a sanctions regime that has significant, but not disastrous, impact on Russia while also making sure that the EU would suffer to only a limited degree to ensure unanimity in the Council. The main argument is that EU Member States only accept measures in the Council which did not harm their fundamental interests. For example, as the chapters will also show, the interests of Central and Eastern European States ruled out the possibility of introducing sanctions on the gas sector which was promoted by the UK, the Netherlands and the European Parliament. The high dependence of Central and Eastern European States on Russian gas resulted in declining this type of sanctions while it was possible to target the Russian oil industry for which the EU could re-export its technologies to other parts of the world. Similarly, the EU quickly ruled out the possibility of targeting the nuclear energy field mainly due to Finnish and Hungarian interests. Finally, it is also interesting to observe that the EU decided not to cut off Russia from the SWIFT system. This was a measure which was introduced vis-à-vis Iran but the EU soon realized that the deep connections between some EU Member States and Russia did not make it possible to introduce similar measures against Russia, even if that measure alone would have decreased the Russian GDP by 3-5%.

At the time when EU sanctions were imposed in response to the Ukrainian crisis, Russia was, after the USA, Switzerland and China, the fourth largest trading partner of the EU representing 8,4% of total trade. For Russia, the EU has been its biggest trading partner with 48% of total Russian foreign trade and the most important foreign investor, providing up to 75% of foreign direct investment. EU exports are mainly in machinery, transport equipment (mostly cars), chemicals, medicines, electric and electronic goods and agricultural products the total volume of which was €103 bn in 2014. In contrast, Russia main export to the EU is extraced fuels (74,9%). Trade between the two economies grew until the 2008 economic crisis. This negative trend was reversed during the early 2010s with record high level trade. Due to the Russian recession and sanctions, total trade fell from €326 bn to €285 billion in 2014 (Szczepanski, 2015). EU exports to Russia declined by 20,7% annually between 2013 and 2016 (Fritz et al., 2017). In the second half of 2014, the European Commission predicted that sanctions would cut Russian GDP growth by 0,6% in 2014 and 1,1% in 2015 (European Commission, 2015). The IMF agreed with the EU's evaluation, estimating that sanctions and counter-sanctions could reduse Russia's GDP by 1 to 1-1,5% (IMF, 2015). After the imposition of sanctions, the World Bank estimated a recession of 2,7 percent of real GDP based on the optimistic belief that oil prices will rise and produce a growth rate of 0,7% in 2016 and 2,5% in 2017.[149] Prior to the imposition of sanctions, Russia's GDP increased by 1.6%, a number significantly behind emerging economies like India or China (De Galbert, 2015). The European Commission estimated in the second half of 2014 that the EU's real GDP was decreased by 0,3 percentage points due to the sanctions.[150] This is not an unsigifnicant decrease given the relatively low growth rate of 1,3-1,5% in the EU.

There was wide consensus on the need to respond to events unfolding in Ukraine. After military solutions were quickly ruled out, the EU's answer mostly relied on the application of sanctions. At the same time, it quickly turned out that there was no appetite for far-reaching economic sanctions having strong impact on Europe. There were several reasons not to apply storng sanctions against Russia. First, Russian related business interests, especially in the fields of oil and gas, have a strong influence on political decision-making, given some countries are highly dependent on Russia's natural resources. Second, strong sanctions could have been seen by Russia

[149] World Bank Revises Its Growth Projections for Russia for 2015 and 2016, *World Bank*, 9 December 2014
[150] EU Projects Impact of Sanctions on Russian Economy, *The Wall Street Jornal*, 29 October 2014

as an escalation whereas the EU's strategic objective was de-escalation in Ukraine. Furthermore, 2014 was still a period of recovery for Europe after the economic crisis: it was rather threatening for Europe to use strong sanctions as it feared losing billions of euros, even if the loss would be relativey rather low. For example, a Russia-friendly German business lobby group, the Committee on Eastern European Economic Relations, warned the German government of the risk of losing 50 000 jobs (compared to almost 40 million employed persons) and a fall in exports of €7-8 billion (compared to €1 000 billion in total) (Christie, 2016).

The EU was thus constrained in designing the new sanctions regime. The ultimate aim was to establish a sanctions regime that would have a significant, but not disastrous, impact on Russia while also making sure that the EU would suffer to a limited degree, to ensure unanimity in the Council. The perfect scenario would have been if only Russia paid the price of sanctions but this option turned out to be illusory given the high dependence between the two economies. The second-best solution was, therefore, a sanctions regime with a lower economic impact on Europe than on Russia. Another difficulty was to balance the losses among different regions of Europe: the exposure to Russian markets (see table 5) was negligible for certain Western European Member States, low-to-intermediate for Central Europe and intermediate-to-high for Eastern Europe. In this unbalanced situation, officials were tasked to find a way forward by redistributing the impact of the new sanctions regime in a relatively balanced way so that the restrictive measures could get unanimous support in the Council. An additional factor was the wish that Member States control the intensity of the new sanctions regime: it would be up to them to increase or, if needed, decrease the pressure on Russia if sanctions did not achieve meaningful results (Christie, 2016).

Member State	2013	2015
Lithuania	19,8	13,7
Latvia	16,2	11,4
Estonia	11,5	6,7
Finland	9,6	5,9
Poland	5,3	2,9
Slovenia	4,6	3,0

Slovakia	4,0	2,2
Czech Republic	3,7	2,0
Germany	3,3	1,8
Austria	3,3	1,9
Hungary	3,1	1,7
Croatia	3,0	1,7
Romania	2,8	1,8
Italy	2,8	1,7
Bulgaria	2,6	1,7
EU Total	2,6	1,5
Sweden	2,2	1,2
Denmark	1,9	0,9
France	1,8	1,0
Cyprus	1,6	0,5
Netherlands	1,6	0,5
Greece	1,5	0,8
Belgium	1,4	0,8
Malta	1,3	0,1
Spain	1,2	0,7
UK	1,1	0,8
Luxembourg	1,1	0,7
Ireland	0,7	0,3
Portugal	0,6	0,3

Table 5: Value of goods exports to Russia as a percentage of the value of goods exports to all countries in the world, EU Member States, in 2013 and 2015 (Christie, 2016).

Accordingly, six design criteria were created before the new sanctions regime was approved:

1. Effectiveness (intensity of impact on the Russian economy)
2. Cost/benefit ratio (impact on EU economy)
3. Balance across sectors and across Member States

4. Coordination with sanctions adopted by the US, G7 partners and other countries
5. Scalability/reversibility over time
6. Legal defensibility of the measures/ease of implementation by economic operators (European Commission, 2015).

Based on criteria 1, 2 and 3, the import ban on crude oil and natural gas was ruled out. Although this measure would have seriously affected Russia's public finances, it would have also hurt Central and Eastern European Member States (Christie, 2016). Indeed, energy export revenues jumped from $53 billion to $330 billion between 2000 and 2014 and accounts for about half of the Russian federal budget and nearly 66 percent of all export revenues (Vatansever, 2015). However, Central and Eastern European states feared that they would be cut from the Russian gas supply. Hungary, for example, voiced its concern that Russia might, as a countermeasure, stop delivering gas to EU Member States highly dependent on Russian gas.[151] Thus, the Russian gas sector was not directly targeted but its main players, Gazprom and Novatek, were prohibited from accessing EU financial markets. Thus, the sanctions would not limit the current supplies of energy export from Russia but would impose a barrier for Russia to develop its long-term projects in oil industry by limiting EU companies' role in Russian oil projects (Vatansever, 2015).

Based on criteria 1 and 3, wide-ranging prohibition of exports to Russia (e.g. in manufactured goods) was considered undesirable, although the EU could have borne the costs, given its much larger global exports revenues. Selecting only a narrow set of manufactured goods would have been acceptable to the Member States but the damage to Russia would have been low. This also explains why the ban on military and dual-use goods as well as advanced oil production equipments could only be a part of the new sanctions regime. When considering criterion 5, policymakers realized that a measure with a single, instant 'hit' followed by a decreasing impact generally would reach their aim because the target country would pay the price once and there is going to be no reason to change its behaviour. Excluding Russia from SWIFT would have contributed to the establishment of a new financial system in which the EU would not have had oversight. It would have also fragmented the international financial transaction system eroding the common benefits of SWIFT (Christie, 2016).

[151] Biztosítani kell a közép-európai országok energiaellátását, *kormany.hu*, 7 March 2014

While suspending Russia from the SWIFT international bank payment system was seriously considered, it was ruled out for several reasons (Emerson, 2014). This is nuclear weapon of the sanctions arsenal, and was supported by Britain and Poland[152] while Germany and Italy – countries with deeper trade relations with Russia – objected the idea. It would admittedly have caused a GDP contraction of up to 5% in Russia.[153] The European Parliament in its resolution also called to "consider excluding Russia from […] the SWIFT system" (European Parliament, 2014). However, Europeans feared that Russia, as a countermeasure, would stop sending gas to the European continent where some EU Member States are heavily, if not totally, dependent on Russian gas (Dolidze, 2015). There were three major reasons why Russia was not cut off from SWIFT. First, European firms working in Russia would suffer. Second, if it is used too frequently to achieve foreign policy objectives and, its cherished neutrality could weaken. Third, if cutting countries off from SWIFT is overused, there will be an incentive for other countries to develop alternatives. Russia's central bank had already worked on alternatives, while China has also been interested in working out a substitute as the world's financial centre of gravity moves eastward. As one of America's senior Treasury officials argued, using it for sanctions should be 'an extraordinary step, to be used in only the most extraordinary situations'.[154]

Contrary to common belief, EU sanctions were not imposed to isolate Russia from the West (in the way that restrictive measures isolated Iran, North Korea or Cuba) given its high degree of integration into global markets and its strong economic relations with Europe. Similarly, the exclusion of Russia from the G8 was a symbol rather than a sign of willingness to deal with world affairs without the involvement of Russia. Instead of isolation, sanctions were designed to achieve targeted economic impact that would not harm the entire international financial system (De Galbert, 2015). As then-US undersecretary David Cohen said, Russian sanctions required an innovative approach in finding 'a way to increase the pressure sufficiently to affect Moscow's calculations while minimizing the risk to global financial markets, global energy supplies, and overall economic activity in the United States and Europe'.[155]

