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Giumelli, Francesco

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Chapter 6
The Role of For-Profit Actors in Implementing Targeted Sanctions: The Case of the European Union

Francesco Giumelli

6.1 Introduction

The evolution of sanctions from comprehensive to targeted has favored the inclusion of for-profit actors[1] in the policy process. When financial restrictions are imposed, banks and financial institutions play a key role in ensuring that implementation is done according to *De l'Esprit des Lois* (the spirit of the law). When an economic boycott is decided, then it is trading companies and producers that are directly responsible for not delivering and selling certain goods to listed individuals and entities. Targeted sanctions are disciplined via public regulations and for-profit actors are central to the achievement of the policy objectives that inspired the adoption of sanctions. As a foreign policy instrument "between wars and words" in the international system (Wallensteen and Staibano 2005), sanctions are normally used to deal with security challenges. As such, for-profit actors play a central role in the provision of security, which is also in line with a general trend that has been recognized and discussed in the literature. In domestic politics, for instance, private actors have been used to provide security (Johnston 1992; Shearing and Stenning 1987), to administer prisons (Hart et al. 1997) and to protect critical infrastructures (Dunn Cavelty and Kirstensen 2008; Lee 2009). In external affairs, most of the attention was devoted to the study of for-profit actors that were dealing directly with security matters, such as the case of private military and security companies (PMSCs) in military operations (Avant 2005; Kinsey 2006). However, less attention has been paid to 'less-spectacular' for-profit actors (Abrahamsen and

[1]For-profit actors are defined as firms and companies. They will be referred to as private actors and non-state actors in the text, but they will be treated as synonyms of actors for-profit.

F. Giumelli (✉)
Department of International Relations and International Organization (IRIO), University of Groningen, Oude Kijk in 't Jatstraat 26, 9712 EK Groningen, The Netherlands
e-mail: f.giumelli@rug.nl

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Williams 2009; Bures and Carrapico Chap. 1), such as banks and trading companies, which are central to the implementation of sanctions.

This chapter intends to investigate the role of for-profit actors in the implementation of sanctions. More specifically, this chapter suggests a typology of regulatory environments that facilitates explaining and understanding the behavior of for-profit actors in implementing targeted sanctions. The typology of regulatory environments, defined in terms of formal institutions only, is constituted by the quality of instructions provided by state authorities and their capacity to monitor the implementation of such decisions. This typology presents two advantages: first, it allows us to consider the transnational nature of the role of for-profit actors in the provision of security in general, and in implementing sanctions in particular; second, it permits us to identify problems and challenges that can emerge through the involvement of non-state actors in implementing public regulations across policy areas. The chapter argues that there are four types of regulatory environments—*enforceable implementation, implementation by persuasion, enforceable delegation of implementation,* and *delegation of implementation by persuasion*—and that each of these regulatory environment is likely to create problems of overcompliance, uneven and lack of compliance. The theoretical framework is tested on the case study of the restrictive measures of the European Union (EU). The EU has adopted a targeted sanctions approach (European Union 2013) whose particular institutional architecture forces the EU to adopt domestic legislations to regulate the behavior of firms and companies within its own borders. The regulations also have effect beyond EU borders. The imposition of sanctions is motivated by security concerns, and its hybrid nature of domestic as well as international dimension makes it a most typical case study to test the typology proposed in this chapter. The data for this chapter was collected through semi-opened interviews and focus groups held in Brussels from 2013 to 2015.[2]

The chapter is divided into five sections. The first one presents the academic debate on the role of non-state actors in the provision of security. The second section presents the typology of regulatory environments that can be used to analyze the behavior of for-profit actors in implementing public regulations. The third part introduces the targeted sanctions policy of the European Union. The fourth one analyzes each of the four types applied to EU targeted sanctions. Finally, the chapter ends with a discussion on the usefulness of the typology and it suggests some venues for future research.

[2]Interviews were held in different phases. First, I participated in two focus groups with EU officials and private sector representatives in two workshops held in Brussels in July and October 2013. The focus groups took place as background activity for writing 'The effectiveness of EU sanctions. An analysis of Iran, Belarus, Syrian and Myanmar', a report that I co-authored with Paul Ivan and which was published by the European Policy Centre in November 2013. Additionally, a total of thirteen interviews were held with EU officials in Brussels between March 2010 and February 2015. Sparse email communications took place with companies between 2013 and 2015, but only one is used in this chapter. The interviews were held under anonymity; therefore only the position, date and role of the interviewees are indicated whenever necessary.

