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Are European Union sanctions “targeted”?

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Abstract *The emergence of targeted sanctions in the mid-1990s was due to the humanitarian impact of embargoes, which were deemed unacceptable and compelled senders to shift to measures designed to affect only wrongdoers. Twenty years on, the present paper considers the extent to which autonomous sanctions are designed to affect those individuals and elites responsible for the behaviour the EU aims to condemn. How faithful has the EU remained to this concept in its sanctions policy? The enquiry scrutinizes diverse practices in three established sanctions strands of the EU, development aid suspensions, Common Foreign and Security Policy (CFSP) sanctions and Generalised Scheme of Preferences (GSP) withdrawals. It shows that it has been more faithfully implemented in some strands of EU sanctions than in others. Specifically in the flagship CFSP sanctions practice, the due process motivated court challenges of its blacklists have led the EU to modify selection criteria in a way that renders them potentially less targeted.*

Introduction

After remaining paralysed by the ideological divisions that characterized the Cold War, the United Nations Security Council (UNSC) dramatically increased its activity in the field of peace and security during the 1990s. This activation was visible in the dispatch of peace missions and the imposition of sanctions alike. The frequency of the adoption of new sanctions regimes, 16 in ten years as opposed to only two in the first 40 years of life of the organization, led experts to label the 1990s as the "sanctions decade" (Cortright and Lopez 2000). Dissatisfaction with the negative impacts of sanctions regimes on target populations, and in particular the severe humanitarian consequences of the draconian embargo on Iraq, brought about a search for a refinement of the sanctions tool. The result of such reflection was the notion of "targeted sanctions", also known as "smart sanctions", which were meant to inflict harm on the responsible leaders while sparing the population from suffering. The development of targeted sanctions was, therefore, meant to be the "*guillet de sauvetage*" of an instrument whose legitimacy had been compromised (Brzoska 2003). The attempt to design sanctions to hit only the wrongdoers represents a fundamental innovation in the sanctions landscape. The United Nations (UN) has imposed only targeted sanctions regimes since the mid-1990s. Targeted sanctions form part of the sanctions practice of all major senders (Biersteker et al 2016), including some regional organizations (Charron and Portela 2015; Eriksson 2010). The world's principal sender, the US, alternates targeted sanctions and comprehensive embargoes in its practice.

Leading expert Michael Brzoska anticipated in 2001 that 'whether and how sanctions can be smart will remain a hotly debated issue for some time' (Brzoska 2001, 15). Scholars have questioned targeted sanctions' ability to spare populations from suffering (Gordon 2011; 2015; Lopez 2012) as well as their feasibility (Tostensen and Bull 2002) and morality (Pattison 2015). Much of the debate has revolved around their compatibility with human rights (Heupel 2009). Few studies have inquired about their actual impacts (Cosgrove 2005; Wallensteen et al 2006). Unsurprisingly, a great deal of attention has been devoted to the comparative effectiveness of targeted measures in achieving policy objectives (Ashford 2016; Neier 2015). Most early assessments have been negative: 'More targeted impact also means more limited impact, also for those targeted' (Elliott 2005, 11). Cortright and Lopez contend that 'where economic and social impact have been greatest, political effects have also been most significant' (2002, 8). Aviation and travel bans have been described as 'not much more than a nuisance for targeted elites' (Brzoska 2001, 70). This has led some authors to claim that 'options other than smart sanctions should be pursued' (Drezner 2011, 97), albeit some recent research on UN targeted sanctions claims that their effectiveness rate is comparable to that of broader sanctions (Biersteker et al 2016).

In sum, research has "jumped" from discussing the notion to assessing its impacts. By contrast, the fundamental question of how the notion of targeted sanctions finds reflection in international sanctions practice has been scarcely explored. What do targeted sanctions look like in practice—that is, what shape(s) have they taken when implemented? Following some pioneering work which examined the "translation" of the concept of targeted measures into actual sanctions regimes (Wallensteen and Grusell 2012), the present article inquires how the notion of targeted sanctions has been "interpreted", and how faithfully its implementation reflects the principles that inspired the notion. In other words, how well do sanctions presented as "targeted" correspond to the original formulation of the concept? This question is important because it has been recognized that even targeted sanctions can produce unintended humanitarian effects (Giumelli 2015). Recent research observed humanitarian consequences in 44 per cent of the episodes of UN targeted sanctions under study (Biersteker et al 2016, 28). In order to explore this issue, EU sanctions practice serves as a suitable case study. European countries were at the forefront of the re-invention of sanctions as targeted measures. Indeed, some of them promoted the adoption of the notion, convening the so-called "Sanctions Reform Process", which consisted of a series of expert meetings to specify the concept and produce recommendations: the "Interlaken process", the "Bonn-Berlin process" and the "Stockholm process" (Vines 2012; Wallensteen et al 2003). While the outcome of the reform processes was never formally endorsed by the UNSC, it proved enormously influential in the development of its working methods and sanctions practice and in reinforcing the normative shift away from comprehensive sanctions (Biersteker et al 2005; Weschler 2009). EU members Germany and Sweden sponsored the Sanctions Reform Process, alongside Switzerland. The first-ever informal UNSC working group on sanctions issued its final report in 2006 under the chairmanship of Greece (UNSC 2006). The recent High Level Review of UN Sanctions was sponsored by four EU members, Finland, Germany, Greece and Sweden, joined by Australia (UNGA 2015). In addition to its role in promoting the concept of targeted sanctions, the EU has embraced the notion in its sanctions practice. While the UNSC shifted from comprehensive to targeted sanctions in

