

## **Improving the Effectiveness of Sanctions: A Checklist for the EU**

**Antonius W. de Vries, Clara Portela and Borja Guijarro-Usobiaga**

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### **Abstract**

The increasingly frequent imposition of sanctions by the EU over the past decade has not been accompanied by a thorough pre-assessment and contingency planning stage, which has led to the formulation of suboptimal sanctions regimes. This paper argues for establishing a pre-assessment and contingency planning of sanctions, departing from the 'ad hoc-ism' of current decision-making on sanctions. To this end, it proposes the development of a 'checklist' composed of key questions that need to be tackled to optimise the design of sanctions. These questions include the identification of resources linked to the objectionable policies; the leverage of the EU; the costs to the EU; the legality of the measures; their unintended effects; the expected contribution towards EU goals; their coherence with overall EU external relations; and the communication of these policies.

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## The increasing use of CFSP sanctions

Sanctions are routinely imposed by the European Union (EU) in response to what it considers to be reprehensible behaviour, breaches of human rights and democratic principles, or potential security threats such as the support for terrorism and the proliferation of weapons of mass destruction.<sup>1</sup> Sanctions are used to communicate the EU's disapproval of wrongdoing or to address the threat at hand, and often seek to bring about its termination or reversal. The imposition of sanctions as a Common Foreign and Security Policy (CFSP) tool has increased steadily since the early 1990s, in particular over the past decade.<sup>2</sup> This upward trend in the number of sanctions imposed is striking for two reasons: first, it contrasts sharply with the widely held belief that sanctions are ineffective.<sup>3</sup> Second, some of the latest measures taken include 'tough' sanctions that have serious negative effects on resources tied to the reprehensible behaviour. Indeed, the EU's increasing use of tough sanctions since 2007 marks a remarkable departure from its long-standing reluctance to enact anything more than soft sanctions, which are devoid of real impact.<sup>4</sup> Most importantly, this shift has added complexity to the design and implementation of sanctions regimes, dramatically accentuating the need for better planning. In the face of the frequent rulings by the European Court of Justice (ECJ) against the blacklisting of individuals, the need for better planning also applies to 'soft' sanctions.

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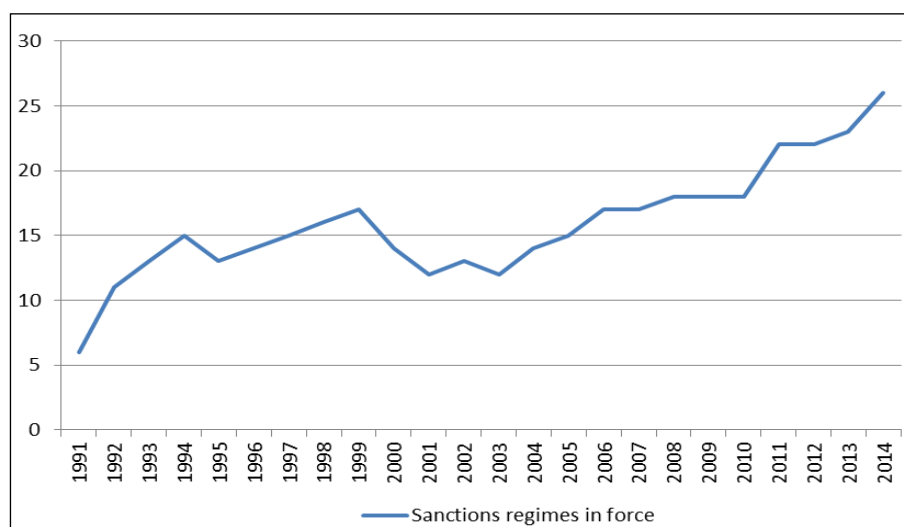
<sup>1</sup> This brief focuses on 'autonomous' EU sanctions, i.e. those sanctions imposed by the EU in the absence of a UN Security Council mandate (De Vries and Hazelzet, 2005; Portela, 2010).

<sup>2</sup> Lehne (2012), Gebert (2013).

<sup>3</sup> Pape (1997).

<sup>4</sup> Portela (2010).

Figure 1. Evolution of CFSP sanctions



Source: Guijarro-Usobiaga and Portela, own elaboration (2014).

Regrettably, the increasing imposition of tough sanctions has not been accompanied by a thorough pre-assessment and contingency planning stage. In fact, plans for imposing sanctions are frequently drawn up at short notice, even though early warning signs of impending crises should allow the EU time to prepare measures before the crises erupt. The lack of adequate preparation has led to shortcomings in the EU's sanctions policy, which undermine its effectiveness from the outset. As a consequence, some of the most prominent EU sanctions regimes, such as those imposed on Belarus, Zimbabwe or Myanmar, were applied without careful scrutiny at the inception phase.