6.2 Non-State Actors and the Provision of Security

The provision of public goods very often depends on the role and the activities of private actors, such as firms, individuals, non-governmental organizations, and enterprises. As a departure from the understanding of the Westphalian system, wherein states are the main security providers within their own borders and of their own borders, the growing complexity of the international system has brought about two main changes that need to be pointed out. First, borders became more permeable to external security threats. At the same time, security threats evolved from states and state-sponsored to a more hybrid and molecular nature, facilitating their enacting from distant geographical locations. In an attempt to enhance their role as security providers, states have gradually involved non-state actors in the protection of their borders and the management of distant and non-state based security threats.

The growing reliance of states on private actors did not start with the provision of security, as properly emphasized by the literature on New Public Management and on Regulatory Capitalism (Braithwaite 2008; Gilardi 2008; Levi-Faur 2005). Although states became service providers following the industrial revolution in the nineteenth century, the growing complexity of a globalized world incentivized their evolution to further extend their range of services at the same time as reducing their costs (Olsen 1988; Lane 2000). In order to diversify the governance of service provisions, states took the initiative to involve private actors (Kettl 1993; King 2007). Since the 1970s, the state has shifted towards becoming a regulatory entity rather than a direct provider of public goods (Majone 1994, 1996). Although this transformation initially regarded mostly non-security related sectors—Knill and Lehmkuhl refer to the regulation of internet domain names, the standardization of digital copyright and the internet content registration (2002, pp. 53–57), while other studies mention environment policy, and labor practices (Vogel 2010, p. 68)—security has also been gradually included in this process (Abrahamsen and Williams 2009; Avant 2005; Hall and Biersteker 2002; Leander and van Muster 2007). Especially relevant to this chapter, the link between business and security has been investigated as well (Bailes and Frommelt 2004; Bures and Carrapico Chap. 1). Such link regards non-explicit security tasks—such as the protection of critical infrastructure (Lee 2009; Dunn Cavelty and Kristensen 2008) and the monitoring of money laundering (Allidge 2008; Levi 2010; Favarel-Garrigues et al. 2011)—and explicit security tasks—such as combat support and other tasks performed by PMSCs (Singer 2003; Kinsey 2006).

The provision of security is the product of a collaboration between state and non-state actors, either in voluntary or mandatory terms. For instance, state and non-state actors, and therefore for-profit as well, can decide to engage in public-private partnerships (PPPs) (Donahue and Zeckhauser 2006; Schaferhoff et al. 2009). In other cases, firms decide to act out of feelings of responsibility for the social implications of their behavior defined as Corporate Social Responsibility (CSR) (Garriga and Mele 2004; Petersen 2008; Bures 2015). Furthermore, states

have also taken the lead and regulated, or tried to, the behavior of business actors for the provision of security. For instance, there is a flourishing literature on the role played by non-state actors in countering money laundering[3] (Allidge 2008; Levi 2010; Favarel-Garrigues et al. 2011) and terrorist financing (Biersteker and Eckert 2007). This approach is often resisted by private actors, who lament that they have to perform tasks that, in fact, should be carried out by public institutions (Bergstrom et al. 2011, p. 1049; Bures 2013, p. 443; Lee 2009; Jordana and Levi-Faur 2004; Bull and McNeill 2007).

In any case, regulations require that for-profit actors behave in specific ways implementing the policy according to the spirit of the law. This opens a debate about the conditions under which for-profit actors comply with public regulations (Peters 1999; Scott 2001, as cited by Parker and Lehmann Nielsen 2011, p. 18). First, enterprises and firms comply because of specific motives. The original assumption was that companies are motivated by economic gains, therefore firms and companies fear the imposition of penalties and fines. However, the debate was subsequently extended beyond this assumption as other motivations were explored. For instance, Winter and May (2001) argue that firms are driven by social motives, namely the need to earn the respect of other actors, whether they are consumers, other peers or regulators. In other words, for-profit actors are afraid of reputational costs as well. Alternatively, companies also comply for normative reasons, meaning that firms conform to a broader sense of what's the right thing to do in given circumstances. Others claim that companies comply *when they can*. This set of motivations regards the specific organizational peculiarities of companies, such as the size of the company, the types of products/services they are providing and the markets where they operate. This is also affected by the organizational culture, the decisions of their management and/or their employees. For instance, companies differ because of 'their economic resources, technical knowhow, knowledge about the law and managerial capacity and oversight' among others (Parker and Lehmann Nielsen 2011, p. 15). Finally, companies do not operate in a vacuum and, therefore, they are subject to influence of external factors. These factors are the formal and informal institutions that 'dictate, limit and also enable certain actions'. Accordingly, institutions are classified in regulative (laws), normative (norms and values) and cultural cognitive (administration practices). In other words, the quality of the regulation explains why private actors comply, or not, with public regulations.