1994, the EU has never imposed a comprehensive embargo on any country. The EU is one of the most active senders on the planet: a comparison of the volume of unilateral sanctions by regional organizations and the US from 1980 to 2014 shows that the EU alone accounts for 36 per cent of the total, closely approximating the figure of 36.9 per cent reached by the US (Borzyskowski and Portela 2016, 15).

This article is in four parts. Firstly, it analyses the concept of targeted sanctions, drawing on the reports issued by the Sanctions Reform Process. A second section looks at the adoption "on paper" of the notion of targeted sanctions by the EU. This part is followed by a review of EU sanctions instruments, looking at how the EU gives expression to its commitment to targeted measures, and contrasting it with the original formulation of "targeted-ness". A final section concludes.

Re-inventing sanctions in the sanctions reform process

The idea of targeted measures was developed in response to the UNSC's negative experiences with comprehensive trade embargoes. The realization did not come earlier because the UN experience with sanctions had been limited to two cases, Rhodesia in 1966 and South Africa in 1977. Comprehensive trade embargoes entail the complete interruption of trade and finance with the target. Thus, their effects are severe, in particular when imposed in the form of mandatory measures by the UNSC, binding on all countries in the world.

The UNSC became acutely aware of the extent of the humanitarian impact of sanctions and of the unpopularity of these measures due to the international outcry provoked by the Iraqi catastrophe in the mid-1990s. In Iraq, the release of data on the high mortality rates among children and other vulnerable groups resulting from the embargo made clear to the UNSC that the employment of similar measures would be unable to garner sufficient support from the international community (Brzoska 2003). This was best expressed in the unusually bold statement of then-Secretary-General Boutros Boutros-Ghali, who criticized sanctions as follows:

> 'They raise the ethical question of whether suffering inflicted on vulnerable groups in the target country is a legitimate means of exerting pressure on political leaders whose behaviour is unlikely to be affected by the plight of their subjects' (UNGA 1995, 16).

However, renouncing the use of sanctions altogether would have deprived the UNSC of one of the few tools at its disposal. Thus, to "rescue" the instrument, the permanent members of the UNSC (the so-called P-5) issued a "non-paper" on the humanitarian effects of sanctions which stipulated that 'any future sanctions regime should be directed to minimise unintended adverse side-effects of sanctions on the most vulnerable segments of targeted countries'. They also pledged to assess the 'short- and long-term humanitarian consequences of sanctions', to give 'due regard to the humanitarian situation' when reviewing sanctions in the Security Council, and to envisage provisions 'to allow unimpeded access to humanitarian aid' (UNSC 1995). As Elliott puts it, UN sanctions nowadays have more than one explicit goal, namely to achieve their political objective 'and to do so without harming innocent civilians' (Elliott 2009, 86–87).

The development of targeted sanctions was part and parcel of a broader transformation in the construction of sanctions regimes by the UN in the post-Cold War

era (Eckert 2016; Weschler 2009). The UNSC targeted its measures by differentiating between actors, sometimes favouring one over the other. By 2000, the UNSC had acquired a habit of combining travel bans and asset freezes against individual decision makers. The UNSC has banned international flights, and trade in commodities that provided funding to targeted groups such as timber and diamonds, and it has applied sanctions to specific geographical areas within a state rather than to its entire territory (Giumelli 2015).

Thanks to the development of targeting, far from vanishing, sanctions have become the instrument of choice of the UNSC (Charron 2011; Weschler 2009). Experts posit that a return to comprehensive sanctions is 'difficult to imagine' (Biersteker et al 2005, 28) if not 'inconceivable' (Doxey 2009, 544). Once targeted sanctions have become the standard, we should develop a precise understanding of what measures can be described as "targeted". To this end, the following section complements the meagre definition contained in the 1995 non-paper—sanctions regimes 'directed to minimise unintended adverse side-effects of sanctions on the most vulnerable segments of targeted countries' (UNSC 1995)—with the outcomes of the Sanctions Reform Process.

