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THE EUROPEAN NEIGHBOURHOOD POLICY AND THE POLITICS OF SANCTIONS

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Introduction
Sanctions are no stranger to the European Union’s (EU’s) neighbourhood. On the contrary, out of the sixteen European Neighbourhood Policy (ENP) partner countries, as many as seven have been at the receiving end of EU sanctions during the application of this policy framework. Seven out of sixteen amounts to 44 per cent of the total population of ENP countries – almost half. The list of neighbours affected by EU sanctions grows if we include sanctions measures taken informally, outside the context of the Common Foreign and Security Policy (CFSP). And if we look at the EU’s periphery in a broader sense, encompassing the Balkans in the 1990s, Iran, Russia or Turkey, the list expands even further. A study on the geographical distribution of EU sanctions until the year 2004 concluded that sanctions were not only imposed more frequently at its periphery than further afield, but that they pursued objectives different from those advanced elsewhere (Portela 2005). Yet, despite their frequent use, most recently in the wake of the Arab uprisings, EU sanctions practice has attracted little attention among scholars studying the EU’s relations with its vicinity. This chapter introduces the EU’s employment of sanctions in the neighbourhood, as well as an assessment of this policy and of its connection to the ENP. It reviews the universe of CFSP sanctions imposed after the launch of the ENP in 2003, or already in force by then. In addition, it includes a case of suspension of direct aid, despite its status as a non-CFSP measure.

EU sanctions: the CFSP toolbox and beyond
Sanctions are defined as politically inspired interruptions of bilateral trade, finance, travel and diplomatic relations imposed by (a) sender(s) against a target, in response to what is perceived as objectionable behaviour (Portela 2010). While it is often believed that sanctions aim at coercing the target into complying with certain demands, senders often pursue a variety of goals, including assuaging an outraged public opinion or lobby groups, denying key technology to the target, slowing its economic performance or consolidating international norms (Lindsay 1986). EU sanctions, officially referred to as ‘restrictive measures’, are imposed by the Council on states, entities and individuals (Council of the European Union 2004). The political decision to impose sanctions is agreed unanimously by the Council at the initiative of any of the
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Member States, and takes the form of a Council Decision under the CFSP. If the Decision calls for Community action, the Council is required to follow up with the adoption of a Council Regulation, acting by a qualified majority on a joint proposal from the Commission and the High Representative of the Union for Foreign Affairs and Security Policy (art. 215 TFEU). Subsequent decisions extending, modifying or lifting sanctions equally require unanimity in the Council.

The EU’s practice of imposing sanctions, which originated in the 1980s, was boosted with the creation of the CFSP in 1992. Several types of CFSP sanctions can be distinguished. First, the EU implements sanctions in compliance with the UN Charter obligation to give effect to mandatory sanctions adopted by the United Nations Security Council (UNSC) under its Chapter VII. Since these measures merely implement UNSC resolutions, they are not considered EU sanctions per se (Biersteker and Portela 2015). However, the EU sometimes imposes measures that go beyond UN resolutions to reinforce UN sanctions regimes. Second, the EU also applies autonomous sanctions in the absence of a UN mandate. The bulk of EU sanctions fall within this category. This is a ‘default’ option: for the Council, ‘it is preferable for sanctions to be adopted in the framework of the UN’ (Council of the European Union 2012: 21). Finally, the EU imposes sanctions outside the CFSP framework (Koch 2015; Nivet 2015). This includes the suspension of agreements with third countries, the withdrawal of trade preferences (Fierro 2003) and the suspension or redirection of aid (Portela 2010).

The use of sanctions is related to political conditionality, as it often constitutes its logical and legal follow-up. The 2003 Commission Communication on ‘Wider Europe’ foresaw conditionality as a defining feature of the ENP, stating that engagement should ‘be conditional on meeting agreed targets for reform’ (Commission of the European Communities 2003: 16). Conditionality was strengthened in the 2011 revision, thanks to the introduction of the concept of ‘more for more’ (Natorski and Soler 2014). It claimed that the ENP should ‘provide for increased differentiation, more flexibility, stricter conditionality and incentives for best performers’ (High Representative of the Union for Foreign Affairs and Security Policy and European Commission 2011: 20). It even threatened the use of sanctions, announcing that the EU would ‘uphold its policy of curtailing relations with governments engaged in violations of human rights and democracy standards, including by making use of targeted sanctions’ (ibid.: 20). This trend was reversed with the 2015 revision of the ENP, which de-emphasised conditionality in favour of containing mounting instability (European Commission and High Representative of the Union for Foreign and Security Policy 2015).