[152] EU threatens more Russia sanctions after Mariupol attack, *EUObserver*, 25 January 2015
[153] Blocking Russian access to SWIFT network may cause 5% GDP fall, *TASS*, 16 September 2014
[154] The pros and cons of a SWIFT response, *The Economist*, 20 November 2014
[155] Remarks of Under Secretary for Terrorism and Financial Intelligence David S. Cohen at The Practicing Law Institute's "Coping With U.S. Export Controls And Sanctions" Seminar, "The Evolution Of U.S. Financial Power", *U.S. Department of the Treasury Press Center*, 12 November 2014

Policy-makers were, therefore, tasked to find an area of economic exchange where a prohibition would cost Russia while asymmetric enough to ensure less damage to the EU. The best area seemed to be cutting off Russia's access to Western financial markets, especially Russian corporations with external debt. In the fourth quarter of 2013, 74 percent of total international banking clams on Russian counterparts were held by EU banks but Russian counterparts represented only 0,9 percent of all foreign claims held by EU banks (Christie, 2016). Accordingly, the European Commission proposed that the capital market restrictions include a prohibition on participation in Russian state-owned banks if they the government ownership stake was more than 50 percent. The Commission estimated that $16.4bn was raised by Russian financial institutions through IPOs in EU markets between 2004 and 2012. In 2013, 47 per cent of the bonds (7.5bn out of a total of 15.8bn) issued by Russian public financial institutions were issued in the EU's financial markets. The Commission noted that this restriction seriously harms the ability of Russian state-owned financial institutions to finance the Russian economy as their cost of raising funds sharply increases. The European Commission assessed both direct and indirect impact of the restriction. While it had only limited direct negative impact, other (indirect) impacts were distributed among the Member States. The scope of restriction was limited to new issues but it could (indirectly) affect securities previously issued by Russian financial institutions, and already traded and held by EU investors. Adverse effects could range between loss of revenue for operators or, as a worst-case scenario, risk of default on outstanding obligations from Russian financial institutions. The European Commission did not propose to extend the measures to sovereign bonds as Russia had been an important investor in issuance by several EU Member States while equity and debt financing from private sector operators as well as syndicated loans were excluded given the possible adverse effects of possible asymmetrical retaliations on EU subsidiaries in Russia (European Commission, 2015). As table 6 shows, criterion 3 was also fulfilled because core countries, with the exception of Austria, have low exposure to Russia (Christie, 2016).

	Russia	All Foreign Counter-parts	Share of Russia
All Bank Nationali-ties	256 388	28 109 600	0,9%
BIS CBS Reporting Countries	245 008	26 781 900	0,9%
Austria	(estimated) 14 667	428 600	(estimated) 3,4%
Belgium	819	242 900	0,3%
Finland	N/A	27 300	N/A
France	52 076	2 948 100	1,8%
Germany	23 515	2 684 300	0,9%
Greece	377	170 700	0,2%
Ireland	N/A	127 800	N/A
Italy	30 531	845 900	3,6%
Japan	20592	3 349 000	0,6%
Netherlands	18 703	1 295 200	1,4%
Spain	2 831	1 516 000	0,2%
Sweden	N/A	949 200	N/A
Switzerland	7 124	1 826 000	0,4%
UK	17 806	3 780 100	0,5%
EU (estimated)	189 041	20 200 100	0,9%
Share of EU (esti-mated)	73,7%		
US	31 144	3 015 600	1,0%
Canada	(estimated) 366	1 152 300	(estimated) 0,0%
EU+US+CAN (esti-mated)	220 551	24 368 000	0,9%
Share of EU+US+CAN	86,0%		

Table 6: Foreign claims by nationality of reporting bank, amounts outstanding, in millions of US dollars, to Russian counterparts versus all foreign counterparts, fourt quarter of 2013.

Indeed, a significant risk for Russia was a liquidity crisis created and intensified by sanctions. This is precisely what sanctions targeted: financial sectorial sanctions affecting companies' debt requiring access to Russian state's foreign exchange reserves (as the case of Roseneft also showed). The access to financial markets of three major Russian state oil firms – Roseneft, Transneft and Gazprom Neft – was restricted which was a serious blow to Rosneft which asked the Russian government for a €25,2bn loan in August 2014.[156] Indeed, sanctions would contribute to destabilizing the Russian foreign exchange market and the falling ruble. This is exactly what happened: in 2014, the rouble lost 45 percent of its value against the dollar. The stabilization of the rouble required monetary intervention which, in turn, redued Russia's international reserves from $475 bn in June 2014 to nearly $360 bn in March 2015. Sectorial financial sanctions restricting Russia's access to international capital markets weakened Russia's ability to grow. Sanctions targeting energy technologies will impede the ability to maintain their production capacities (De Galbert, 2015).

Regarding an embargo on trade in arms, the European Commission noted that Russian exports to the EU were worth €3.2 bn while EU exports to Russia are tenth times less. Prior contracts could be executed through a safeguard clause equally applied to both exports and imports. EU dual use goods exports to Russia amounted to around €20 bn per year. The European Commission proposed a narrowly defined list of products, worth around EUR 4 billion per year (20 per cent of the total dual use exports to Russia), such as special materials, quantum key distribution systems, some machine tools, and high performance computers and electronics. The European Commission also noted that Russia is highly dependent on EU technologies to develop its most competitive export-oriented sectors, including energy and steel production. EU exports in energy related technologies for non-conventional oil and gas projects amount to around EUR 150 million per year. In order to avoid current trade in energy products, the European Commission proposed the restriction to applied only to long term production. It was also added that substitutions of such products and technologies, at least with similar degree of sophistication and quality, is almost impossible.[157]

EU Member States struggled to balance their economic interests with political interests as some of them, notably France, Germany, Italy as well as the Czech Republic – had serious arms trade

[156] Ukraine crisis: New EU sanctions on Russia go into effect, *BBC*, 12 September 2014
[157] Ukraine crisis: New EU sanctions on Russia go into effect, *BBC*, 12 September 2014

deals with Russia. European military exports consisted of, among others items, aircrafts, armoured vehicles and communciations supplies. Official and precise data remain unclear because not every EU Member State provide information on their deliveries. It is known, however, that during 2008-2012, EU Member States issued export licenses on arms to Russia worth over €925 million. This sum represented less than 1 percent of the total value of all export lincences. France was clearly one of the biggest exports to Russia representing one-third of this value and exporting arms worth €382,5 million between 2008 and 2012.[158] While EU Member States were undecided on whether to impose an arms embargo at the EU level, some of the them, particularly Germany and the United Kingdom, imposed a quiet ban on arms sales to Russia and declined licenses to export related materials during Spring 2014. The German government declared that 'due to the current political situation no permits for the export of arms to Russia are […] being granted'.[159] Belgium, Finland, the Netherlands and Sweden also opted for prohibiting arms trade with Russia. By contrast, France and Spain issued such licenses as long as an agreement did not come about at the EU level while Italy remained undecided and declined to declare its official position.[160]

France's exports clearly surpassed every other EU Member State's arms trade with Russia as its export had tripled between 2009 and 2010. The expected export of two Mistral ships, on which more than 1000 jobs depended were outstanding compared to previous deals. Former French President François Hollande attached great importance the sale of the Mistral ships despite criticism of allied countries. Not only were the Mistral ships expected to be sold: Vladimir Putin had also made a pledge to buy further military equipments from France should the ships be delivered on time.[161] The Russian military needed to have advanced command-and-control technology and France was interested in selling jets and electro-optic infrared equipment[162] as well as infantry fighting vehicles, thermal-vision, or night-operations capability.[163] The Baltic states regarded French willingness to sell its ships unethical: the agreement symbolized the

[158] EU arms embargo on Russia will make little impact if France can still sell Putin warships, *The Conversation*, 28 July 2014
[159] Several EU states impose arms ban on Russia, *EUObserver*, 7 July 2014
[160] Several EU states impose arms ban on Russia, *EUObserver*, 7 July 2014
[161] European countries are selling arms to Russia while condemning it over Ukraine, *Washington Post*, 17 June 2014
[162] Several EU states impose arms ban on Russia, *EUObserver*, 7 July 2014
[163] France and Germany should stop arms sales to Russia, *EUObserver*, 11 March 2014

strong willingness to promote national interests in the wake of global uncertainties and ambiguity over the fundamentals of international law. At the beginning of the crisis, former French President refused to cancel the deal on the two Mistral-class helicopter carrier ships, of €1,2 billion, used to transport sixteen attack helicopters, dozens of tanks and hundreds of soliders. François Hollande declared '[w]e are executing the contract in full legal compliance because we're not at that level of sanctions' while he also upheld the possibility to cancel the contract if the crisis escalated. A unified position on collective EU sanctions was difficult as no other Western nation offered France financial help.[164]

Based on the evidences provided by the Stockholm International Peace Research Institute (SIPRI), Germany and the Czech Republic also had significant arms trade deals with Russia, including two German engines for missile boats and four Czech light transport aircraft worth $3,2 million each. Russia also made a deal with Italy for 60 army vehicles worth $24 million.[165] Germany, for example, sought to sell a brigade-level training facility, used to simulate realistic battlefield conditions, worth over €100 million which was only accessible to Western nations.[166] In March 2014, however, due to the evolving crisis in Ukraine, Germany halted the military contract signed by Rheinmetall Defence despite the efforts of Rheinmetall to stick to its contractual obligations with Russia.[167] Former German Economy Minister Sigmal Gabriel said "[g]iven the current situation, the German government considers the construction of a military training facility in Russia to be inappropriate".[168]

The UK, along with some of the EU Member States, imposed unilateral trade embargo against Russia in the first half of 2014. Prime Minister David Cameron, while under attack by MPs for not prohibiting all kinds of arms export to Russia, criticized non-aligned EU Member States, particularly France, of promoting their own economic interests instead of prohibiting arms trade with Russia. Prime Minister David Cameron called for EU-wide measures on prohibiting arms sales to Russia. According to the Commons Committees on Arms Export Controls, however, only 31 licences had been halted while 251 other, worth at least £132 million, remained in force despite Prime Minister Cameron's and Foreign Secretary William Hague's earlier declaration.