Targeting: rationales and concretization

Firstly, the rationale for the development of targeted sanctions ought to be examined. Their principal definitional element is their discriminatory nature—that is, their ability to affect specifically those responsible for objectionable actions. The objective is to 'apply coercive pressure on transgressing parties—government officials, elites who support them or members of non-governmental entities' (Biersteker 2001, ix). On the flipside, this entails avoiding impacts on others. According to the then-Swiss Foreign Minister Joseph Deiss, targeted sanctions 'are designed to focus on groups of persons responsible … while ideally leaving other parts of the population and international trade relations unaffected' (Deiss 2001, vi). This rationale highlights a preoccupation with humanitarian impacts on civilians in the target country, as the measures aim to avoid 'causing excessive suffering to civilian populations' (Deiss 2001, vi). However, the complete eradication of impacts on non-targeted population sectors is not pursued. Instead, such effects should be kept to a minimum. Then-Secretary-General Kofi Annan spoke of '*minimising* the negative effects of the sanctions on the civilian population and neighbouring and other affected states' (UNGA 2000, emphasis mine).

Targeting has also been associated with the expectation that sanctions will be more effective. The Bonn-Berlin process points to sanctions' disappointing effectiveness record as an impetus for the refinement of the tool (Brzoska 2001, 10). The report of the Interlaken process posits: 'better targeting of such measures on the individuals responsible … and the elites who benefit from and support them would increase the effectiveness of sanctions' (Biersteker 2001, ix). The then-Swedish Secretary for Foreign Affairs confirmed this aspiration: 'The overall ambition has been to enhance the prospects of sanctions achieving their stated objectives' (Dahlgren 2003, viii).

Thus, the Sanctions Reform Process expanded the original rationale for targeted sanctions. While the P-5's 1995 non-paper spelt out an unequivocal humanitarian rationale, the Sanctions Reform Process incorporated the idea of hitting the

wrongdoers and added the expectation of enhanced efficacy. Concurrently, the group of those who should be spared from the unintended adverse side-effects of sanctions was broadened from 'the most vulnerable segments of targeted countries' identified by the P-5 (UNSC 1995, 2) to 'vulnerable populations and overall societies' (Dahlgren 2003, viii). It also purported avoiding 'collateral effects on third states' (Dahlgren 2003, viii). In addition to promising not to provoke large-scale suffering and to deprive responsible leaders from the possibility of shielding themselves from the impact of the measures, the claim that targeted measures would maximize effectiveness rendered the notion more attractive to senders and to an international audience mainly concerned about the coercive capacity of the measures.

Some scholars contend that because targeted sanctions hit the wrongdoers while sparing the innocent, their introduction is justified on account of the promotion of justice (Herzog and Walton 2014), making the expectation of enhanced effectiveness superfluous. By contrast, others have situated the problem of comprehensive embargoes not in the causation of civilian suffering per se, but in their lack of proportion between the magnitude of this suffering and their effects on decision makers: 'comprehensive trade embargoes against states have increasingly been perceived as not having the desired effects on the behaviour of the target state in comparison with the disruptions that these sanctions cause in civilian life' (Stenhammar 2004, 145). The assumption that targeted sanctions are better placed to achieve their aims than their predecessors has found some scholarly validation Kirshner 1997. It has been posited that targeted sanctions are likely to be effective when applied against autocrats who rely on a small selectorate because these measures are better suited to adversely affect their power base (Brookes 2002).

Having determined their rationale, the next step consists in ascertaining which specific measures qualify as targeted sanctions. What justifies the inclusion of a particular measure in the targeted sanctions toolbox is its amenability to be targeted at a pre-determined group of individuals, entities or sectors. The critical quality distinguishing a smart sanction is that 'it is designed to hit at the interest of individuals or groups in positions of power directly, rather than the entity they control' (Stenhammar 2004, 150).

The tools that have been put forward as targeted sanctions are not novel: most of them had been in use before. The UN Secretary-General, Sanctions Reform Process experts and scholars have endeavoured to specify the nature of the instruments. These feature selective embargoes, such as those on commodities or luxury goods, the denial of international travel, visas and educational opportunities to regime members and their families, and cultural and sports bans. Arms embargoes and aviation bans 'qualify as targeted sanctions because they are partial bans, they can be tailored to predominantly affect certain groups of people, and their humanitarian effects on the larger population are generally minor' (Brzoska 2001, 10). Targeted financial sanctions encompass a broad group of measures which 'are financial in that they involve the use of financial instruments [and] are sanctions in that they are coercive measures' (Biersteker 2001, ix). They are defined as asset freezes—immobilizing financial resources and preventing new resources being made available to the blacklisted person or entity—, the blocking of financial transactions or financial services and the suspension of credits. While the list is potentially open-ended in the light of the criterion specified above, three principal categories have crystallized in the practice of the UN: visa bans, financial sanctions and arms embargoes (Eckert 2016).