However, these explanations do not fully account for the special nature of a regulatory environment in international security. First, the international system is characterized by the absence of institutions that can enforce common rules. Second, while regulations on non-security related issues are based on 'hard' facts, security is characterized by 'soft' facts, namely it is managed through assumptions and risk assessments. On the one hand, the rule of law is weak in the international system and, on the other hand, security operates in a realm of uncertainties. In this context,

[3]Money laundering can be security related, for instance if the activity is carried out by international criminal organizations, and non-security related, for instance in case of tax evasion.

understanding and explaining the role of for-profit actors becomes central to understanding and explaining the implementation of targeted sanctions. The next section suggests a typology hat enhances the understanding of the effects of formal rules on the behavior of for-profit actors when they are asked to contribute to the provision of security.

6.3 The Regulatory Environment and the Implementation of Sanctions

As mentioned above, this chapter intends to contribute to the debate on regulating the behavior of for-profit actors to deal with security challenges in the international system. This chapter argues that given that international and domestic systems are different *in nature* from one another and that dealing with security challenges means dealing with uncertainties, there is the need for wider analytical frameworks undertaking comparisons across time, space and policy areas. In this analysis, the assumption is that focusing on regulatory environments provides the necessary analytical perspective to identify recurrent problems when for-profit actors are requested to implement public policies via regulations. A regulatory environment is the set of formal institutions—such as laws and institutional actors instructing, monitoring and enforcing public regulations—in which for-profit actors operate. Certainly, regulatory environments could be defined more extensively and, therefore, they could include other defining characteristics. However, the focus in this chapter is on formal institutions and, therefore, informal institutions and other variables are not considered.

The regulatory environment is determined by the clarity of instructions provided by the regulations adopted by public authorities and by the monitoring/enforcing capacities of public authorities. When it comes to enacting legislation, state authorities need to have at least as much knowledge as private actors. Knowledge allows state authorities to provide private actors with specific guidelines on what needs to be done. However, private actors can have more knowledge than state institutions. This can occur for several reasons. For instance, the growing complexity of technological innovations allow firms and companies to draw from market forces and rely on specific expertise that state institutions, being less flexible and unable to acquire competences in each policy area, cannot afford. Additionally, non-state actors are often closer to the daily activity of their customers, therefore they are exposed to dynamics that state institutions are not witnessing (Dunning 1999 also see Chaps. 9–12 in Part III of this book).

The objective of public regulations is to ensure that for-profit actors carry out specific actions, such as implementing targeted sanctions as investigated in this chapter. In order to *implement* targeted sanctions, for-profit actors need to be provided with specific instructions regarding what they have to do. If for-profit actors do not receive such information and, instead, are provided only with vague

instructions, then public authorities are *delegating* the implementation of sanctions to for-profit actors. In such a case, private actors are asked to make substantive decisions about specific situations that states cannot make (Cherednychenko 2016). At the same time, for-profit actors can embark on deviant behavior and refuse to implement sanctions. In such a case, public authorities can be either in a position to *enforce* implementation, for instance by monitoring and imposing fines on deviant behavior, or to *persuade* implementation, for instance by convincing for-profit actors to implement sanctions by reasons other than coercion such as reputational costs, sense of justice, etc.

The intersection of the two variables constitutes a typology of regulatory environments of formal institutions that allows to account for both the domestic/international divide, as well as security/non-security policies. Thus, four types of regulatory environments can be identified: (1) *enforceable implementation* (type A), which is when governments can specifically outline what private actors are supposed to do and also monitor their behavior in order to enforce the regulation; (2) *implementation by persuasion* (type B), wherein public authorities can provide detailed regulations, but monitoring cannot be properly done. This could be a situation in which specific actions are forbidden, but public authorities cannot act because the violations occur beyond their reach (and knowledge sometimes); (3) *enforceable delegation of implementation* (type C), regards those situations wherein public authorities do have the power to monitor the behavior of non-state actors, but clear and specific instructions cannot be provided. For instance, this would occur in security-related matters in domestic systems, wherein strict coordination between private and public actors replaces the state in providing public goods; and (4) *delegation of implementation by persuasion* (type D) which refers to situations in which private actors do not know exactly what they have to do to comply and public authorities cannot monitor what they do. For instance, this is a security-related challenge in the international system. Table 6.1 summarizes the 2×2 matrix of the four regulatory environments.