The following section provides an overview of the sanctions episodes in the EU’s vicinity since the launch of the ENP in 2004, featuring both sanctions regimes that were in force prior to that date or initiated afterwards. Attention is devoted to the formal status of the country affected in the ENP as well as to the previous record of relations with the EU.

Eastern neighbourhood

Belarus

Sanctions against Belarus addressed the country’s evolution towards autocracy, which originated in 1996 with the enactment of a new constitution concentrating powers on President Aleksander Lukashenko. In response, the Council ceased high-level contacts and assistance programmes and froze the ratification of an already concluded agreement (Fierro 2003). Both the parliamentary elections and the referendum in Belarus of October 2004 were found to fall short of basic OSCE standards by the OSCE International Election Observation Mission. This conclusion,
coupled with the repression of peaceful demonstrations, prompted the EU to impose a visa ban on responsible officials. Following the presidential elections of March 2006, the EU expanded its visa ban, blacklisting President Lukashenko for the first time. An assets freeze was applied to the blacklists shortly after, and its lifting was conditioned on the release of political detainees and the reform of the electoral code (Council of the European Union 2006). A separate sanctions regime was motivated by the disappearance of three Belarusian politicians and a journalist: the EU imposed a visa ban on those responsible for the failure to launch an investigation. Yet, Russia’s increase of energy charges to Belarus and the energy crisis that ensued in January 2007 induced a gradual rapprochement. Within weeks, the European Commission and Belarus set up ‘discussions’ on energy. Belarus authorised the opening of a European Commission Delegation in Minsk, and launched a privatisation programme (Portela 2011). Following the OSCE-supervised parliamentary elections of September 2008, the Council suspended the travel ban on most blacklisted individuals to encourage dialogue with the Belarusian authorities and the adoption of positive measures to strengthen democracy and respect for human rights (Council of the European Union 2008: 7). The Council expressed its readiness to lift sanctions ‘provided there we’re further positive developments’ (Council of the European Union 2009: 1) and launched a human rights dialogue, while the Commission set up technical dialogues in fields such as environment and customs. Due to widespread rigging and crackdown on the opposition during the presidential elections of December 2010, sanctions were reapplied.

The short-lived rapprochement was also reflected in moves to allow for some Belarusian participation in the ENP. As only EUR21 million, out of a total ENP budget of EUR600 million, had been allocated to Belarus until 2010, the EU operated on a tight budget (Sahm 2010). The EU included Belarus in the multilateral – not in the bilateral – track of the Eastern Partnership. Yet, tensions soon surfaced on issues such as the representation of Belarus in the EU-Neighbourhood East Parliamentary Assembly and the Eastern Partnership Civil Society Forum. At the Eastern Partnership summit in September 2011, Belarus cancelled participation after learning that President Lukashenko was not allowed to attend (Casier 2012).

New attempts at rapprochement were not launched until 2015. In the context of the dispute that emerged between the EU and Russia over the armed conflict in Eastern Ukraine, President Lukashenko improved his standing vis-à-vis the EU because of his role as a host of the peace talks and the resulting Minsk agreements (The Guardian 2015). The Council temporarily suspended the asset freeze and travel ban in response to the release of all Belarusian political prisoners on 22 August and in the context of improving EU-Belarus relations’ (Council of the European Union 2015: 1).

**Moldova**

The sanctions regime applied on Moldova addresses the ‘frozen conflict’ in Transnistria, a region that declared independence from the Republic of Moldova in the aftermath of the dissolution of the Soviet Union and that survives as a non-recognised territorial entity. The EU imposed a visa ban against Transnistrian leaders, alleging the leadership’s obstructionism of the OSCE-led peace process. Yet, the efforts at rectifying the de facto split of Transnistria have made little progress, despite the appointment of an EU Special Representative. The sanctions have been criticised for being ‘too limited in scope to impose a serious burden on the leadership to make it reverse its policies’ and especially for ‘the vagueness with which objectives are formulated’ (Popescu 2005: 33). Still, they are held to undermine the position of the Transnistrian leadership and the legitimacy of their claim to independent statehood (Giumelli 2011).
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Ukraine