Most of these measures can have deprivational or disruptive impacts on their targets. Arms embargoes serve to restrict or deny access to military equipment, curtailing the ability of the target to pursue an armed conflict (Kirkham and Flew 2003). Visa bans can interfere with efforts to raise funds or acquire arms if foreign travel is required: Expert panels have linked the ability to travel abroad to the procurement of arms and funds (Wallensteen and Grusell 2012). Yet the specification of the measures is not free of difficulty. While targeted sanctions are discriminating policy measures, they vary in their degree of discrimination. A recent study suggests that different types of measures can been conceived as a continuum, with the most narrowly targeted measures on one end and the broadest on the other, depending on how discriminating each type is. On a "discrimination scale", individually targeted sanctions such as travel bans are the most discriminating, while transportation bans and energy embargoes most closely approximate comprehensive sanctions (Biersteker et al 2016, 27). Among participants in the Bonn-Berlin process, differences emerged about what makes sanctions targeted. One view was that the term should be reserved for sanctions which directly aim at targeted elites and avoid pain to those not responsible, while another view favoured a broader use of the term targeted sanctions, including selective embargoes (Brzoska 2001, 69). Since aviation bans affect a wider section of the population than just the elite, they are less targeted than travel bans against named individuals. Doubts have been cast on the targeted nature of bans prohibiting nationals of the targeted state from participating in sports, cultural or scientific activities, given that these individuals would not be affected for their perceived support of a ruling group (Brzoska 2001, 47–48).

The "EU way" of sanctions

The analysis now turns to the EU's 'interpretation' of targeted sanctions, attempting to evaluate EU sanctions policy against the definitional criteria identified in the previous section. The present analysis does not purport to assess the implementation or actual impacts of the measures as virtually no data exist on the unintended consequences of EU sanctions. Instead, the focus is on assessing the *design* of the measures and its suitability to affect responsible wrongdoers as opposed to "innocent bystanders". The method employed is an analysis of the design of different categories of sanctions instruments. In keeping with the above discussion, sanctions instruments will be scrutinized by applying two key criteria:

(a) the ability of the sanctions to discriminate between targets and non-targets; and
(b) the suitability of exemptions to shield non-targeted populations from unintended harm.

Data are obtained from policy and legal documents, which provide information on the motivations of the sanctions regimes, the selection of specific sanctions measures, the criteria for blacklisting of persons and entities, and humanitarian exemptions and other measures geared to prevent civilian deprivation. The analysis is complemented with specialized literature.

For the purpose of the present analysis, sanctions are defined as the deliberate interruption, reduction or withdrawal of normal relations or of a benefit that

would otherwise be granted, in response to what is considered objectionable behaviour (Portela 2010). Thus, the analysis considers sanctions instruments according to the legal framework in which they are agreed, irrespective of their formal status in official EU terminology. While most research on EU sanctions focuses on the imposition of sanctions under the Common Foreign and Security Policy (CFSP); (Cardwell 2015; Hellquist 2016), there is an increasing recognition that measures wielded in alternative frameworks qualify as sanctions too (de Vries and Hazelzet 2005; Koch 2015; Nivet 2015). This dovetails with the understanding prevalent in development studies (Molenaers et al 2015; Zimelis 2011) and sanctions scholarship (Jones 2015). Thus, the present analysis examines (i) CFSP sanctions, which belong to the realm of foreign policy; (ii) the suspension of aid under its Partnership Agreement with the African-Caribbean and Pacific (ACP) states group, a development instrument; and (iii) the withdrawal of trade privileges under the General Scheme of Preferences (GSP), a trade tool.

The CFSP framework

The CFSP is the principal framework for foreign policy formulation in the EU. It is the venue for the framing of foreign policies outside the communitarized areas of trade and development. It operates by unanimity. Foreign policy co-ordination originated in the framework of the European Political Co-operation, in whose context the first autonomous sanctions were wielded in the early 1980s, giving way to the CFSP in 1992. In the CFSP, sanctions are labelled "restrictive measures" and their adoption is reflected in legislative acts, "Common Positions" before the Lisbon Treaty and "Council Decisions" thereafter.

Even though its autonomous sanctions practice goes back to the 1980s (Koutrakos 2001), the EU only released policy documents on its sanctions policy concurrently with the European Security Strategy of 2003. 'Guidelines on implementation and evaluation of its sanctions' (Council of the European Union 2003) were followed by some 'Principles for the use of sanctions' which embraced the concept of targeted measures:

> Sanctions should be targeted in a way that has maximum impact on those whose behaviour we want to influence. Targeting should reduce to the maximum extent possible any adverse humanitarian effects or unintended consequences for persons not targeted or neighbouring countries. (Council of the European Union 2004, 3)

In the same document, the Council pledged to 'further refine sanctions' and 'improve their implementation' (Council of the European Union 2004, 3). In this spirit, the Council subsequently updated the 'Guidelines on implementation and evaluation' of its sanctions (Council of the European Union 2012).