[164] European countries are selling arms to Russia while condemning it over Ukraine, *Washington Post*, 17 June 2014
[165] From guns to warships: Inside Europe's arms trade with Russia, *CNN*, 31 July 2014
[166] France and Germany should stop arms sales to Russia, *EUObserver*, 11 March 2014
[167] Rheinmetall poised to honor military delivery contract with Russia, *DW*, 19 March 2014
[168] Germany suspends Rheinmetall military contract with Russia, *DW*, 19 March 2014

For instance, the committee said that the export of small arms ammunition, gun mountings, body armour and, military communications equipment were still allowed to export.[169] Despite the fact that the UK, Sweden and some Eastern EU Member States proposed imposing an EU-wide arms embargo on Russia, the Foreign Affairs Council, showing deep divisions among the Member States, failed to agree on prohibiting trade deals between the EU and Russia. The failed agreement was largely due to the resistance of France fearing that it would not be able to sell the Mistral ships to Russia. The idea that France should be given a safeguard clause to execute contracts signed before the crisis was raised.[170] The French firm Thales had exported a great amount of military equipment to Russia, mostly to Russian arms-maker Rosoboronexport but both declined to comment on whether they had contractual relations after the Ukraine crisis. France was able to persuade other EU Member States that the scope of arms embargo imposed against Russia should not cover contacts concluded before 1 August 2014. If, therefore, Thales and Rosoboronexport had a contract concluded before that date, they could have retained their beneficial relations while the French company would be able to comply with common decisions.[171]

Sanctions on Russia have had much more impact on Europe than on the US given that the former has had 10 times larger trade volume (€365 billion in 2013) with Russia than the latter ($38 billion in 2013). Germany, a single EU Member State, has had twice the trade-in-goods ($86 billion) than the US in the same year. US trade with Russia decreased 10 percent in 2014, while EU-Russia trade relations decreased by 13 percent in 2014. The first half of 2015 showed an acceleration in this process: US-Russia trade was down 20 percent compared to the same period in 2014, while EU-Russia trade was down 28 percent. EU countries with extensive trade relations with Russia, notably Germany, France, Italy, Poland and the Netherlands – suffered the most with the imposition of sanctions.

Within this context, it was clear that the new sanctions regime would have its limits. Although the EU sought to maximize pressure on Russia, EU Member States were reluctant to accept measures which seriously harmed their national interests. On-going trade in arms, for example, was a vital issue for some Member States, which could only accept an arms embargo if it did

[169] Cameron to check arms export licences to Russia, *BBC*, 23 July 2014
[170] Leaked Russia sanctions memo: the details, *Financial Times*, 24 July 2014
[171] French eyes for a Russian tiger, *EUObserver*, 25 August 2015

not cover deals in progress at that time. Other measures – such as sanctions on the gas sector or cutting Russia from the SWIFT system – were quickly ruled out due to the fundamental interests of some Member States. The current sanctions regime thus reflects the interests of the Member States and also the expertise of some officials who proposed measures that mostly hurt Russia.

6. Conclusions

This research has explored the EU's legal framework for collective decision-making in the area of sanctions policy. It addressed the question of how EU law enables Member States to adopt sanctions collectively and how it constrains them in implementing national policies going against EU law. The main conclusion is that EU law discourages the adoption of national legislation in the field of sanctions policy, especially in cases when the application of restrictive measures has economic or financial consequences. In fact, EU Member States are seriously constrained by EU law in adopting economic and financial sanctions unilaterally. In this way, an EU Member State promoting its interests unilaterally may be brought before the CJEU for failing to comply with EU law in the field of trade and sanctions policy.

In some respects, the prohibition of adopting unilateral measures in the field of foreign and security policy may seem striking. After all, sanctions are nearly always used to achieve foreign or security policy objectives where EU Member States have always sought to retain (most of) their competences to pursue policy objectives based on national preferences. Indeed, EU external relations law provides the Member States with the flexibility to formulate foreign and security policy unilaterally. In particular, the Treaty provisions on CFSP are clearly less restrictive with regard to the implementation of national foreign policies compared to other external policies defined by the TFEU. The Treaty drafters' intentions are clear: they sought to retain (most of) the competences at the Member State level in order to be able to act unilaterally in cases where the adoption of collective decisions, for whatever reasons, fail in the Council. The intergovernmental nature of the CFSP still allows EU Member States to take individual actions in world politics, although this flexibility has already been limited due to the introduction of new legal obligations into the Treaties and the process of foreign policy institutionalization at the EU level.

However, the CFSP has clearly moved away from traditional intergovernmentalism. EU foreign relations law has developed considerably since the publication of the Davignon report on the future of EC foreign policy. Compared to the initial attempts of the Member States to establish a cooperation in foreign policy issues within the framework of the EPC in the early 1970s, the CFSP has clearly undergone major reforms, institutionalization and even a legalisation process producing law and legal processes. EU Member States must respect the legal obligations defined by the TEU in foreign and security policy. In particular, they are now bound by the (CFSP) Decisions adopted within the framework of the CFSP and are under legal obligation to avoid the adoption of national policies going against EU-level actions.

Undoubtedly, however, the (legal) enforcement of CFSP Decisions still causes uncertainties in legal scholarship. Except for some limited areas, the CJEU is principally excluded from CFSP matters. There are simply no judicial tools to evaluate the Decisions adopted by the Member States within the framework of the CFSP. In fact, EU Member States are prevented from adopting legislative acts in CFSP which makes judicial scrutiny impossible. Furthermore, the specific loyalty obligation inserted in Article 24(3) TEU also reinforces the general view on CFSP that mutual solidarity cannot be enforced in foreign and security policy. The lack of legal tools does not mean, however, that the possibility of enforcement is be totally lacking: EU Member States disrespecting CFSP Decisions might experience (political) disadvantages in other negotiations where consequences for non-compliance appear in the form of exclusion from benefits in any other EU policy area. In other words, the Commission is not entitled to launch infringement proceedings against EU Member States disrespecting CFSP Decisions ("no legal route"). However, if an EU Member State clearly implements national measures contradicting CFSP decisions it may face negative *political* consequences, e.g. other EU Member States deciding to refuse demands for benefits in other policy areas. To put it more simple: EU Member States that violate CFSP Decisions may face decreasing influence in the EU and may not receive advantages which would have been given to them if they had complied with their obligations under TEU provisions.

While the use of sanctions is inextricably linked with CFSP, it also shows considerable differences concerning the ability of the Member States to pursue policy objectives based on national preferences. In fact, even in the area of foreign and security policy, EU Member States are expected to respect their EU law obligations and are constrained in formulating foreign policy

which complies with EU law. According to settled case-law of the CJEU, measures whose effect is to prevent or restrict the export of certain products cannot be treated as falling outside of scope of the common commercial policy simply for the reason that they also pursued foreign and security policy objectives. In other words, even if (economic) sanctions are used to achieve foreign and security policy objectives, they remain principally commercial policy tools. In this way, EU Member States cannot disregard the fact that the EU has exclusive competence in the area of trade policy and are thus constrained in their abilities to formulate a foreign policy based on national preferences.

The wide competence of the EU in the field of sanctions policy thus discourages EU Member States from adopting measures at the national level and pushes them towards collective actions. The type of competence the EU has in the area of sanctions policy, however, remains undefined. In fact, it is one of the few external competences of the EU which is neither an exclusive nor a shared competence of the EU. It is certainly not an exclusive competence because sanctions policy is not listed amongst the exclusive competences of the EU. Furthermore, the adoption of economic and financial sanctions is pre-conditioned on a political decision made within the framework of the CFSP. It seems that the adoption of sanctions bears resemblance to shared competences in which both the EU and the Member States can take actions.

However, the application of some other types of sanctions, such as travel bans or arms embargoes, remained principally the competence of the Member States. In these cases, the Member States can adopt EU-wide measures by adopting the necessary CFSP Decisions. At the same time, they are entitled to introduce unilateral measures. One of the reasons why sanctions policy, as such, has remained an undefined EU competence is that the term ‘sanctions’ is so broad that it entails measures falling within both EU and Member State competences. In this way, sanctions policy simply cannot be categorized as either an exclusive or a shared competence.

Thus, from a legal perspective, EU Member States were encouraged to impose sanctions collectively against Russia. In particular, sanctions with economic and trade repercussions, which mostly harm the Russian elite, could not have been imposed individually. If a group of Member States had decided to impose economic and financial sanctions against Russia, previous case law and EU Treaty provisions suggest that the Commission would have initiated infringement proceedings against them for failing to comply with their EU law obligations. In exceptional

cases, EU Member States are still entitled to introduce unilateral trade measures against third States. In the Russian case, however, individual actions would have gone against well established case law and the process of establishing a new sanctions regime provided for by Article 215 TFEU.

The contribution of this research does not end here. In particular, it has recognized and has emphasized the increased importance of EU soft law in the adoption of sanctions. It has drawn attention to the trend whereby the European Council, through its Conclusions, has gradually promoted itself as the ultimate decision-maker in EU sanctions policy. The European Council has always shaped EU external actions. Its Conclusions have always served as a compass for other EU institutions. However, since the entry into force of the Lisbon Treaty, EU Heads of State and Government are now involved in *day-to-day EU policy-making processes*. Instead of providing merely general strategic guidelines and outlook on the future of the EU, which was its traditional role, the European Council has stepped up with the ambition to formulate *specific policy proposal*s which are then submitted to other EU institutions, notably to the Commission and the Council.