If regulatory environments influence the behavior of private actors, then specific patterns of behavior should be expected when applied to concrete cases of security governance. This chapter proceeds inductively and it applies the theoretical framework to a case study in order to observe whether there are regularities in behavioral patterns that can be identified with for-profit actors. This chapter does not intent to discuss the role of non-state actors regarding the effectiveness of a public policy, but it aims to identify regularities in private actors' behaviors. The targeted sanctions of the European Union (EU) is the case study for this research. First, sanctions are inherently a security topic. Second, the evolution from comprehensive

Table 6.1 A typology of regulatory environments

	Detailed instructions	Vague instructions
High monitoring capacity	Type A: enforceable implementation	Type C: enforceable delegation of implementation
Low monitoring capacity	Type B: implementation by persuasion	Type D: delegation of implementation by persuasion

to targeted sanctions has increased the need to involve private actors in the implementation of sanctions. Finally, the case of the EU is also relevant as the level of formalization reached in Europe further emphasizes the importance of guidelines needed by companies to implement public regulations. The next section introduces the case of the targeted sanctions of the European Union.

6.4 Targeted Measures and the Case of the EU

The EU imposes sanctions as one of its foreign policy instruments under its Common Foreign and Security Policy (CFSP).[4] The EU became a political entity with the entry into force of the Maastricht Treaty and, since then, EU member states began to act on foreign policy matters[5] with Decisions by the Council of Ministers, which find their inspiration in European Council conclusions (Portela 2010; Eriksson 2010; Giumelli 2011, 2013). As economic sanctions also affect the functioning of the common market, the Commission had to be involved in receiving the decisions of the member states and in transposing them into EU legislation that would be binding for everyone in the common market. As such, the case of targeted sanctions constitutes a complex private-public security governance structure that involves transforming the way in which firms and companies ought to operate.

Sanctions are adopted on the basis of article 29 of the Treaty of the European Union, which allows the Council of ministers to adopt foreign policy decisions by consensus. There are three main documents that discipline the utilization of sanctions by the EU. First, sanctions are imposed according to tenets illustrated in the "Basic Principles" adopted in 2004 (European Union 2004). Second, sanctions are designed and imposed according to the ideas listed in the "Guidelines", whose latest versions were adopted in 2013 (European Union 2013). This document states that the European Union has adopted a "targeted" approach, meaning that sanctions were designed to minimize the impact on civilians while increasing the burden on certain actors, namely targeted individuals, political parties, and governmental leaders. Finally, given that imposing sanctions on individuals is extremely detailed, the third document indicates "Best Practices" to overcome implementing problems and to favor the homogenous implementation of EU decisions across member states (European Union 2015).

The adoption of the "Best Practices" document was necessary because the implementation of sanctions is shared between the Council and member states. The Council is responsible for measures that alter the functioning of the common

[4]The Lisbon Treaty included a distinction between imposing sanctions on third parties (CFSP) and imposing sanctions on terrorist groups that operate within the borders of the European Union (art. 75 of the Treaty on the Functioning of the European Union). The latter is considered a measure related to internal security (Area of Freedom, Security and Justice) and, therefore, it will not be considered in this chapter.

[5]Formerly also with 'Common positions'.

market, such as economic boycotts and financial restrictions. Economic boycotts entail the prohibition to sell specific products or services to a targeted country, region, company and/or individual. Financial sanctions include the freezing of assets and the prohibition of providing loans and making payments. Article 215 of the Treaty on the Functioning of the European Union (TFEU) grants the Council with implementing powers regarding sanctions. The pre-Lisbon framework foresaw this possibility for the Commission with 'Commission Regulations', while article 215 transferred this implementing power to the Council. Additionally, the Treaty of Lisbon also grants further implementing power to the Council which, in foreign policy matters (article 24 TUE), can exercise powers to implement legislative acts (article 291). When the Council exercises such power, the legal documents are headed with 'Council Implementing Regulations'. The contours of Article 291 have been also subject to the attention of the Court of Justice of the European Union (Case C-440 P-14 National Iranian Oil Company v Council, see European Union 2016). EU regulations have immediate effect for everyone in the European Union and, therefore, firms and companies have to comply with them.

Member states are responsible for the implementation of arms embargoes and travel bans, which are still under their competence despite the numerous treaties signed since 1957. Arms embargoes prohibit the sale of weapons and dual-use technologies to specific political actors. Although the EU has produced a list of dual-use goods in 2009 to facilitate the coordination among EU members, it is still up to the latter to monitor and enforce trade in this area as provided by a clause added to the Treaty of Rome indicating that the trade of weapons directly affects the security of member states. Travel bans, which restrict access to the territories of the member states for security reasons, are also implemented by member states.