Yet these policy documents did not foresee the principal vulnerability of blacklists—namely, the lack of due process guarantees. On this basis, a number of designated individuals brought cases to court. After the European Court of Justice—renamed the Court of Justice in 2009—ruled in favour of the claimant in the landmark "Kadi" judgement in 2008, it subsequently annulled numerous listings because it considered they have been adopted on insufficient evidence (Heupel 2009). Interestingly, the designation in question in the Kadi case was not originally an EU listing, but it stemmed from a UNSC resolution. By 2014,

as many as 110 challenges to listings concerning 290 individuals or entities had been brought before the Court of Justice of the EU (Lidington 2014). While the EU has pledged to 'respect due process and the right to an effective remedy in full conformity with the jurisprudence of the EU Courts' (Ashton 2012), the Council's restoration of certain designations annulled by the Court illustrates the level of controversy associated with these rulings (The Economist 2015; Lidington 2014). Even though this is a distinctively European as opposed to global problem, it has induced a crisis of confidence whose magnitude has been equated to that caused by the 1990 Iraqi embargo (UNGA 2015, 68).

Discriminating between targets and non-targets

The design of measures aims to respect the distinction between those responsible for the violations condemned, and the population at large. Sanctions regimes such as that imposed on Zimbabwe in February 2002 purportedly blacklisted persons whose activities 'seriously undermine democracy, respect for human rights and the rule of law in Zimbabwe' (Giumelli and Krulis 2012, 171). In justifying the sanctions imposed in response to the flawed elections in Belarus in 2006, then-Commissioner for External Relations and European Neighbourhood Policy Benita Ferrero announced that the EU had blacklisted individuals bearing direct responsibility, stating that it was 'important that sanctions be clearly focused, targeting precisely the individuals—including Mr. Lukashenko—responsible for the fraudulent elections' (Ferrero-Waldner 2006). Yet an evolution is discernible in the criteria governing listings in recent years. The standard formulation of 'persons whose activities seriously undermine democracy, human rights and the rule of law' has now evolved to 'those identified as responsible for the policies or actions that have prompted the EU decisions to impose restrictive measures and those benefiting from and supporting such policies and actions' (Council of the European Union 2012, 8).

The above phrase has made its way into legal documents: Current sanctions against Syria define its target group as 'persons responsible for the violent repression against the civilian population in Syria, persons benefiting from or supporting the regime, and persons associated with them' (Council of the European Union 2013, 18). The inclusion of 'persons associated with' those 'responsible for the violent repression against the civilian population in Syria' and those 'benefiting from or supporting the regime' broadens the targeted circle considerably and introduces some definitional indeterminacy. While the population identified as responsible for condemned policies can be defined narrowly as it entails individuals in leadership positions, the formulation describing 'those benefiting from and supporting such policies and actions' appears potentially open-ended. Because it encompasses not only cronies—'those benefiting'—but also supporters, this group could, in theory, extend to the entire population of the target country as long as it lends its backing to the leadership's actions. For the purpose of targeting, it is unclear in what ways individuals or groups can be held to "benefit from" and "support" the regime, and how these can be told apart from those which do not.

Interestingly, refinements introduced in targeting criteria are not motivated by an ambition to determine more precisely the degree to which potential designa-

tions are associated with condemned policies. Instead, innovation has been driven by the legal challenges that led the European Court to annul designations. Aware that its listings are subject to the scrutiny of the Court, the Council has adopted a more cautious approach to selecting targets. As a result, today's listing criteria are less vulnerable to legal challenges than in the past, but not necessary fairer or targeted with more precision. The fact that Brussels took a longer time than Washington to blacklist individuals from the entourage of President Vladimir Putin (Fischer 2015) illustrates that EU faces legal constraints to which the US is not subject.

Preventing deprivation

The EU employs several methods to prevent deprivation. Because blacklists are invariably endowed with exemptions, designated persons are not subject to hardship. Sanctions legislation authorizes member states to release funds necessary to satisfy the basic needs of persons whose assets have been frozen, including payments for foodstuffs, rent, medical treatment, taxes and public utilities, or intended for the payment of legal services. Exceptions to the visa ban can be granted too. Given that blacklists often include entities, the release of funds can be authorized if necessary for humanitarian purposes, such as delivering medical supplies, food, humanitarian workers and related assistance (Council of the European Union 2013, 20). Dedicated clauses foresee that member states may grant exceptions from the visa ban 'where travel is justified on the grounds of urgent humanitarian need', allowing blacklisted individuals to travel to the EU to receive medical treatment. The procedure for granting exceptions is on a non-objection basis: A member state wishing to grant an exception notifies the Council. The exemption is deemed to be approved unless another member raises an objection within two working days, in which case the Council decides by qualified majority (Council of the European Union 2013, 19). Exceptions for medical reasons are routinely granted (interviews with officials, 2007 and 2015).