In order to see how EU soft law has changed, this research specifically examined every European Council Conclusion adopted after the entry into force of the Maastricht Treaty. It analysed whether sanctions, as a specific policy instrument, appeared in European Council Conclusions during the pre-Lisbon period. It turned out that prior to the entry into force of the Lisbon Treaty, these Conclusions rarely if ever contained comments on sanctions, let alone instructions to adopt specific types of sanctions. Even if the term 'sanctions' appeared in Conclusions pre-Lisbon, EU Heads of State and Government merely acknowledged that sanctions were imposed by the foreign ministers or, complying with international law obligations, implemented restrictive measures through the UN framework. Since 2009, however, there have been four cases in which EU Heads of State and Government specifically called on other EU institutions to adopt sanctions: before the Iranian nuclear deal, during the Syrian civil war and the Ukrainian crisis as well as after the Salisbury attack (Szép, 2019b).

In other words, this research argues that a strict reading of EU Treaty provisions is insufficient to understand the new policy-making processes in sanctions policy. The provisions in the TEU and TFEU suggest that the Council is the only decision-maker in the adoption of restrictive

measures. Since the entry into force of the Lisbon Treaty, however, the European Council intervenes, on a regular basis, in the adoption of sanctions. EU Heads of State and Government also make a (political) decision on sanctions if the EU is faced with external crises with serious internal consequences or if they need urgent management and require decisions with more authority. In fact, the results suggest that the European Council retains the right to make final decisions on sensitive questions while EU foreign minsters are no longer authorized, despite clear Treaty provisions, to impose sanctions in sensitive cases.

The appearance of a new actor in EU sanctions policy has unequivocal consequences on collective decisions in the area of sanctions. In the first step, the European Council principally makes a binary decision: the fundamental question at this level is whether the EU should or should not introduce sanctions against third actors. The responsibility of EU Heads of State and Government is not to make technical and detailed decision. Instead, they must take a *political decision* on whether and how EU institutions need to introduce sanctions. Once this highly political decision has been made, the decision-making procedure continues to be based on Treaty provisions. Formally, the Council imposes sanctions with the combined application of Articles 29 TEU and 215 TFEU after receiving legislative and non-legislative proposals from the European Commission and the EEAS. The role of the Council here is to follow the guidance of EU Heads of State and Government as well as to prepare the technical and legal details of the (new) sanctions regime concerned.

The argument that an intergovernmental policy area is dominated by the interests of the Member States may not seem a surprising result. In some sense, EU Member States promote their interests through institutions, including the complex web of EU institutions. The literature on EU foreign policy, however, is largely dominated by constructivist views. According to the majority of scholars, several factors suggest that CFSP has moved beyond traditional intergovernmentalism. In particular, the common socialization of policy-makers and their shared norms on how the EU should speak on the world stage leads to common agreements. In this way, EU Member States are capable of going beyond the lowest common denominator. This research, however, argues that the case of sanctions imposed against Russia precisely shows that EU Member States only adopted decisions which do not harm their fundamental (political and trade) interests. After all, the main objective of this sanctions regime was to minimize the damage to the EU, while maximizing the pressure on the Russian elite.

The reason the Commission was prevented from proposing legislation in the area of gas and nuclear energy was that it was aware that the EU Member States would not have accepted these measures in the Council. In particular, most of the Central and Eastern European states are heavily dependent on Russian gas. Despite British and Dutch pressure, they could not have accepted the introduction of such measures because it would have fundamentally gone against their main interests. Similarly, the prohibition of cooperation in the area of nuclear energy was also unacceptable for some Member States. Finland and Hungary voiced their concerns that nuclear energy cooperation cannot fall victim to the crisis. Finally, EU Member States did not want to cut off Russia from the SWIFT banking system due to the strong economic ties between the EU and Russia.

Therefore, the EU designed this sanctions regime to have the minimum impact on Europe while maximizing pressure on the Russian elite. This is the reason EU Member States accepted the restrictions on the export of technology used for deepwater drilling. These technologies can hardly be replaced by Russia, while EU Member States can sell their technology elsewhere in the world.

In conclusion, this research argues that the case of sanctions imposed against Russia tells us something more general about the EU. It draws our attention to the changing nature of policy-making processes, including sanctions policy. The European Council is involved in the policy-making processes more than ever. In other words, if the question is whether the EU is driven by supranational actors or by the interests of the Member States, this research would argue that the latter group determines, even dictates, the main actions and policy objectives of the EU.

While the question of effectiveness and/or impact of EU sanctions is not part of this research, one may ask whether the EU has achived its (foreign and security policy) objectives with the application of restrictive measures. The general view on sanctions is that they often fail to meet expectations and that they are unable to generate change in the targeted state (see, Szép 2015). According to the old wisdom, sanctions can only be regarded as effective policy tools if the sender state/organization has been able to change the behaviour of the targeted country. In this sense, the EU was clearly unable to change Russia's behaviour, let alone to reverse its policies on the Crimean Peninsula. The latter has clearly remained under Russian control and the chance that Moscow renounces its act due to the sanctions remains low.

However, in my mind, sanctions were effective in at least two ways. First, from a more symbolic perspective, the EU was able to demonstrate that it was willing to take serious actions in the face of a clear violation of international law. It decided not only to condemn Russia's actions in a diplomatic way but was also able to demonstrate, through the imposition of sanctions, that it takes the principles of international law seriously, including the territorial integrity and sovereignty of states. As this research has showed, reaching unanimity in the Council, especially in cases when the EU tries to balance its approach with strategic partners, remains a challenge. In fact, the EU has always tried to avoid the imposition of sanctions in the post-Cold War era, but found itself in a new situation after 2014: every single Member State agreed that Russia violated internatonal law. Therefore, the question was not whether sanctions must be imposed or not; the difference lied in the *type* of sanctions to be adopted against Russia.

More importantly, EU sanctions can be considered effective policy measures in the sense that they were probably necessary to avoid the further escalation of the crisis. If Russia, in the case of a serious violation of international law, had not been retaliated against, it would have probably gone further given that it would not have paid price for its actions. It is also important to note here that the EU was not the only organization (group of States) that applied sanctions against Russia in the wake of the crisis. It successfully coordinated its sanctions regime with the United States, Canada and other major global actors. The EU was also successful in convincing most of its neighbours – ranging from EFTA to candidate (Western Balkan) countries – to align their foreign policies with the EU's sanctions policy. These concerted actions against Russia were necessary to stop the escalation of the Ukrainian crisis.

Now, even if EU sanctions were (politically) effective in one way or another, this does not mean that EU did not pay a price when deciding to apply restrictive measures against Russia. In fact, as statistics confirm, EU countries, especially Germany but also other Member States, were seriously affected by the measures adopted at the EU level. The decision to prohibit the export of arms or dual-use goods was reported to have serious consequences for the German military industry. Although trade, as such, remained in place between EU and Russia, it dropped significantly in the subsequent years due to EU sanctions. In addition, the Russian government's decision to adopt countermeasures against EU countries in the field of food industry further damaged the outlook for growth in certain economic sectors.

EU Member States decided to continue with the sanctions regime despite having serious repercussions on their economies: even if the US, Canada and other like-minded states imposed sanctions against Russia, it was evident that Europe was going to loose the most due to its traditional trading and political relationship with Russia. With the imposition of coordinated sanctions, 90 percent of the costs fell on EU Member States while other states had significantly lower burdens.

Nevertheless, it was also clear that the EU's sanctions regime was carefully designed. Its main objective was to hurt the Russian elite responsible for the Ukrainian crisis while making sure to protect the EU's and its Member States primary economic interests. In other words, the EU could have inflicted more damage to Russia but the potential decision to adopt measures that go beyond the current sanctions regime could have had far-reaching consequences to the EU itself which, in turn, would have rendered impossible agreement at EU level. This explains, at least in part, why EU Member States were able to adopt a common decision in the Council: their aim was to target some sensitive Russian sectors and to protect important European industrial and business interests.

8. Bibliography

8.1 Primary sources

Council of the European Union (1999): Press Corner 2217th Council Meeting [Online] Council of the European Union. Available: https://ec.europa.eu/commission/presscorner/detail/en/PRES_99_344 [Downloaded: 4 July 2019]

Council of the European Union (2008): Extraordinary European Council [Online] Council of the European Union. Available: https://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/102545.pdf [Online: 7 March 2018]

Council of the European Union (2014): Press release 3330th Council meeting [Online] Council of the European Union. Available: https://www.consilium.europa.eu/media/25367/144098.pdf [Donwloaded 5 March 2018]

Council of the European Union (2014b): Council conclusioins on Ukraine. Foreign Affairs Council meeting [Online] Council of the European Union. Available: https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/141110.pdf [Downloaded: 7 March 2017]

Council of the European Union (2014c): Press release 3312th Council meeting [Online] Council of the European Union. Available: https://www.consilium.europa.eu/media/28335/142563.pdf [Downloaded: 5 April 2018]

Council of the European Union (2015): Burundi: EU requests the opening of consultations under Article 96 of the Cotonou Agreement [Online] Council of the European Union. Available: https://www.consilium.europa.eu/en/press/press-releases/2015/10/26/burundi/ [Downloaded: 15 December 2019]

Council of the European Union (2019): Chemical weapons: Council renews EU sanctions regime for one year [Online] Council of the European Union. Available: https://www.consilium.europa.eu/en/press/press-releases/2019/10/14/chemical-weapons-council-renews-eu-sanctions-regime-for-one-year/ [Downloaded: 5 December 2019]

CVCE (2013): Second report on European political cooperation in foreign policy matters (Copenhagen, 23 July 1973) [Online] CVCE. Available: https://www.cvce.eu/content/publication/1999/1/1/8b935ae1-0a38-42d4-a97e-088c63d54b6f/publishable_en.pdf [Downloaded: 4 January 2018]

European Commission (1997): Declaration by the Presidency on behalf of the European Union on the Chechnya Peace Accord [Online] European Commission. Available: https://ec.europa.eu/commission/presscorner/detail/en/PESC_97_46 [Downloaded: 7 June 2018]

European Commission (2015): Outline of an initial package of targeted measures in the areas of access to capital markets, defence, dual use goods and sensitive technologies.