This means that the EU sanctions process is triggered by the European Council, decided by the Council of Ministers, and implemented either by member states or by the EU, but the implementation involves the regulation of the behavior of firms and companies. Private businesses are important players in the sanctioning process since firms are the first ones to come into contact with targeted entities or potential ones. Indeed, private businesses have extensive knowledge of their partners while public authorities do not. Thus, private actors become central in guaranteeing an effective implementation of restrictive measures. For instance, financial sanctions are often directly implemented by banks and financial institutions, since it is their tasks to freeze accounts, and block payments to/from listed individuals. Sometimes decisions are taken independently, other times private actors consult with public institutions on the best course of actions to undertake. Economic boycotts become truly effective when companies make further efforts to prevent certain technologies, services, finances and goods from becoming available to targeted individuals. EU regulations are binding for firms and companies that are based in the EU even when they operate abroad. In practice, this means that the monitoring and the enforcement capacities of EU institutions (also including member states) are relevantly affected by the lack of reach of public authorities. The next section analyses the four regulatory environments of EU targeted sanctions.

6.5 Regulatory Environments, Sanctions and For-Profit Actors

By analyzing the behavior of for-profit actors through a regulatory environments lens, it may be possible to predict when the implementation of sanctions by private actors will produce the consequences desired by policymakers. Indeed, there are four recurrent problems that correlate with specific regulatory environments. For instance, for-profit actors can either over comply with public regulations or they can disregard them. Additionally, the behavior of for-profit actors may depend on their geographical location in the EU and on their characteristics, such as size. This section summarizes the evidence on for-profit actors collected through interviews and desk-research between 2013 and 2015.

6.5.1 Type A of Regulatory Environment: Enforceable Implementation

Enforceable implementation occurs when public regulators provide clear instructions to for-profit actors and have the capacity to monitor and enforce the regulation. In the area of sanctions, this occurs when EU regulations are applied to firms and companies that are based and operate in the EU, and when the guidelines are very specific. For instance, financial transactions originating in the EU that are directed at targeted individuals in the EU would fall under this category. There are many regimes (Ukraine, Syria, etc.) that include a number of individuals to whom banks cannot provide financial support. Financial resources should not be made available to such individuals, and/or their bank accounts should be frozen. The regulation is specific about the required behavior and for-profit actors' actions can be monitored by national competent authorities because the transaction takes place within the borders of a EU member state. There is also enforceable implementation regarding high-value transactions, with public authorities retaining the final word in their authorisation. For instance, article 30 of the regulation 267/2012 on Iran requested financial transactions above 40,000 euros to be authorized by the competent authorities of member states (European Union 2012). Cases of *enforceable implementation* are characterized neither by the anarchy of the international system nor by the uncertainties of governing security as indicated above, therefore they will not be discussed further.

6.5.2 Type B of Regulatory Environment: Implementation by Persuasion

Implementation by persuasion is defined by the fact that for-profit actors are given instructions on what to do, but public authorities lack institutions that can monitor and control the behavior of for-profit actors. Sanctions regulations do provide a number of detailed information, for instance the correct spelling of the target's name, his/her date of birth and his/her passport number (among others), which enable financial institutions to identify targeted individuals. However, assessing the level of compliance is extremely problematic when monitoring is weakened by the transnational nature of the transactions. For instance, EU regulations are quite specific regarding the listing of entities in the Russian regime, but financial institutions operating outside of one's jurisdiction do pose a problem of monitoring and, therefore, enforcing the regulation. For instance, the Austrian Raiffeisen Bank is under scrutiny for having lent $183 million to VEB, a Russian bank that has been included in the list of sanctions by the EU Council in the July 2014 round (Corcoran et al. 2014). Discerning whether these loans are in violation of sanctions depends directly on the degree of knowledge that the ownership of the foreign subsidiaries in Russia had about these transactions. In other words, it would be easier to investigate such operations had they taken place within the EU since their extra-EU nature makes it more difficult to adjudicate what has happened. EU regulations are clear and provide the necessary details, but operating beyond EU borders provides non-state actors with greater leeway than what they would otherwise have.