A second method consists in the continuation of actions in support of the population concurrently to the sanctions, a peculiarity of EU policy which sets it apart from other senders. With regard to Belarus, former Commissioner Ferrero claimed: 'We must avoid sanctions which harm the wider population', and announced the provision of 'support which directly benefits the population such as health [and] the environment' (Ferrero-Waldner 2006). The EU's preoccupation with sparing the population from deprivation becomes particularly evident with sanctions enacted on developing countries or crisis areas. This has given rise to the apparently paradoxical situation that aid to countries under sanctions is often increased. While the Harare leadership was under sanctions, the EU stepped up its aid to Zimbabwe on account of the severe food crisis of the mid-2000s. Since the restrictions imposed by Brussels did not affect trade, the EU remained Zimbabwe's second largest trading partner (Giumelli and Krulis 2012). Following Hamas's victory in the 2006 Palestinian elections, the EU suspended payments to the Palestinian Authority, but aid to the Palestinian population was actually stepped up. Humanitarian aid is deliberately kept under a separate budget and is not affected by CFSP restrictions.

Finally, the EU's habit of deploying sanctions gradually limits the infliction of hardship. Its incremental strategy was explicitly spelt out with the current sanctions against Russia in the context of the Ukraine crisis, where there has been talk of different phases (Christie 2016; Fischer 2015). The standard sequence starts with the limitation of contacts, consisting in a reduction of the number of bilateral meetings and/or the level at which they are held, sometimes accompanied by the suspension of bilateral agreements. The second stage entails the adoption of some CFSP measures, consisting of a visa ban and an arms embargo, which are later followed by the inclusion of new entries to the blacklists, and the enactment of an asset freeze (Giumelli and Krulis 2012; Portela 2010). Rarely has the EU moved to the final stage in the series, wielding measures that go beyond this triad, such as the Kosovo crisis in 1998 (de Vries 2002).

However, in some recent cases the EU has adopted more severe sanctions such as energy embargoes on oil or gas and commodity embargoes, in addition to a range of more sophisticated financial sanctions, signifying a qualitative leap in EU practice (Portela 2016). Measures imposed on Syria in 2011 including an embargo on oil and gas (Thomas 2013) and on Russia in 2014 covering extraction technology (Christie 2016) are cases in point. Other examples include EU measures supplementing UN sanctions on Iran in the period from 2010 until 2015 and on Côte d'Ivoire in 2011, constituting some of the rare cases in which the EU has imposed autonomous sanctions supplementing a pre-existing UN sanctions regime (Brzoska 2015).

By imposing commodity embargoes and financial restrictions, the EU is moving up the discrimination scale, thus getting closer to causing hardship to "innocent bystanders". Commodity embargoes have been identified as potential sources of unintended consequences: 'Because natural resources trade can serve as the main source of revenue for the affected countries, there is an obvious possibility that legitimate trade could also be affected' (UNGA 2015, 70). Similarly, a vigorous use of financial sanctions 'might endanger the economy of a whole country or region, and thus go beyond the idea with targeted sanctions' (Wallensteen et al 2006, 31). Financial and sectoral embargoes have been associated with the most significant effects on civilian health (McCarthy 2000).

During the post-electoral crisis that engulfed Côte d'Ivoire after President Laurent Gbabgo's rejected the outcome of the 2010 election, the EU blacklisted a number of state enterprises including the company trading in cocoa as well as the country's only international harbours, Abidjan and San Pedro. Given that cocoa is a key industry for the Ivorian economy, it has been claimed that 'if the crisis had continued beyond April 2012, the humanitarian impact of [the] cocoa embargo would have been serious' (Vines 2012, 875). In addition, the blacklisted ports were points of entry for supplies for the entire region. While the Ivorian crisis proved too short-lived for humanitarian effects to materialize, the EU demonstrated an unprecedented readiness to deviate from its characteristic restraint to facilitate Gbagbo's downfall.

Autonomous restrictions on Syria and unilateral sanctions supplementing the UN package on Iran have been denounced as a departure from carefully targeted sanctions, marking a shift towards more comprehensive measures (Moret 2015). In Iran, while sanctions are recognized to have affected the economy, health care and the environment, a key humanitarian worry concerned the obstacles faced by local actors in the acquisition and distribution of medical and pharmaceutical supplies.

Although legislation exempted the importation of humanitarian items such as food and medicine, foreign companies and banks often forwent business owing to fear of repercussions, while insurance companies experienced difficulties when attempting to provide coverage to Iranian importers and exporters (UNGA 2014). Similar hindrances are currently documented in Syria, evidencing the pervasive limitations of exemption clauses to avoid humanitarian impacts (Walker 2016).

The ACP–EU framework

Since the mid-1990s, successive agreements between the EU and the ACP states—Lomé IVa and Cotonou—enshrine democratic rule, respect for human rights and the rule of law as so-called "essential elements". In the event of violation of these elements, any of the parties may call for consultations with the party at fault to agree on a roadmap for corrective action. Art. 96 of the Cotonou Convention authorizes the suspension of its application if consultations prove unfruitful, or if the commitments undertaken are not subsequently honoured. Officially, suspensions are euphemistically referred to as "appropriate measures", a term setting them apart not only from the word "sanction" but even from the EU jargon of "restrictive measures". The suspension of the agreement entails the discontinuation of development aid and trade preferences. In contrast to the CFSP, the EU has never produced a programmatic document on the policy it follows when suspending the application of the ACP–EU Partnership agreement under Art. 96. The contours of EU suspension policy must thus be inferred from its evolving practice, vastly documented in legal instruments.