European Commission (2016): "Enjoy, it's from Europe": Over €100 million to promote European agriculture in 2016 [Online] European Commission. Available: https://ec.europa.eu/commission/presscorner/detail/en/IP_15_5804 [Downloaded: 11 March 2020]

European Commission (2017): EU to launch global Alliance for Torture-Free Trade [Online] European Commission. Available: https://ec.europa.eu/commission/presscorner/detail/en/IP_17_3088 [Donwloaded: 8 May 2018]

European Commission (2017b): Rule of Law: European Commission acts to defend judicial independence in Poland [Online] European Commission. Available: https://ec.europa.eu/commission/presscorner/detail/en/IP_17_5367 [Downloaded: 5 January 2020]

European Commission (2018): Dual-use trade controls [Online] European Commission. Available: https://ec.europa.eu/trade/import-and-export-rules/export-from-eu/dual-use-controls/ [Donwloaded: 11 March 2020]

European Commission (2018b): Updating of data used to calculate lump sum and penalty payments to be proposed by the Commission to the Court of Justice in infringement proceedings [Online] European Commission. Available: https://ec.europa.eu/atwork/applying-eu-law/docs/c_2018_5851_en.pdf [Downloaded: 13 December 2019]

European Commission (2019): New rules for financial sanctions in infringement cases and Brexit [Online] Available: https://ec.europa.eu/commission/news/new-rules-financial-sanctions-infringement-cases-and-brexit-2019-feb-20_en [Downloaded: 3 December 2019]

European Commission (2019b): Blocking statute [Online] European Commission. Available: https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/blocking-statute_en [Downloaded: 4 November 2019]

European Commission (2020): Trade and international policy analysis [Online] European Commission. Available: https://ec.europa.eu/info/food-farming-fisheries/trade/trade-and-international-policy-analysis_en [Donwloaded: 11 March 2020]

European Council (2014): Conclusions on Ukraine approved by the European Council [Online] European Council. Available: https://www.consilium.europa.eu/media/29224/141707.pdf [Downloaded 2 February 2018]

European Council (2014b): European Council 26/27 June 2014 Conclusions [Online] European Council. Available: https://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/143478.pdf [Downloaded 4 February 2018]

European Council (2014c): European Council conclusions on external relations (Ukraine and Gaza) [Online] European Council. Available: https://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/143990.pdf [Downloaded: 5 March 2018]

European Council (2015): European Council Conclusions on external relations (19 March 2015) [Online] Available: https://www.consilium.europa.eu/en/press/press-releases/2015/03/19/conclusions-russia-ukraine-european-council-march-2015/ [Downloaded: 9 April 2017]

European Council (2016): Council's Rules of Procedure and comments on Council's Rules of Procedure [Online] European Council. Available: https://www.consilium.europa.eu/en/documents-publications/publications/council-rules-procedure-comments/ [Downloaded: 22 April 2017]

European Council (2018): European Council conclusions on the Salisbury attack [Online] European Council. Available: https://www.consilium.europa.eu/en/press/press-releases/2018/03/22/european-council-conclusions-on-the-salisbury-attack/ [Downloaded: 10 October 2018]

European Council (2018b): European Council conclusions, 28 June 2018 [Online] European Council. Available: https://www.consilium.europa.eu/en/press/press-releases/2018/06/29/20180628-euco-conclusions-final/ [Downloaded: 20 October 2018]

European Parliament (1999): Helsinki European Council 10 and 11 December 1999 Presidency Conclusions [Online] European Parliament. Available: https://www.europarl.europa.eu/summits/hel1_en.htm [Downloaded 8 June 2018]

European Parliament (2012): European Parliament rejects ACTA [Online] European Parliament. Available: https://www.europarl.europa.eu/news/en/press-room/20120703IPR48247/european-parliament-rejects-acta [Downloaded: 13 May 2017]

European Parliament (2014): on the situation in Ukraine and the state of play of EU-Russia relations [Online] European Parliament. Available: https://www.europarl.europa.eu/doceo/document/RC-8-2014-0118_EN.html [Donwloaded: 14 April 2017]

European Parliament (2018): Rule of law in Hungary: Parliament calls on the EU to act [Online] Available: https://www.europarl.europa.eu/news/en/press-room/20180906IPR12104/rule-of-law-in-hungary-parliament-calls-on-the-eu-to-act [Downloaded: 5 January 2020]

European Parliament (2019): Rules of Procedure of the European Parliament [Online] European Parliament. Available: https://www.europarl.europa.eu/doceo/document/RULES-9-2019-07-02-TOC_EN.html [Downloaded: 12 March 2018]

Federal Foreign Office (2014): Joint Declaration by the Foreign Ministers of Ukraine, Russia, France and Germany [Online] Federal Foreign Office. Available: https://www.auswaertiges-amt.de/en/newsroom/news/-/263492 [Downloaded: 7 June 2018]

IMF (2015): Russian Federation. IMF Country Report No. 15/211. [Online] IMF. Available: https://www.imf.org/external/pubs/ft/scr/2015/cr15211.pdf [Downloaded: 7 March 2018]

Kimberley Process (2020): KPCS Core Document [Online] Kimberley Process. Available: https://www.kimberleyprocess.com/en/kpcs-core-document [Donwloaded: 10 August 2019]

UK Government (2018): PM Commons statement on Salisbury incident: 12 March 2018 [Online] UK Government. Available: https://www.gov.uk/government/speeches/pm-commons-statement-on-salisbury-incident-12-march-2018 [Downloaded: 18 October 2018]

UK Parliament (2018): Salisbury incident [Online] UK Parliament. Available: https://hansard.parliament.uk/Commons/2018-03-14/debates/071C37BB-DF8F-4836-88CA-66AB74369BC1/SalisburyIncidentFurtherUpdate [Downloaded: 18 October 2018]

United Nations 2020: Universal Declaration of Human Rights [Online] United Nations. Available: https://www.un.org/en/universal-declaration-human-rights/ [Donwloaded 2 April 2020]

8.2 Secondary sources

Adler-Nissen, Rebecca (2014): Symbolic Power in European Diplomacy: The Struggle between National Foreign Services and the EU's External Action Service. *Review of International Studies,* Vol. 40. No. 4. pp. 657–81.

Aggestam, Lisbeth (2008): Introduction: Ethical Power Europe? *International Affairs,* Vol. 84. No. 1. pp. 1–11.

Aggestam, Lisbeth, and Markus Johansson (2017): The Leadership Paradox in EU Foreign Policy. *Journal of Common Market Studies,* Vol. 55 No. 6. pp. 1203–20.

Allen, David (1998): Who Speaks for Europe? The Search for an Effective and Coherent External Policy. In: John Peterson - Helene Sjursen (eds.): A Common Foreign Policy for Europe? Competing Visions of the CFSP, eds. John Peterson and Helene Sjursen. Routledge, London; New York.

Andreatta, Filippo (2011): The European Union's International Relations: A Theoretical View. In Christopher Hill - Michael Smith (eds.): International Relations and the European Union. Oxford University Press, Oxford.

Aron, Raymond (1966): Peace and War : A Theory of International Relations. Doubleday, Garden City, NY.

Art, Robert (2007): Europe Hedges Its Security Bets. In: Thazha Varkey Paul - James J Wirtz - Michel Fortmann (eds.): Balance of Power: Theory and Practice in the 21st Century. Stanford University Press, California.

Axelrod, Robert - Robert O. Keohane (1985): Achieving Cooperation under Anarchy: Strategies and Institutions. *World Politics,* Vol. 38. No. 1. pp. 226–54.

Axelrod, Robert M (1985): The Evolution of Cooperation. Basic Books, New York.

Baere, Geert De (2008): Constitutional Principles of EU External Relations Constitutional Principles of EU External Relations. Oxford University Press, Oxford.

Bárd, Petra - Anna Śledzińska-Simon (2019) Rule of Law Infringement Procedures: A Proposal to Extend the EU's Rule of Law Toolbox. CEPS Paper on Liberty and Security in Europe. Available at: https://www.ceps.eu/ceps-publications/rule-of-law-infringement-procedures/ [Downloaded 1 May 2020]

Beaucillon, Charlotte (2014): Les mesures restrictives de l'Union européenne. Bruylant, Bruxelles.

Besselink, Leonard (2017): The Bite, the Bark, and the Howl: Article 7 TEU and the Rule of Law Initiative'. In: András Jakab - Dimitry Kochenov (eds.): The Enforcement of EU Law and Values: Ensuring Member States' Compliance. Oxford University Press, Oxford.

Bicchi, Federica (2011): The EU as a Community of Practice: Foreign Policy Communications in the COREU Network. *Journal of European Public Policy,* Vol. 18. No. 8. pp. 1115–32.

Von Bogdandy, Armin (1999): The Legal Case for Unity: The European Union as a Single Organization with a Single Legal System. *Common Market Law Review,* Vol. 36. No. 5. pp. 887–910.

Bogdandy, Armin von - Martin Nettesheim (1996): Ex Pluribus Unum: Fusion of the European Communities into the European Union. *European Law Journal,* Vol. 2. No. 3. pp. 267–89.

Bohr, Sebastian (1993): Sanctions by the United Nations Security Council and the European Community. *European Journal of International Law,* Vol. 4. No. 2. pp. 256–68.

Cadier, David (2018): Continuity and Change in France's Policies towards Russia: A Milieu Goals Explanation. *International Affairs,* Vol. 94. No. 6. pp. 1349–69.

Carlsnaes, Walter (2010): European Foreign Policy. In: Knud Erik Jørgensen - Mark A Pollack - Ben Rosamond (eds.): Handbook of European Union Politics. Sage, London.