Lacking and/or uneven monitoring further exacerbates the collective action problem, especially within the EU architecture, and this creates the problem of incoherent application of targeted sanctions.[6] This occurs not just in cases when the guidelines are not clear (see type C), but also when EU member states do not devote the same attention to the monitoring and enforcement of sanctions. EU regulations list the competent authorities that are supposed to be responsible for each member state, but a comparative analysis shows that not all EU members place equal effort into providing contacts of competent authorities. There are at least three different responses. First, there are the sanction-diligent states, which provide information to economic operators about the type of sanctions and the point of contacts for each of them in case of necessity. States such as the UK, Germany and the Netherlands would belong to this group. The second group is composed of those who do the minimum in providing information to operators, usually indicating the general point of reference in the ministry of foreign affairs and the ministry of finance. This would be the case of states such as Poland, Cyprus and Portugal. Finally, the third group is composed of those states that provided incorrect information about the national competent authorities, therefore making it intelligible to know who

[6]Interview with private stakeholders on sanctions in Brussels, 5 July 2013 and 22 October.

monitors the implementation of sanctions in certain member states. States in this category are Malta and Spain.[7]

Another instance of this problem occurs when dual-use goods cannot be sold to targeted entities. For instance, the decision of the Council to impose a ban on dual-use goods on Russia can be quite specific. Dual-use goods, whose system has been highly criticized for lack of clarity in the past, are now identified by a Council decision (European Union 2009). When the transaction takes place within the domain of one of the member states of the EU, and the good is listed as a dual-use good, then private companies have to decide whether to submit the request for export to a competent public authority. Given the lack of knowledge in this area, the decision depends very much on the extent to which that companies cooperate with public authorities and/or assess the risk of complying against the risk of non-complying.

As EU members do not devote the same attention to the enforcement of sanctions, firms can decide to relocate to other EU members and continue their business with targeted individuals and other targets. The behavior of for-profit actors in implementing public regulations is dependent more on their geographical location rather than on the spirit of the law.

6.5.3 Type C of Regulatory Environment: Enforceable Delegation of Implementation

Enforceable delegation of implementation refers to a situation where the delegation of sanction implementation can be enforced by public authorities. This means that while detailed instructions are not provided, monitoring and enforcing mechanisms are in place to favor compliance. This can be a strategic choice that is formulated through so-called 'constructive ambiguities'. These are formulations whose aim is to raise for-profit actors' attention regarding certain aspects of their activities in order to increase the system's resilience to threats. However, for-profit actors need to make sense of these constructive ambiguities and public authorities have the possibility to enforce the regulation.

This is the case, for instance, when regulations require financial institutions to block all 'suspicious transactions' (Art. 31, par. 1(d) of Regulation 267/2012 on Iran) without specifying what a 'suspicious transaction' is. Another example is the Regulation on the Crimea crisis, where Art. 2 par. 1 of Council Regulation 269/2014 demands that 'No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural persons or natural or legal persons, entities or bodies associated with them listed in Annex I'. What does 'indirectly' mean? Who are the 'associated' bodies, legal persons or entities? In

[7] Author's own research, May 2014, based on Council Regulation No 325/2013 of 10 April 2013 on Syria.

most of the cases these decisions are left to the actors who are directly involved with the implementation of the restrictive measures, often private actors.

In the EU context, this means that even different EU states can interpret the regulation differently[8] as shown in the case of Valvitalia. Valvitalia is an Italian company that concluded an agreement for the export of valves to Iran in 2010, when sanctions still allowed such shipments. It obtained the export license from the Italian government, but the export and payment procedure was done via Germany. As the latter had a different interpretation of EU regulations, it froze the payment from the Iranian company to Valvitalia (A typology of regulatory environments 2012). Other major business groups indicated that different levels of implementation cause market distortion between EU companies.[9] As a consequence, the location of companies determines the behavior of for-profit actors.

As mentioned above, 'constructive ambiguities' have been monitored and enforced by public authorities. Enforcement actions have originated mostly from the United States (see Vlcek Chap. 5), but given the lack of response from the EU and EU member states authorities, it can be assumed that the EU accepted the extra-territorial claim of the US. As one EU member state official put it when asked if the EU is doing enough to monitor how sanctions are implemented within its territory: 'We do what we can, then we ask the Americans'.[10] Indeed, the activity of EU members in sanctions enforcement has not received the same attention as the one given to US actions. According to the report on the application of EU law, the EU does not take an active role in monitoring and enforcing the implementation of sanctions as there are no initiatives for late transpositions of sanction regulations. With the exception of Germany, which is publicly active in investigating sanctions' busting activities (Charbonneau 2010; Chambers 2012), it is assumed that EU members prefer to take a less spectacular approach, so implementation takes place on a one-to-one discussion between public authorities and individual firms.[11] Whereas a lack of, or only a few, fines can be interpreted as a sign of perfect compliance (Weingast and Moran 1983), the interviews carried out with individuals from the private sector suggest that the lack of fines is actually interpreted as a lack of interest on the side of the EU.[12] In any case, US authorities are mainly responsible for setting the tone of the international sanctions regime by imposing fines on several non-state actors. The first target of the Office for Foreign Assets Control (OFAC) was the UK-based bank Lloyds Banking Group for USD350 million in 2009. The list also includes banks from Germany (Deutsche Bank for USD258 million in 2013), the Netherlands (e.g. ING Bank for USD619