Enhancing the pre-assessment and contingency planning of sanctions would enable a more solid conceptualisation and design, thereby maximising the chances of success. In order to improve the design of sanctions and to embed them into a coherent strategy, the present brief proposes a list of questions to be addressed before sanctions are agreed. This 'checklist' provides a basis for policy-makers to assess the circumstances under which sanctions are likely to contribute to their objectives, to choose the sanctions instruments strategically and to fine-tune them in a responsive manner. Moreover, the availability of a checklist can also inform a broader debate on CFSP sanctions in the relevant fora, in particular in the European and national parliaments. Finally, the development of this checklist can enhance the preparation of EU sanctions – at little additional cost to the EU.

## EU sanctions and their evolution

EU sanctions have become increasingly sophisticated over time. Regular sanctions regimes tend to combine different types of measures, yet their most relevant feature is their 'targeted' nature, since they fall short of completely interrupting trade and investment relations with a targeted country. EU sanctions aim to target the specific goods, assets, financing operations, travel options and reputations of the individuals, companies or sectors associated with the objectionable behaviour that sanctions seek to redress. There are, however, different degrees of 'targetedness', depending on which measures are selected and how they are used. In fact, targeted sanctions can be conceived of as part of a continuum according to their capacity to

discriminate among targets, where the most discriminatory measures are located at one end, and the less targeted or more comprehensive ones are at the opposite end.<sup>5</sup>

Over the last two decades, notable progress has been made in the design of sanctions regimes, as the drafting of the 2003 “Guidelines on implementation and evaluation of restrictive measures (sanctions)” exemplifies.<sup>6</sup> Thus, while in the 1990s the adoption of EU sanctions legislation was often slow due to a lack of consensus on concepts such as ‘funds’, ‘economic resources’, ‘freezing’, and on provisions on exemptions and exceptions, the guidelines nowadays enable a speedy adoption of the legislation.<sup>7</sup> This has minimised the risk that targeted individuals could move funds out of the jurisdiction of the sanctioning authorities during the time gap between the announcement of sanctions and their entry into effect.<sup>8</sup> Progress has also been made with respect to due process, thanks to the jurisprudence of the ECJ, which has granted targeted individuals the right to appeal mistaken designations.<sup>9</sup> In addition, a great deal of attention is being devoted to ensure that due diligence standards are respected in the application of sanctions and that humanitarian effects and costs to non-targeted persons and entities are avoided.<sup>10</sup>

Notwithstanding these improvements, the rise in EU sanctions regimes over the past 20 years has not been matched by an increase in the material and human resources at the EU or member state level dealing with sanctions. In fact, existing resources are mostly employed for the implementation of the sanctions regimes rather than with their preparation. Although existing resources have so far sufficed to impose sanctions that require little effort in their design and implementation – like visa bans and assets freezes on a limited number of individuals and entities, they are insufficient to address the challenges of more sophisticated and tougher sanctions regimes, like those recently adopted against Iran, Syria and the Russian Federation. Such multifaceted sanctions regimes require more meticulous preparation because the technicalities involved and the potential fallout are much higher and more complex to estimate. However, due to the limited resources available for pre-assessment and contingency planning, the EU is challenged when it resolves to impose this type of sanctions.

Fortunately, more effective sanctions regimes can be designed through the rationalisation of existing practices without incurring high costs. Improvement depends on the ability of EU institutions and member states to share information with each other, co-ordinate their positions in advance, assess the potential effects on the target's behaviour and the possible fallout that sanctions may have on the EU. In order to facilitate planning and to allow for a targeted sanctions design, an 'EU sanctions checklist' should be put in place. The checklist would provide the basis for policy-makers to evaluate the desirability of imposing sanctions, estimate their effects and costs, and design contingency plans to anticipate negative externalities to the EU. On the basis of past experience with sanctions regimes, the remainder of this paper presents a comprehensive list of questions featuring key elements that a pre-assessment and contingency planning stage for the imposition of EU sanctions should entail. Checking this list would provide the relevant authorities with a more accurate idea of the

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<sup>5</sup> Biersteker et al. (2013).

<sup>6</sup> Council of the European Union (2003, 2004).

<sup>7</sup> Council of the European Union (2003).

<sup>8</sup> Between 46 and 83 days elapsed between the adoption of *Common Positions* imposing sanctions and the release of the implementing *EC Regulations* during the Kosovo crisis (Buchet de Neuilly, 2003).

<sup>9</sup> Heupel (2009), Eckes (2009, 2012).