Chelotti, Nicola (2015): A "Diplomatic Republic of Europe"? Explaining Role Conceptions in EU Foreign Policy. *Cooperation and Conflict,* Vol. 50. No. 2. pp. 190–210.

Christiansen, Thomas - Christine Neuhold (2013): Informal Politics in the EU. *Journal of Common Market Studies,* Vol. 51. No. 6. pp. 1196–1206.

Christie, Edward Hunter (2016): The Design and Impact of Western Economic Sanctions against Russia. *Tue RUSI Journal,* Vol. 161. No. 3. pp. 52–64.

Craig, Paul (2004): Competence: Clarity, Conferral, Containment and Consideration. *European Law Review* Vol. 29. No. 3. pp. 323–44.

Craig, Paul - Gráinne de Búrca (2017): EU Law: Text, Cases, and Materials. Oxford University Press, Oxford.

Cremona, Marise (2003): The Draft Constitutional Treaty: External Relations and External Action. *Common Market Law Review,* Vol. 40. No. 6. pp. 1347–66.

——— (2008): Defining Competence in EU External Relations: Lessons from the Treaty Reform Process. In: Alan Dashwood and Marc Maresceau (eds.): Law and Practice of EU External Relations : Salient Features of a Changing Landscape. Cambridge University Press, Cambrdige.

——— (2012): The Two (or Three) Treaty Solution: The New Treaty Structure of the EU. In: Andrea Biondi - Piet Eeckhout - Stefanie Ripley (eds.): EU Law after Lisbon. Oxford University Press, Oxford; New York.

Curtin, Deirdre, and Ige Dekker (2011): The EU as a "Layered" International Organization: Institutional Unity in Disguise. In: Paul Craig - Gráinne De Búrca (eds.): The Evolution of EU Law. Oxford University Press, Oxford.

De Galbert, Simond (2015): *A Year of Sanctions against Russia -- Now What?: A European Assessment of the Outcome and Future of Russia Sanctions*. Available at: https://csis-website-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/publication/150929_deGalbert_SanctionsRussia_Web.pdf [Downloaded 19 April 2018]

De Schoutheete, Philippe (1980): La Coopération Politique Européenne. Nathan/Labor, Paris and Brussels.

De Witte, Bruno (1998): The Pillar Structure and the Nature of the European Union: Greek Temple or French Gothic Cathedral. In: Ton Heukels - Niels M. Blokker - Marcel Brus (eds.): The European Union after Amsterdam: A Legal Analysis. Kluwer, The Hague.

——— (2008): Legal Instruments and Law-Making in the Lisbon Treaty. In: Stefan Griller - Jacques Ziller (eds.): The Lisbon Treaty EU Constitutionalism without a Constitutional Treaty? Springer, Wien, New York.

Delreux, Tom - Stephan Keukeleire (2017): Informal Division of Labour in EU Foreign Policy-Making. *Journal of European Public Policy,* Vol. 24. No. 10. pp. 1471–90.

Denza, Eileen (2002): The Intergovernmental Pillars of the European Union. Oxford University Press, New York.

Deutsch, Karl W et al. (1957): Political Community and the North Atlantic Area: International Organization in the Light of Historical Experience. Princeton University Press, Princeton.

Deutsch, Karl W (1964): Communication Theory and Political Integration. In: Philip Ernest Jacob - James V Toscano (eds.): The Integration of Political Communities. Lippincott, Philadelphia.

Dolidze, Tatia (2015) *EU Sanctions Policy towards Russia: The Sanctioner-Sanctionee's Game of Thrones*. Available at: https://www.ceps.eu/ceps-publications/eu-sanctions-policy-towards-russia-sanctioner-sanctionees-game-thrones/ [Downloaded 3 March 2018]

ECFR (2019): How to govern a fragmented EU: What Europeans said at the ballot box [Online] ECFR. Available: https://ecfr.eu/publication/how_to_govern_a_fragmented_eu_what_europeans_said_at_the_ballot_box/ [Downloaded 19 March 2020]

Eckes, Christina (2009): EU Counter-Terrorist Policies and Fundamental Rights. Oxford University Press, Oxford.

——— (2012): EU Counter-Terrorist Sanctions against Individuals: Problems and Perils. *European Foreign Affairs Review*, Vol. 17. No. 1. pp. 113–32.

——— (2014) EU Restrictive Measures against Natural and Legal Persons: From Counterterrorist to Third Country Sanctions. *Common Market Law Review*, Vol. 51. No. 3. pp. 869–905.

Eeckhout, Piet (2011): EU External Relations Law. 2nd ed. Oxford University Press, Oxford.

Elgström, Ole et al. (2018): Perceptions of the EU's Role in the Ukraine-Russia and the Israel-Palestine Conflicts: A Biased Mediator? *International Negotiation*, Vol. 23. No. 2. pp. 299–318.

Emerson, Michael et al. (2005): *The Reluctant Debutante: The European Union as Promoter of Democracy in Its Neighbourhood.* Available at: http://aei.pitt.edu/6670/ [Downloaded 27 April 2018]

Emerson, Michael - Veronika Movchan (2016): *Deepening EU-Ukrainian Relations*. Available at: https://www.ceps.eu/ceps-publications/deepening-eu-ukrainian-relations-what-why-and-how/ [Downloaded 4 January 2018]

Fabbrini, Sergio - Uwe Puetter (2016): Integration without Supranationalisation: Studying the Lead Roles of the European Council and the Council in Post-Lisbon EU Politics. *Journal of European Integration*, Vol. 38. No. 5. pp. 481–95.

Forsberg, Tuomas (2016) From Ostpolitik to "Frostpolitik"? Merkel, Putin and German Foreign Policy towards Russia. *International Affairs*, Vol. 92. No. 1. pp. 21–42.

Forsberg, Tuomas - Hiski Haukkala (2016): The European Union and Russia. Palgrave Macmillan, London.

Forsberg, Tuomas - Graeme Herd (2015): Russia and NATO: From Windows of Opportunities to Closed Doors. *Journal of Contemporary European Studies,* Vol. 23. No. 1. pp. 41–57.

Forsberg, Tuomas - Graeme P. Herd (2005): The EU, Human Rights, and the Russo—Chechen Conflict. *Political Science Quarterly,* Vol. 120. No. 3. pp. 455–78.

Fritz, Oliver - Elisabeth Christen - Franz Sinabell - Julian Hinz (2017): *Russia's and the EU's Sanctions: Economic and Trade Effects, Compliance and the Way Forward*. Available at: https://www.europarl.europa.eu/thinktank/en/document.html?reference=EXPO_STU(2017)603847 [Downloaded 19 January 2018]

Gablentz, Otto von der (1979): Luxembourg Revisited or The Importance of European Political Cooperation. *Common Market Law Review,* Vol. 16. No. 4. pp. 685-699.

Giumelli, Francesco (2019): Implementation of Sanctions: European Union. In: Masahiko Asada (ed.): Economic Sanctions in International Law and Practice. Routledge, Abingdon, Oxon ; New York.

Glarbo, Kenneth (1999): Wide-Awake Diplomacy: Reconstructing the Common Foreign and Security Policy of the European Union. *Journal of European Public Policy,* Vol. 6. No. 4. pp. 634–51.

Gosalbo Bono, Ricardo (2006): Some Reflections on the CFSP Legal Order. *Common Market Law Review,* Vol. 43. No. 2. pp. 337–94.

Gould-Davies, Nigel (2018) *Economic Effects and Political Impacts: Assessing Western Sanctions on Russia*. Available at: https://helda.helsinki.fi/bof/bitstream/handle/123456789/15832/bpb0818.pdf?sequence=1. [Downloaded 19 April 2019]

Grieco, Joseph M. (1993): Understanding the Problem of International Cooperation. In: David A. Balwin (ed.): Neorealism and Neoliberalism: The Contemporary Debate. Columbia University Press, New York.

——— (1997): Realist Theory and the Study of World Politics. In. Michael W Doyle and G. John Ikenberry (eds.): New Thinking in International Relations Theory. Westview Press, Boulder.

Grieco, Joseph M - Robert Powell - Duncan Snidal (1993): The Relative-Gains Problem for International Cooperation. *The American Political Science Review,* Vol. 87. No. 3. pp. 727–43.

Haas, Ernst B (1961): International Integration: The European and the Universal Process. *International Organization,* Vol. 15. No. 3. pp. 366–92.

——— (1976) Turbulent Fields and the Theory of Regional Integration. *International Organization,* Vol. 30. No. 2. pp. 173–212.

Haas, Ernst B (2004): The Uniting of Europe: Political, Social, and Economic Forces 1950-1957. Notre Dame Press, Notre Dame.

Hellquist, Elin (2016): Either with Us or against Us? Third-Country Alignment with EU Sanctions against Russia/Ukraine. *Cambridge Review of International Affairs,* Vol. 29. No. 3. pp. 997–1021.

Hill, Christopher (1993): The Capability-Expectations Gap, or Conceptualizing Europe's International Role. *Journal of Common Market Studies,* Vol. 31. No. 3. pp. 305–28.

Hill, Christopher - Karen E. Smith (2002): European Foreign Policy: Key Documents. Routledge: London.

Hill, Christopher - William Wallace (1996): Introduction: Actors and Actions. In: Christopher Hill (ed.): The Actors in Europe's Foreign Policy. Routledge, London.

Hillion, Christophe - Wessel A. Ramses (2008): Restraining External Competences of EU Member States under CFSP. In: Marise Cremona and Bruno De Witte (eds.): *EU Foreign Relations Law: Constitutional Fundamentals*. Hart, Oxford.

Hoffmann, Stanley (1964): The European Process at Atlantic Crosspurposes. *Journal of Common Market Studies,* Vol. 3. No. 2. pp. 85–101.

——— (1966): Obstinate or Obsolete? The Fate of the Nation-State and the Case of Western Europe. *Daedalus,* Vol. 95. No. 3. pp. 862–915.

——— (2000): Towards a Common European Foreign and Security Policy? *Journal of Common Market Studies,* Vol. 38. No. 2. pp. 189–98.