[8]This is not new, for instance it applies to the diverging categorization of conflicts across EU member states in Asylum policy (UNHCR 2007).

[9]Phone interview with firm, 14 January 2014.

[10]Interview with official from EU member state, February 2015.

[11]Interview with official from EU member state, February 2015.

[12]Interview with private stakeholders on sanctions in Brussels, 5 July 2013 and 12 November 2013.

million in 2012) and Italy (e.g. Intesa Sanpaolo for USD2.9 million in 2013) among others. OFAC's highest settlement took place with BNP Paribas in 2013, with the bank agreeing to pay USD8.9 billion to US authorities for violations of sanctions in Sudan, Cuba, Myanmar/Burma and Iran. Non-financial institutions have been hit as well. For instance, companies from Sweden (Stena bulk and KTM group), the Netherlands (Aviation Services International, CWT and Fokker Services), the UK (Balli Group PLC and Balli Aviation), Luxembourg (Weatherford International Holdings), Denmark (Maersk) and France (Schlumberger and CGG Services) settled with US authorities as a response to accusations of sanctions busting activities (Giumelli and Levi 2016).

The situation, in which companies are unsure about how to proceed, although they feel that their actions can be sanctioned, is likely to lead to overcompliance. This is a well-known problem in the sanctions field and has already been identified in counter-terrorism measures (Bures 2012). Over-compliance occurs when private actors avoid the risk of violating public regulations on restrictive measures by choosing to adopt extremely cautious behavior towards any transaction to and from targeted countries to such an extent that targeted sanctions become, in fact, comprehensive sanctions. Certainly, firms and companies based in the EU were affected by the dynamism of OFAC in enforcing sanctions. The result is, as recorded in Iran, that the behavior of for-profit actors turned sanctions from targeted to comprehensive (for instance, for the case of Iran see Giumelli and Ivan 2013). Banks and financial institutions did it because they were 'afraid of the consequences' as the reputational costs 'would be too high for our interests'.[13] The same situation has occurred with Syria where the increasing uncertainties scared private businesses away, adding to the already limited opportunities offered by this market. Given the growing uncertaintines and the risk of incurring into fines, compliance officers have preferred to advise firms and companies not to have contacts with countries that host sanctioned individuals or targets.

6.5.4 *Type D of Regulatory Environment: Delegation of Implementation by Persuasion*

Finally, *delegation of implementation by persuasion* refers to a situation wherein public authorities do not provide precise instructions and are not in the position to monitor and enforce the regulation. This is more frequently the case when economic boycotts are imposed. Although anti-money laundering policies in the last two decades have created an international regime with instruments to monitor the movement of capital, nothing comparable is yet in place when it comes to monitoring the trade of goods and services. Constructive ambiguities as indicated above

[13]Interview with private stakeholders on sanctions in Brussels, 5 July 2013 and 12 November 2013.

(type C) are therefore harder to monitor. For instance, art 15 par. D of Regulation 267/2012 does not specify whether machinery falls under the technical assistance linked to gold, precious metals and diamonds as specified in annex VII. When such transaction involves companies operating outside of the EU, then public authorities encounter problems to monitor and enforce the regulation.

The first problem of enforcement by persuasion is lack of compliance. Lack of monitoring combined with the possibilities of companies to interpret the spirit of public regulations explains why, sometimes, sanctions are perceived to be harmless. For instance, arms embargoes are notorious for the inability to prevent weapons from reaching conflict torn areas (Brzoska and Lopez 2009). While OFAC has been active in censoring the violation of financial sanctions, public institutions have been less keen on pursuing sanctions' busters in this area.

In other occasions, restrictive measures created the incentive for targeted entities to profit even further from the situation. It was reported that a sanctioned businessman in Myanmar managed to exploit the favorable fiscal regimes for import/export with the EU from neighboring countries.[14] This phenomenon is caused by for-profit actors exploiting the loopholes of vague instructions and it is made possible by the lack of monitoring mechanisms that characterises the activity of the EU in the area of targeted sanctions.