The suspension of agreements in implementation of the conditionality mechanism embedded in the EU–ACP treaty is reportedly reserved as 'very much the last resort' (Holland 2002, 133). Questioned about the possibility of suspending aid to Kenya following a clamp-down on pro-democracy demonstrations, then-Commissioner for Development João Pinheiro confirmed that the suspension of aid was 'considered to be a measure of last resort' (Pinheiro 1998). Nevertheless, these measures are relatively frequent compared to CFSP practice. The suspension of agreements experienced a dramatic surge in the immediate aftermath of the Cold War as the EU enthusiastically embraced the promotion of democracy and human rights, but its frequency soon subsided (Borzyskowski and Portela 2016). Still, with 33 instances of suspensions from 1990 to 2009 (Zimelis 2011), of which 15 occurred from 2000 to 2009 (Del Biondo 2009), Art. 96 is applied often in comparison with the rare invocation of suspension clauses in other EU agreements with third countries. For non-ACP countries, CFSP measures and a review of support strategies are preferred over the suspension of aid cooperation (European Commission and High Representative of the Union for Foreign Affairs and Security Policy 2016).

Discrimination between targets and non-targets

Development aid suspensions follow an incremental logic similar to that described in the CFSP. Once the suspension has been agreed, the step-by-step resumption of cooperation is foreseen on a conditional basis. This is referred to as the 'gradual and conditional approach' (Portela 2010, 131). The design of the measures applied

under Art. 96 does not entail the withdrawal of aid, but rather its re-direction towards actors or aims other than those they had been originally allocated to. Suspensions only affect budget support administered directly by recipient state authorities. Only certain categories of aid are discontinued, leaving in place those types which benefit recipients unconnected to government authorities. While no new commitments are made, funds are re-directed to development projects implemented by non-governmental organizations (NGOs). Often, aid is used to support the implementation of the recipients' commitment to restore the constitutional order, such as preparing elections (Portela 2010, 132).

The rationale behind the present approach is clearly to deprive the leadership of the benefits associated with presenting themselves as providers of public services and infrastructure projects vis-a-vis their citizenry. Rather than signifying the end of the aid relationship, partial forms of suspensions entail 'a warning to the incumbent government to address the issues at stake, an invitation to negotiate measures so as to correct what has been going wrong' (Molenaers et al 2015, 63). From that point of view, the measures follow a discriminatory logic which disadvantages the leadership at fault. While an attempt at targeting is made, Art. 96 suspensions are less targeted than CFSP sanctions are. Budget support suspensions can only be wielded against state authorities, and they penalize the state apparatus as a whole, rather than only the top leadership. Measures are not 'personalized' as no specific individuals are designated. In contrast to CFSP sanctions, leaders responsible for the acts condemned by the EU—coups d'état, violent repression or other human rights violations—continue to be allowed to hold assets abroad and travel freely to Europe.

Preventing deprivation

Despite the suspensions, a long list of actions are not discontinued in order to ensure that the population is spared from deprivation. Suspensions decided under Art. 96 are normally partial in nature, even though full suspension remain an option. Programmes to support the most vulnerable sections of the population are left in place. The suspension is only enforced for prospective projects, leaving on-going programmes unaffected. Humanitarian aid is expressly exempted (see above). Cross-border regional projects involving several countries are kept in place. Aid in direct support of the population—including health, education, rural development or food security programmes—is channelled through NGOs and remains unaffected. Finally, EU member states' aid programmes remain fully independent from EU aid.

The EU's commitment to avoid humanitarian hardship in the impoverished ACP group is evident beyond the framing of its development aid suspensions. A most illustrative example demonstrating the EU's preoccupation with the protection of civilian populations is that of Burundi, which was subject to a full economic blockade by neighbouring countries in 1996. The embargo was eventually terminated at the instigation of the EU, which, concerned about humanitarian consequences, threatened Burundi's neighbours with suspension from the ACP Partnership Agreement if they persisted (Wohlgemuth 2005).

The GSP framework

For decades, developing countries have been receiving preferential market access to the European market under the EU's GSP, enshrined in a Council regulation revised periodically. Eligibility for the GSP scheme is determined by criteria of economic vulnerability. The system features two subcategories in addition to the general scheme: Least developed countries (LDCs) benefit from a particularly favourable treatment on the basis of their underdevelopment. A third category consists in a special incentive system labelled "GSP+" which grants enhanced tariff preferences in return for beneficiaries' compliance with fundamental International Labour Organisation (ILO) conventions and international agreements on sustainable development and good governance. To benefit from GSP+, countries must ratify and implement eight fundamental ILO conventions and seven conventions on human rights and environmental governance. For all schemes, negative political conditionality foresees the temporary withdrawal of preferences in response to serious and systematic breaches of core human and labour rights by the beneficiary country: 'The reasons for temporary withdrawal of the arrangements under the scheme should include serious and systematic violations of the principles laid down in certain international conventions concerning core human rights and labour rights' (European Parliament and Council of the European Union 2012, 3).