Holland, Martin (2002): The European Union and the Third World. Palgrave: New York.

Huber, Jürgen (1996): The Helms-Burton Blocking Statute of the European Union. *Fordham International Law Journal,* Vol. 20. No. 3. pp. 699-716.

Hyde-Price, Adrian (2006) "Normative" Power Europe: A Realist Critique. *Journal of European Public Policy,* Vol. 13. No. 2. pp. 217–34.

Jørgensen, Knud Erik (1999): Modern European Diplomacy: A Research Agenda. *Journal of International Relations and Development,* Vol. 2. No. 1. pp. 78–96.

——— (2015): Introduction: Theorizing European Foreign Policy. In: Knud Erik Jørgensen (ed.): The SAGE Handbook of European Foreign Policy. Sage, Los Angeles.

Keohane, Robert Owen (1984): After hegemony: cooperation and discord in the world political economy. Princeton University Press: Princeton.

Keohane, Robert Owen, and Joseph S Nye. 1977. Power and Interdependence: World Politics in Transition. Little Brown: Boston, Toronto.

Keukeleire, Stephan, and Tom Delreux (2014): The Foreign Policy of the European Union. Palgrave Macmillan: Houndsmills, Basingstoke.

Klamert, Marcus (2014): The Principle of Loyalty in EU Law. Oxford University Press: Oxford.

Kleine, Mareike (2014): Informal Governance in the European Union. *Journal of European Public Policy*, Vol. 21. No. 2. pp. 303–14.

Kleizen, Bjorn (2016): *Mapping the Involvement of the European Parliament in EU External Relations – a Legal and Empirical Analysis*. Available at: https://www.asser.nl/about-the-institute/asser-today/mapping-the-involvement-of-the-european-parliament-in-eu-external-relations-a-legal-and-empirical-analysis/ [Downloaded 20 May 2019]

Kochenov, Dimitry (2017): *Busting the Myths Nuclear: A Commentary on Article 7 TEU*. Available at: http://hdl.handle.net/1814/46345 [Downloaded 23 June 2018]

Kochenov, Dimitry - Laurent Pech (2016): Better Late than Never? On the European Commission's Rule of Law Framework and Its First Activation. *Journal of Common Market Studies*, Vol. 54. No. 5. pp. 1062–74.

Koutrakos, Panos (2000): Is Article 297 EC a ``Reserve of Sovereignty''? *Common Market Law Review*, Vol. 37. No. 6. pp. 1339–62.

——— (2001): Trade, Foreign Policy and Defence in EU Constitutional Law. Hart, Oxford and Portland, Oregon.

——— (2006): EU International Relations Law. Hart, Oxford.

——— (2012): The European Union's Common Foreign and Security Policy after Lisbon. In: Diamond Ashiagbor - Nicola Countouris - Ioannis Lianos (eds.): The European Union after the Treaty of Lisbon. Cambridge University Press, Cambridge.

——— (2015) EU International Relations Law. Hart, Oxford.

Kuijper, Piet J (2003): Implementation of Binding Security Council Resolutions by the EU/EC, In: Review of the Security Council by Member States, eds. Petra Dijkstra - Erika De Wet - André Nollkaemper. Intersentia: Antwerp.

Kuijper, Pieter Jan et al. (2015): The Law of EU External Relations: Cases, Materials, and Commentary on the EU as an International Legal Actor. Oxford University Press, Oxford.

Kuyper, P. J (1975): Sanctions against Rhodesia: The EEC and the International of General International Legal Rules. *Common Market Law Review*, Vol. 12. No. 2. pp. 231–44.

Kuyper, Piet J (1982): Community Sanctions and Human Rights and Commercial Policy. In: David O'Keeffe and Henry G Schermers (eds.): Essays in European Law and Integration: To Mark the Silver Jubilee of the Europa Institute, Leiden 1957-1982. Kluwer, Deventer.

——— (1993): Trade Sanctions, Security and Human Rights and Commercial Policy. In: Marc Maresceau (ed.): The European Community's Commercial Policy after 1992: The Legal Dimension. Nijhoff, Dordrecht.

Kuzio, Taras (1996): International Reaction to the Chechen Crisis. *Central Asian Survey*, Vol. 15. No. 1. pp. 97–109.

Layne, Christopher (2006): The Unipolar Illusion Revisited: The Coming End of the United States' Unipolar Moment. *International Security*, Vol. 31. No. 2. pp. 7–41.

Lehne, Stefan (2015): *Are Prime Ministers Taking over EU Foreign Policy?* Carnegie Endowment for International Peace. Available at: https://www.jstor.org/stable/resrep12974 [Downloaded 19 April 2018]

Lehne, Stefan (2015b): Reviving the OSCE: European Security and the Ukraine Crisis. Available at: https://carnegieeurope.eu/2015/09/22/reviving-osce-european-security-and-ukraine-crisis-pub-61362 [Downloaded 11 April 2018]

Lenaerts, Koen - Tim Corthaut (2006): Of Birds and Hedges: The Role of Primacy in Invoking Norms of EU Law. *European Law Review*, Vol. 31. No. 3. pp. 287–315.

Lenaerts, Koen - Eddy De Smijter (1998): The United Nations and the European Union: Living Apart Together. In: Karel Wellens (ed.): International Law: Theory and Practice: Essays in Honour of Eric Suy. Martinus Nijhoff, The Hague.

Lindberg, Leon N. (1963): The Political Dynamics of European Economic Integration. Stanford University Press, California.

Lindberg, Leon N, and Stuart A. Scheingold (1970): Europe's Would-Be Polity: Patterns of Change in the European Community. Prentice-Hall, Englewood Cliffs, N.J.

Lipson, Charles (1984): International Cooperation in Economic and Security Affairs. *World Politics*, Vol. 37. No. 1. pp. 1–23.

Lorand Bartels. 2005. Human Rights Conditionality in the EU's International Agreements. Oxford University Press, Oxford.

Maass, Anna-Sophie (2017): EU-Russia Relations, 1999-2015: From Courtship to Confrontation. Routledge, London, New York.

Manners, Ian (2002): Normative Power Europe: A Contradiction in Terms? *Journal of Common Market Studies,* Vol. 40. No. 2. pp. 235–58.

Maresceau, Marc (2009): Unilateral Termination and Suspension of Bilateral Agreements Concluded by the EC. In: Mielle Bulterman - Alison McDonnell - Hanna G. Sevenster (eds.): Views of European Law from the Mountain: Liber Amicorum for Piet Jan Slot. Wolters Kluwer Law & Business, Alphen/Rijn.

Martin, Lisa L (1992): Institutions and Cooperation: Sanctions during the Falkland Islands Conflict. *International Security,* Vol. 16. No. 4. pp. 143–78.

Maull, Hanns W (2005): Europe and the New Balance of Global Order. *International Affairs,* Vol. 81. No. 4. pp. 775–99.

Mearsheimer, John J (1990): Back to the Future: Instability in Europe after the Cold War. *International Security,* Vol. 15. No. 1. pp. 5–56.

Moravcsik, Andrew (1993): Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach. *Journal of Common Market Studies,* Vol. 31. No. 4. pp. 473–524.

——— (1998): The Choice for Europe: Social Purpose and State Power from Messina to Maastricht. Cornell University Press, Ithaca, N.Y.

Moravcsik, Andrew - Kalypso Nicolaïdis (1999): Explaining the Treaty of Amsterdam: Interests, Influence, Institutions. *Journal of Common Market Studies,* Vol. 37. No. 1. pp. 59–85.

Moravcsik, Andrew - Milada A. Vachudova (2003): National Interests, State Power, and EU Enlargement. *East European Politics and Societies,* Vol. 17. No. 1. pp. 42-57.

Moret, Erica (2016): Effective Minilateralism for the EU – What, When and How. Available at: https://www.iss.europa.eu/content/effective-minilateralism-eu-%E2%80%93-what-when-and-how [Downloaded 19 April 2019]

Niemann, Arne (2010): Explaining Decisions in the European Union. Cambirdge University Press, Cambridge.

Nowak, Manfred, and Elizabeth McArthur (2008): The United Nations Convention Against Torture: A Commentary. Oxford, New York: Oxford University Press.

Nuttall, Simon J (1992): European political co-operation. Clarendon Press, Oxford.

Nye, Joseph S (1990): Soft Power. *Foreign Policy,* Vol. 80. pp. 153–71.

Øhrgaard, Jakob C (1997): "Less than Supranational, More than Intergovernmental": European Political Cooperation and the Dynamics of Intergovernmental Integration. *Millennium: Journal of International Studies,* Vol. 26. No. 1. pp. 1–29.

Orenstein, Mitchell A. - R. Daniel Kelemen (2017): Trojan Horses in EU Foreign Policy. *Journal of Common Market Studies,* Vol. 55. No. 1. pp. 87–102.

Peterson, John (1995): Decision-making in the European Union: Towards a Framework for Analysis. *Journal of European Public Policy,* Vol. 2. No. 1. pp. 69–93.

Peterson, John, and Elizabeth Bomberg (1999): Decision-Making in the European Union. Macmillan, Basingstoke.

Peterson, John - Niklas Helwig (2017): The Common Foreign and Security Policy: Institutionalizing Europe's Global Role. In: Dermot Hodson - John Peterson (eds.): Institutions of the European Union. Oxford University Press, Oxford, New York.

Piris, Jean-Claude (2010): The Lisbon Treaty : A Legal and Political Analysis. Cambridge University Press, Cambridge.

Poli, Sara - Maria Tzanou (2009): The Kadi Rulings: A Survey of the Literature. *Yearbook of European Law,* Vol. 28. No. 1. pp. 533–58.

Portela, Clara (2007): Aid Suspensions as Coercive Tools? The European Union's Experience in the African-Caribbean-Pacific (ACP) Context. *Review of European and Russian Affairs,* Vol. 3. No. 2. pp. 38–53.

——— (2012): European Union Sanctions and Foreign Policy: When and Why do they Work? Routledge, Abingdon, Oxon, [England], New York.