The ousting of the pro-Russian leadership after the Maidan protests of early 2014, and the annexation of Crimea and destabilisation of Eastern Ukraine that followed the ousting of the pro-Russian leadership after the Maidan protests of early 2014, prompted sanctions by the EU. The sanctions regime is primarily directed at Russia and aims at supporting Ukrainian sovereignty. EU sanctions against Moscow banned the supply of certain goods, and limited access to primary and secondary capital markets in the EU for targeted Russian financial institutions, energy and defence companies. In addition, their enactment elicited the imposition of Russian counter-sanctions on perishables. Yet, the costs of sanctions for the European economy have not been severe. After the imposition of sanctions, the EU’s share in both Russian imports and exports declined by only 3 per cent in 2015 (Gros and Mustilli 2015). EU sanctions also target some Ukrainian nationals and entities. First, the EU blacklisted officials of the ousted government in Kiev after its downfall. Second, it economically isolated Crimea from Europe (Fischer 2015) by imposing a uniquely comprehensive regime in protest to its annexation by Russia. The long list of restrictions prohibit imports from Crimea and Sevastopol, the provision of tourism services, the calling of European ships at Crimean ports and the export of items for the transport, telecommunications and energy sectors, as well as investment in the region. Third, individuals who bear responsibility for the annexation of Crimea are blacklisted under the sanctions regime, as are individuals responsible for action against Ukraine’s territorial integrity. Unexpectedly, the almost automatic blacklisting of individuals upon request of the Ukrainian authorities came under fire. The European Court of Justice annulled the blacklisting of Ukrainian oligarch Andrij Portnov for relying solely on accusations from the Ukrainian public prosecutor’s office without corroborating the charges (Hirst 2015).

Southern neighbourhood

Tunisia

Before the outbreak of the Arab uprisings of early 2011, Tunisia was fully participating in the ENP and had been one of the first countries to conclude an Action Plan (in 2005) (Natorski and Soler 2014). After revolutionary protests spread across the country, Tunisian leader Ben Ali fled the country in January 2011. Once Tunisian prosecutors opened an investigation into the finances of Ben Ali and his relatives, the EU imposed an asset freeze on 48 persons, including the deposed Ben Ali. The freezing of assets prevented them from accessing state assets held abroad. High Representative Catherine Ashton justified the measure in the following terms: ‘Even with a successful democratic transition, the issue of assets misappropriated by former regimes remains. The frozen assets cannot just be released; first ownership must rightfully be transferred to the new state structures’ (Ashton 2012: 2). This measure reflected the EU’s intention to reserve access to these funds for the post-revolutionary authorities, thereby ensuring their viability, while implying that the EU no longer regarded the ousted leaders as legitimate. Interestingly, the Council linked the freezing to both economic development and democracy promotion, affirming that those having misappropriated Tunisian state funds were ‘depriving the Tunisian people of the benefits of the sustainable development of their economy and society and undermining the development of democracy in the country’ (Council of the European Union 2011: 1). The Tunisian assets freeze was unprecedented, as it constituted the first instance in which the EU blacklisted rulers after they had relinquished office, as well as the first time in which an EU asset freeze did not accompany a visa ban (Boogaerts et al. 2016).
Like Tunisia, the Egyptian leadership under Hosni Mubarak participated fully in the ENP. An Action Plan had been signed in 2007. Although the protests that erupted in late January 2011 were repressed violently by the security forces, the EU responded with an assets freeze only over one month after President Mubarak was forced to step down. The blacklist featured 19 officials, including Mubarak himself. As with Tunisia, the *ex post* nature of the asset freeze shows that it was meant to prevent the former leader and his entourage from accessing state funds as well as their private assets abroad (Portela 2012) and to gain the support of the Supreme Council of the Armed Forces (SCAF), which had taken control following Mubarak’s deposition. President Morsi, the candidate of the Muslim Brotherhood’s Freedom and Justice Party, which emerged victorious from the 2012 elections, passed legislation concentrating powers in himself and pushed through a new constitution, which had been boycotted by opposition parties. In the midst of a new wave of protests, the SCAF restored direct rule in July 2013 (Roll 2016). When security forces caused over 800 fatalities when dissolving a largely peaceful protest on Rab’a Square on 14 August 2013, the EU banned the transfer of equipment for internal repression (Council of the European Union 2013b). Yet, this measure was not legally binding. It also constitutes a rare stand-alone embargo of this kind, as it does not accompany a standard weapons embargo, which allows for the delivery of military items unrelated to internal repression, such as warships (Boogaerts et al. 2016).