A further problem of d*elegation of implementation by persuasion* is that different companies respond differently to the same *persuasion* effort. Empirical research shows that the imposition of sanctions increases the possibilities of illegal trade for certain companies as sanctions regimes almost systematically involve busting activities (Naylor 2001; Early 2015). However, it appears that not all actors respond similarly to sanctions. The various interviews with firms and companies in the EU revealed that smaller companies are more likely to engage in sanctions busting activities than bigger ones. Smaller size companies take longer to adjust to EU sanctions because they are less sensitive to reputational costs than larger companies.[15] In such a case, public regulations alter the incentive structure of firms and companies according to their size.

Table 6.2 summarizes the classificatory typology of regulatory environments with the examples discussed above. The typology is relevant because it enhances the understanding of problems and challenges in regulating for-profit actors regarding the implementation of targeted sanctions. This typology contributes to explaining the (lack of) impact that EU regulations have when implementing sanctions on third parties by taking into account that for-profit actors can be central to the policy process.

[14]Interview with EU official in March 2010.

[15]Email exchange with private firm, 05 September 2014.

Table 6.2 A typology of regulatory environments

	Detailed instructions	Vague instructions
High monitoring capacity	Type A: Enforceable implementation Problem: not considered	Type C: Enforceable delegation of implementation Problem: overcompliance
Low monitoring capacity	Type B: Implementation by persuasion Problem: behavior depends on location of company	Type D: Delegation of implementation by persuasion Problem: lack of compliance, behavior depends on type of company

6.6 Conclusions

The Council of Ministers of the European Union frequently relies on targeted sanctions to deal with foreign policy challenges. In the tradition of the changing nature of state institutions and their relations to the use of force, the implementation of targeted sanctions takes place with regulations that rely on for-profit actors to implement targeted sanctions. The role of for-profit actors in the provision of security was thus far mainly studied in the context of private military and security companies, while less 'spectacular' actors have been largely neglected. The analysis presented in this chapter, however, demonstrates that implementation of targeted sanctions often relies on these less 'spectacular' actors.

The analysis was carried out by developing a classificatory typology that highlighted the importance of regulatory environments to determine (or make more likely) the behavior of for-profit actors. By looking at the clarity of instructions and the capacity of monitoring and enforcing public regulations, whose absence would depict the area of international security, the four ideal-types of regulatory environments highlight how different decisions may lead to different problems. For instance, overcompliance takes place in a situation of uncertainty wherein public regulators have demonstrated their capacity to enforce public regulations. The inability to monitor and enforce the behavior of for-profit actors, for instance by imposing targeted sanctions way beyond the borders of the EU, may be a guarantee of lack of impact. Finally, either the inability to provide clear instructions or to monitor the behavior of private actors creates a situation in which either the location or the type of companies/firms produces an uneven implementation of the regulation.

Several theoretical implications can be derived from this investigation. In particular, regulatory environments as permissive contexts could be further refined with the inclusion of more descriptive/qualifying variables, such as the quality of connections or the type of trade that is occurring between targeted entities and the rest of the world. The regulatory environment framework also presents the opportunity to investigate the micro-level, for instances by investigating the specific effect of companies' location, size and motivations on sanctions compliance.

At the same time, the findings of this analysis also bear several policy implications. First, the non-existent monitoring structure of the European Union is

alarming. For-profit EU based actors are exposed, on the one hand, to extremely harsh US actions and, on the other hand, to the inaction of EU institutions and EU member states. New institutional developments, such as the adoption of the Panel of Experts' model that proved to be quite successful for United Nations sanctions, could ensure that for-profit actors would take EU regulations more seriously. Second, a monitoring mechanism would allow the EU to acquire independent and accurate information, which in turn would facilitate the design of sanctions by making the guidelines for implementation more specific. Finally, since the role of for-profit actors is indispensable in contemporary politics of sanctions, EU institutions should consider developing mechanisms to involve, train and prepare private actors to implement targeted sanctions. Whether this is done in the form of an open consultation or within a more dedicated forum, public institutions and private actors should engage in discussions on cross-cutting themes and issues, such as coordination across EU member states and drafting of general guidelines that can be used by for-profit actors to reduce the uncertainties to engage in business deals with actors located in states where certain individuals were hit by EU sanctions. This would also strengthen the resilience of the system against foreign threats and reduce the expectation/reality gap between *De l'Esprit de Lois* of regulations and their policy outcomes.

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