——— (2014): The EU's Use of "Targeted" Sanctions: Evaluating Effectiveness *Available at:* https://www.ceps.eu/ceps-publications/eus-use-targeted-sanctions-evaluating-effectiveness/ [Downloaded 19 March 2018]

——— (2016): How the EU Learned to Love Sanctions. In *Connectivity Wars: The Geo-Economic Battlegrounds of the Future*, London: European Council on Foreign Relations. Available at: https://ink.library.smu.edu.sg/soss_research/1871. [Downloaded 11 March 2018]

——— (2019): *The Spread of Horizontal Sanctions*. Available at: https://www.ceps.eu/the-spread-of-horizontal-sanctions/ [Downloaded 2 May 2018]

Posen, Barry R (2004): ESDP and the Structure of World Power. *International Spectator,* Vol. 39. No. 1. pp. 5-17.

Puetter, Uwe (2012): Europe's Deliberative Intergovernmentalism: The Role of the Council and European Council in EU Economic Governance. *Journal of European Public Policy,* Vol. 19. No. 2. pp. 161–78.

——— (2015): European Council: The Centre of New Intergovernmentalism. In: Christopher J. Bickerton - Dermot Hodson - Uwe Puetter (eds.): The New Intergovernmentalism: States and Supranational Actors in the Post-Maastricht Era. Oxford University Press, Oxford.

——— (2016): The Centrality of Consensus and Deliberation in Contemporary EU Politics and the New Intergovernmentalism. *Journal of European Integration,* Vol. 38. No. 5. pp. 601–15.

Putnam, Robert D (1988): Diplomacy and Domestic Politics: The Logic of Two-Level Games. *International Organization,* Vol. 42. No. 3. pp. 427–60.

Putnam, Robert D, and Nicholas Bayne (1987): Hanging Together: Cooperation and Conflict in the Seven-Power Summits. Sage, London.

Randazzo, Vincenzo (2014): Article 346 and the Qualified Application of EU Law to Defence. Available at: https://www.iss.europa.eu/content/article-346-and-qualified-application-eu-law-defence [Downloaded 19 October 2018]

Rosamond, Ben (2010): Theories of European Integration. Palgrave Macmillan, Basingstoke.

Salmon, Trevor C, and Alistar J.K Shepherd (2003): Toward a European Army: A Military Power in the Making? Lynne Rienner, Boulder.

Sarkozy, Nicolas (2008): L'Union Européenne et La Russie Dans La Gouvernance Mondiale. *Politique étrangère,* 2008. Vol. 4. 723–32.

Schmitter, Philippe C (1969): Three Neo-Functional Hypotheses about International Integration. *International Organization,* Vol. 23. No. 1. pp. 161–66.

Schoeller, Magnus G. (2020): Tracing Leadership: The ECB's "Whatever It Takes" and Germany in the Ukraine Crisis. *West European Politics,* Vol. 43. No. 5. pp. 1095–1116.

Schütze, Robert (2012): European Constitutional Law. Cambridge University Press, Cambridge.

Shelest, Hanna (2016): The Prospects Of The European Union Mediation And Peacekeeping In The Eastern Partnership. Available at: https://ideas.repec.org/a/jes/wpaper/y2016v8i3p473-489.html [Downloaded 9 November 2018]

Simon Zoltán (2013): Döntéshozatal és jogalkotás az Európai Unióban - Elmélet és gyakorlat. In: Simon Zoltán (ed.): *Döntéshozatal és jogalkotás az Európai Unióban: elmélet és gyakorlat*. L'Harmattan, Budapest.

Sjursen, Helene (2002): Understanding the Common Foreign and Security Policy: Analytical Building Blocks. In: Michèle Knodt - Sebastiaan Princen (eds.): Understanding the European Union's External Relations. Routledge, London.

Sjursen, Helene - Guri Rosén (2017): Arguing Sanctions. On the EU's Response to the Crisis in Ukraine. *Journal of Common Market Studies,* Vol. 55. No. 1. pp. 20–36.

Smith, Karen Elizabeth (2014): European Union Foreign Policy in a Changing World. Polity Press, Cambridge.

Smith, Michael E (2000): Conforming to Europe: The Domestic Impact of EU Foreign Policy Co-Operation. *Journal of European Public Policy,* Vol. 7. No. 4. pp. 613–31.

Smith, Michael Eugene (2004): Europe's foreign and security policy: the institutionalization of cooperation. Cambridge University Press, Cambridge.

Szczepanski, Marcin (2015): Economic Impact on the EU of Sanctions over Ukraine Conflict. Available at: https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2015)569020 [Downloaded 2 July 2019]

Szép Viktor (2015a): A gazdasági szankciók politikai hatékonysága. *Politikatudományi Szemle*, Vol. 24. No. 4. pp. 117-131.

Szép Viktor (2015b): Az Európai Unió Által Oroszországgal Szemben Bevezetett Gazdasági Szankciók Hatékonysága. *Külgazdaság,* Vol. 59. No. 11–12. pp. 191–203.

——— (2019a) Foreign Policy Without Unilateral Alternatives? In: Márton Varju (ed.): Between Compliance and Particularism: Member State Interests and European Union Law. Springer, Cham.

——— (2019b) New Intergovernmentalism Meets EU Sanctions Policy: The European Council Orchestrates the Restrictive Measures Imposed against Russia. *Journal of European Integration,* on-line first: 1–17.

Tonra, Ben (1999): The Europeanisation of Irish Foreign Affairs. *Irish Studies in International Affairs,* Vol. 10. pp. 149–65.

——— (2001): The Europeanisation of National Foreign Policy : Dutch, Danish, and Irish Foreign Policy in the European Union. Ashgate, Aldershot.

———(2003): Constructing the CFSP: The Utility of a Cognitive Approach. *Journal of Common Market Studies,* Vol. 41. No. 4. pp. 731–56.

Tostensen, Arne - Beate Bull (2002): Are Smart Sanctions Feasible? *World Politics,* Vol. 54. No. 3. pp. 373–403.

Tranholm-Mikkelsen, Jeppe (1991): Neo-Functionalism: Obstinate or Obsolete? A Reappraisal in the Light of the New Dynamism of the EC. *Millenium: Journal of International Studies,* Vol. 20. No. 1. pp. 1–22.

Trybus, Martin (2014): Buying Defence and Security in Europe : The EU Defence and Security Procurement Directive in Context. Cambrdige University Press, Cambridge.

Várnay Ernő (2017): Sanctioning Under Article 260 (3) TFEU: Much Ado About Nothing? *European Public Law,* Vol. 23. No. 2. pp. 301–16.

Van Elsuwege, Peter (2010): EU External Action after the Collapse of the Pillar Structure: In Search of a New Balance between Delimitation and Consistency. *Common Market Law Review,* Vol. 47. No. 4. pp. 987-1019.

——— (2014): The Potential for Inter-Institutional Conflicts before the Court of Justice: Impact of the Lisbon Treaty. In: Marise Cremona - Anne Thies (eds.): The European Court of Justice and External Relations: Constitutional Challenges. Hart, Oxford.

——— (2019): The Duty of Sincere Cooperation and Its Implications for Autonomous Member State Action in the Field of External Relations. In: Márton Varju (ed.): Between Compliance and Particularism: Member State Interests and European Union Law. Springer, Cham.

Van Vooren, Bart, and Ramses Wessel (2014): EU External Relations Law: Text, Cases and Materials. Cambrdige University Press, Cambrdige.

Vatansever, Adnan (2015): Energy Sanctions and Russia: What Comes Next? Available at: https://www.atlanticcouncil.org/in-depth-research-reports/issue-brief/energy-sanctions-and-russia-what-comes-next/ [Downloaded 8 May 2018]

Waltz, Kenneth N. (1979): Theory of International Politics. Addison-Wesley, Reading, Massachusetts.

Waltz, Kenneth N. (2000): Structural Realism after the Cold War. *International Security*, Vol. 25. No. 1. pp. 5–41.

Weiler, Joseph - Wolfgang Wessels (1988): EPC and the Challenge of Theory. In: Alfred Pijpers - Elfriede Regelsberger - Wolfgang Wessels (eds.): European Political Cooperation in the 1980s: A Common Foreign Policy for Western Europe? Martinus Nijhoff, Dordrecht; Boston.

Wessel, Ramses (1999): The European Union's Foreign and Security Policy : A Legal Institutional Perspective. Martinus Nijhoff, The Hague.

Wessel, Ramses A. (2015): The Legal Dimension of European Foreign Policy. In: Knud Erik Jørgensen et al. (eds.): *The SAGE Handbook of European Foreign Policy*. Sage, Los Angeles.

Wessels, Wolfgang (1982): European Political Cooperation: A New Approach to European Foreign Policy. In: David Allen - Reinhardt Rummel - Wolfgang Wessels (ed.): European Political Cooperation: Towards a Foreign Policy for Western Europe. Butterworth, London.

Wong, Reuben. 2011. 'The Europeanization of Foreign Policy'. In *International Relations and the European Union*, eds. Christopher Hill and Michael Smith. Oxford: Oxford University Press.

Wong, Reuben, and Christopher Hill. 2011a. 'Introduction'. In *National and European Foreign Policies. Towards Europeanization*, eds. Wong Reuben and Christopher Hill. London, New York: Routledge.

———. 2011b. ‘Many Actors, One Path? The Meaning of Europeanization in the Context of Foreign Policy’. In *National and European Foreign Policies : Towards Europeanization*, Routledge advances in European politics: 74, eds. Reuben Wong and Christopher Hill. Routledge.

Wright, Clive (2004): Tackling Conflict Diamonds: The Kimberley Process Certification Scheme. *International Peacekeeping,* Vol. 11. No. 4. pp. 697–708.

Zimelis, Andris (2011): Conditionality and the EU–ACP Partnership: A Misguided Approach to Development? *Australian Journal of Political Science,* Vol. 46. No. 3. pp. 389–406.