**Libya**

EU sanctions against Libya, in early 2011, constitute an example of EU measures supplementing UN sanctions. The regime of Muammar Qaddafi long entertained an adversarial relationship with the West. While antagonism with the US was more pronounced than with Europe, the Member States of the then European Community (EC) imposed sanctions on Libya over its sponsorship of terrorism, following a series of terrorist attacks in the airports of Rome and Vienna and a Berlin club in 1986 (Niblock 2001). Yet, by the time the Arab revolts broke out, Libya was in the process of reversing its traditionally tense relationship with the West (Onderco 2014). While Tripoli remained unprepared to embrace the ENP, negotiations of a Framework Agreement were nearing conclusion by the time anti-Qaddafi protests erupted in February 2011. Their violent suppression soon escalated into a civil war, which compelled the UNSC to enact sanctions against the Qaddafi regime, with explicit backing by the Arab League and military support from some Arab states. UNSC Resolutions 1970 and 1973 applied an arms embargo and blacklisted several high-profile regime members, including Qaddafi himself. The EU, which had been preparing its sanctions in parallel, supplemented UNSC measures with additional designations as well as an autonomous ban on equipment employable for internal repression. In subsequent sanctions rounds, the EU blacklisted Libyan financial entities, the Libyan National Oil Corporation and five of its subsidiaries as well as 26 energy firms accused of financing the regime, thereby imposing a *de facto* oil and gas embargo, and eventually blacklisted six Libyan harbours (König 2011).

**Syria**

Relations between the EU and Syria were long marred by the Assad regime’s sponsorship of terrorism, as well as its involvement in Lebanon. The end of the Lebanese civil war opened the way for a gradual improvement of EU–Syrian relations, which led to the negotiation of an
Association Agreement which was approaching conclusion by 2004. The assassination of Lebanese Prime Minister Rafik Hariri in 2005 compelled the EU to freeze Syrian assets and to blacklist several Syrian terrorist suspects (Santini 2008). When, in February 2011, protests were violently suppressed, a civil war ensued. In the face of UNSC inaction, the EU imposed a travel ban, an arms embargo and assets freeze against the regime of Bashar al-Assad. The official goals of the measures included demands to end repression, withdrawal of the Syrian army and implementation of democratic reforms. High representative Catherine Ashton justified the sanctions against the regime of Bashar al-Assad as follows: ‘When countries fail [. . .] as we have seen in Syria in their ability to support their people and indeed turn to violence against their people, we are obliged to act morally and I believe internationally’ (Ashton 2012). The Council quickly blacklisted over 150 targets including al-Assad, resulting in one of the EU’s most severe sanctions ever enacted against a third country (Seeberg 2015; Portela 2012). Apart from its remarkably broad scope and the speed of its imposition, Syria constitutes one of the few targets on which the EU imposed costly sanctions on the energy sector (Thomas 2013). After the severity of the sanctions regimes reached its peak, the Council changed its approach to the conflict (Seeberg 2015), ultimately abandoning its arms embargo in May 2013 (Council of the European Union 2013a) to allow for the supply of arms to anti-Assad factions.

Palestinian Authority

The suspension of aid to the Palestinian Authority (PA), following the victory of Hamas in the Palestinian elections of 2006, is a case of informal sanctions; it constitutes an instance of redirection of aid rather than a freeze (Portela 2010). The suspension, and a ban on direct contacts, was agreed after Hamas, an organisation included in the EU’s terrorism list, obtained a majority in the elections of January 2006. The EU justified the freeze on direct assistance to the Palestinian government pointing to Hamas’ lack of respect for the principles for engagement – agreed with the Quartet in the framework of mediation efforts in the Middle East conflict. Then-Commissioner for External Relations and Neighbourhood Policy Benita Ferrero-Waldner pointed to Hamas’ refusal ‘to renounce violence, recognise the right of Israel to exist or accept existing agreements’ (Ferrero-Waldner 2006: 1). The ENP process with the Palestinians was frozen (Tocci 2007). At the same time, the EU signalled its readiness to resume aid as soon as Hamas had accepted the principles formulated by the Quartet. Paradoxically, the suspension of payments to the PA was coupled with an increase in EU aid to Palestinians to soothe the deterioration of the social, economic and humanitarian crisis in the Occupied Territories. In June 2006, a special arrangement was put in place to channel international assistance, circumventing the Hamas-led PA government, a Temporary International Mechanism. As total EU aid to the Occupied Territories rose to EUR700 million in early 2007, UN Special Coordinator for the Middle East Peace Process Alvaro De Soto claimed that Europeans ‘actually spent more money boycotting the PA than they did when they were supporting it’ (De Soto 2007). The EU resumed direct aid, alongside the US, only after Palestinian president Mahmoud Abbas dismissed the Hamas-led executive and swore in a new cabinet under Fatah in June of 2007 (The Guardian 2007).