In case of breach of GSP+ commitments, beneficiaries are downgraded to the general scheme. According to the suspension procedure, any EU member state or third party concerned may bring violations to the attention of the Commission. Upon investigating the matter, the Commission may then propose suspension to the Council, which decides by qualified majority taking into account reports by external supervisory bodies such as the ILO. The record of GSP withdrawal is meagre: Preferences were withdrawn from Myanmar in 1997 (but reinstated in 2013), and from Belarus in 2006. Venezuela saw preferences downgraded from GSP+ to the general scheme, due to Caracas' failure to ratify the UN Convention against corruption, while Sri Lanka was suspended in 2009 because of human rights violations in the course of the military campaign against the rebel group Tamil Tigers.

Discrimination between targets and non-targets

The withdrawal of GSP privileges entails the restoration of normal trade flows—that is, regular duties apply again for products of the suspended beneficiary entering the common market. The nature of the products which had benefited from preferences is determined by the EU on the basis of commercial and development considerations. Thus, there are no discriminating mechanisms in place to maintain preferences for sectors which are not associated with responsible actors while restating duties on products associated with sectors affined to them, possibly because such policy might contravene international trade law.

Although suspension cases are rare and evidence on their impacts is scarce, the criticisms directed at the GSP suspension on Myanmar largely pertain to its non-targeted nature. The garment sector, whose exports had flourished thanks to a lack of tariffs, was fatally hit by the suspension of trade preferences by the US and the EU, which had previously absorbed 90 per cent of production. At the time the suspension was agreed, it was believed that costs to the Myanmar economy

would be low overall (Lerch 2004, 259). Yet, instead of harming state-owned enterprises, the burden fell on small private businesses while joint ventures of foreign companies and state-linked enterprises survived (Jones 2015, 107). Because it hit the wrong targets, it has been argued that the GSP suspension hampered the emergence of social forces which might have become opposition constituencies (Jones 2015, 125).

Preventing deprivation

The GSP suspension does not entail any provisions geared towards preventing deprivation in the affected beneficiary. Nevertheless, the differentiation of three categories of preferences respects a hierarchy based on the level of development of the beneficiary: the GSP+ scheme features stronger conditionality rules than the other categories. Yet GSP+ beneficiaries which do not honour additional voluntary commitments are still granted regular GSP privileges. The conditionality applicable to the general scheme and to Everything-but-Arms (EBA) are weaker as they only apply to serious and persistent breaches of core labour and human rights. The fact that EBA, the most favourable scheme, is applicable to the most underdeveloped beneficiaries represents the only protection against deprivation embedded in the EU's GSP.

Conclusions

Although the EU has traditionally followed a narrow interpretation of targeted sanctions guided by the intention to discriminate between responsible leaders and civilian population, our review reveals an imperfect picture.

Firstly, recent CFSP sanctions cases signify a departure from the narrowly defined targeted-ness typical of EU practice. Target groups are not circumscribed to leaderships; instead, they extend to a potentially vast population of supporters. This re-definition of criteria for target selection was induced by the threat posed to EU sanctions by court rulings, rather than by considerations of fairness in targeting. As a result, sanctions are becoming less rather than more targeted.

Secondly, a trend is visible towards the increasing adoption of sanctions of an economic nature such as commodity embargoes and financial sanctions, likely to cause a decline in the living standards of the population, to the detriment of more narrowly targeted strategies. Severe sanctions on Syria or Iran illustrate this scenario. What is worrying about this evolution is that it has not been accompanied by enhancements in the planning of measures and monitoring of impacts. As Erica Moret has argued, if the EU is moving to tougher measures, it should acknowledge 'the humanitarian ramifications and the moral and practical responsibilities' arising from this choice (2014, 14). While no evidence indicates that EU sanctions have caused humanitarian hardship on any of its targets, such a scenario cannot be fully discarded, and it is indeed becoming increasingly likely.

Thirdly, sanctions imposed by the EU outside the framework of the CFSP do not fit targeted-ness criteria adequately. Different targeting logics co-exist in the EU sanctions landscape without any other apparent justification than the compartmentalization governing the organization's external policies (Portela and Orbie 2014). On account of the economic underdevelopment of the ACP group, the preoccupation with avoiding harm is as important with Art. 96 suspensions as

with CFSP measures. This is in keeping with international practice, which spares the most severely impoverished countries from high levels of economic pressure 'precisely because the sender state is unwilling to fully apply the measures against them' (Taylor 2009, 120). However, there is no apparent rationale for the lack of individualization of targetable actors in the ACP and GSP frameworks. On the contrary, the underdeveloped nature of the targets constitutes an incentive for focusing pressure on them as opposed to altering aid flows. Disappointingly, in contrast to CFSP and Art. 96 sanctions, GSP suspensions emerge as a tool not amenable to targeting.

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