Conclusions: sanctions and the ENP

One of the first criticisms directed at the ‘Wider Europe’ communication was that it failed to specify its connection to the pre-existing framework of the Euro-Mediterranean Partnership or to the European Security Strategy (Del Sarto and Schumacher 2005). Something similar can be said about the relationship between CFSP sanctions and the ENP: abundant concept papers and
Consecutive revisions have failed to articulate the role of CFSP sanctions in the ENP. The ubiquity of sanctions in the EU’s periphery appears, on first inspection, to be at odds with the EU’s preference for co-operation and engagement over punishment and coercion (Tocci 2007). However, a closer look at these sanctions reveals that they are consonant with the EU’s intention to upgrade its crisis management role in the region, as announced in the ‘Wider Europe’ communication (Commission of the European Communities 2003). The preoccupation with neighbouring countries manifests itself in the sensitivity of the EU to developments in these countries: the EU has sometimes reacted with sanctions to incidents of relatively low intensity (Portela 2005), such as consecutive flawed elections in Belarus. At the same time, the EU is often cautious in the application of its bans. A prime example is the imposition of a non-binding embargo on equipment for internal repression after Egyptian authorities crashed the peaceful Rab’a demonstration in 2013. Because the situation in the country remained fragile in the post-2011 period, the Council was reluctant to antagonise the leadership and diminish the EU’s influence over a key player in the region (Boogaerts et al. 2016).

Interestingly, the neighbourhood sanctions often feature unique characteristics, such as the first bans imposed on an ousted leader or the only asset freezes that do not follow visa bans (Boogaerts et al. 2016). These instances are unique in the context of overall EU sanctions practice, suggesting that the EU is most innovative in its vicinity than elsewhere. The ban on equipment for internal repression is the only non-binding embargo agreed under the CFSP.

EU measures discriminate between different actors in the domestic political scenes of the countries in question, and the way in which the EU has used their capacity to discriminate is telling. CFSP sanctions have not been used as a follow-up stage to negative conditionality. Our overview shows that EU sanctions were often wielded to support the leadership in power in the face of challenges to its legitimacy or sovereignty. This applies to the Chisinau and Kiev governments, both confronted with Russian-backed separatist forces in their territories. In the same vein, assets were frozen to prevent their misappropriation by leaders after they had left office in Tunis, Cairo or Kiev. Thus, the measures applied to Egypt, Moldova, Tunisia and Ukraine are not sanctions against the countries’ leaderships, but sanctions imposed in their support. Leaders of countries participating in the ENP tend not to be targeted, at least while they remain in office. Thus, while the measures had limited efficacy in changing the status quo, sanctions have not had the effect of antagonising governmental elites in the partner countries.

In turn, rulers under sanctions never activated ENP membership in the first place. The most suggestive finding can be seen in the fate of the neighbours that refused to participate in the ENP framework. Of the sixteen ENP countries, co-operation remained dormant in only three cases: Belarus, Libya and Syria (Casier 2012; Natorski and Soler 2014).Shortly after the launch of the ENP, sanctions on Belarus intensified, and less than a decade later, Libya and Syria had become the targets of some of the most severe sanctions regimes in the history of EU foreign policy. This suggests that involvement in the ENP can be regarded as a trustworthy indicator of the degree of amicability or antagonism in bilateral relations. The freeze on the Palestinian Authority constitutes the only instance of ENP suspension. By contrast, with Damascus and Tripoli, there was no co-operation ongoing when the 2011 uprisings broke out.

Finally, the EU sanctions practice in the ENP countries confirms that, as sometimes expressed in the literature, the priorities of the EU in Eastern Europe differ from those in the Southern Mediterranean. This is most visible in the objectives pursued by the measures. While the EU has wielded sanctions to condemn the non-democratic nature of the Belarusian regime and to support Moldovan and Ukrainian sovereignty in the face of Russian-sponsored separatism, the Southern Mediterranean has only seen the EU imposing sanctions in response to civil wars. The assets freezes targeting the Egyptian and Tunisian leaderships were only enacted after these
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had been ousted, and at the explicit request of the elites that had replaced them. This tends to confirm the notion that the EU is more serious about democracy promotion in Eastern Europe than in the southern neighbourhood, where international security concerns prevail (Casier 2012; Behr 2014).

References