<sup>10</sup> De Vries and Hazelzet (2005).

strategy to follow before sanctions are actually imposed, thereby enhancing the efficacy and coherence of EU sanctions.

All the following questions should be addressed in their totality and as a package prior to the imposition of sanctions. Although some of the questions can only be answered by relying on estimates, extending the use of impact pre-assessment to EU decision-making on sanctions will enhance the design of the resulting sanctions instruments.<sup>11</sup>

## Pre-assessment and contingency planning: elements of a 'checklist'

Sanctions are negative incentives: they are meant to increase the costs of engaging in objectionable policies, or to block access to resources that enable the continuation of the wrongdoing that the EU intends to address.<sup>12</sup> In a pre-assessment and contingency planning phase of sanctions, reliable information should be sourced on the following questions:

### 1. Identification of assets enabling the objectionable behaviour

The choice of sanctions to be applied requires, as a first step, to identify with precision the mechanisms, assets and means that enable the initiation and expansion of the objectionable or threatening behaviour. These may be tangible or non-tangible, human or material, of an economic-financial, motivational, socio-psychological or technological character, and may include professional qualifications, institutional positions of persons involved, their linkage to informal networks, or support for the condemned policies within the target country.

Certain resources employed in initiating, continuing or expanding the objectionable behaviour may be more important than others. The following questions help to identify them reliably.

#### A. Resources directly employed in the objectionable behaviour

- Which of these resources are essential, non-replaceable, subsidiary, and/or fungible?
- To what extent can these resources be generated domestically, i.e. without foreign involvement, at present, in the medium and long term?
- What is the organisational strength of the human resources directly linked to the reprehensible policies (quality of leadership, institutional position, level of education/training, income dependence)?
- What is the strength of psychological, moral, religious, ethical, financial/material or other attachment to the reprehensive action of these persons?
- To what extent does the wrongdoing augment the resources directly employed in it?

Identifying these resources makes it easier to select the most suitable instruments to address the wrongdoing. For instance, arms embargoes hamper warfare by limiting the flow of armaments into a conflict zone. Similarly, restrictions on licences to export technology and

<sup>11</sup> The use of impact estimates is common practice in decision-making, and quality assessments abound in the public sphere. See Richter and Holz (2014), Ministry of Finance of Finland (2014).

<sup>12</sup> Individuals and entities are considered here as 'assets' or 'means' enabling the targeted objectionable behaviour. Like financial resources/assets, individuals and entities can be used for different functions in the framework of the objectionable behaviour. Preventing EU citizens from leaving the EU in order to join the IS in Iraq and Syria is an example of blocking the recruitment of human resources to the IS.

spare parts can significantly reduce the resources required for the development of nuclear technology.

*B. Resources closely linked to the wrongdoing*

Once the assets directly employed in the objectionable behaviour have been identified, it is necessary to broaden the scope to other resources that are closely linked and contribute to it. For instance, the defence industry, communication/information services, the energy industry and transport services are all strategic resources in armed conflicts. By contrast, in cases of human rights violations security/law enforcement services and arms/repression instruments, producers play a more significant role. Finally, resources typically associated with terrorism encompass financial transfers, arms producers, or the recruitment of volunteers. An effort should therefore be made to quantify the percentage of the population involved in the production, trade, and servicing of these resources, and which percentage of their income they derive from these activities. In such a situation, questions to be addressed include:

- What means are closely linked/contribute to the resources directly employed in the objectionable actions (through economic, financial, technical, national, local, personal or other ties)?
- To what extent does the objectionable behaviour increase the resources closely linked, albeit not directly employed in the objectionable behaviour (in terms of financial benefits, ideological/national/religious affiliation)?
- How easily can these resources be used for the objectionable behaviour itself?

Examples of successful targeting of resources closely linked to the wrongdoing include EU sanctions targeting Iran's oil industry, prohibiting the insurance cover of oil shipping, freezing Iran's Central Bank assets in the EU and cutting off Iranian banks from the global SWIFT payment network.<sup>13</sup> Similarly, excluding Russian banks from raising long-term loans, the ban on exports of dual-use equipment for military use are examples of sanctions against resources not directly linked to Russia's involvement in eastern Ukraine, but that might influence the success of their activities.<sup>14</sup>

*C. Resources that could be linked to the objectionable behaviour*

Many tangible, non-tangible and human resources may not be directly linked with the objectionable behaviour but may still constitute potential resources that could be used for this purpose. When sanctions have a serious impact on the resources involved in the objectionable behaviour, target governments might feel compelled to increase revenues by, for example, raising taxes, the appropriate means of production, by obtaining access to state financial reserves, or by increasing the production and sale of commodities like oil, diamonds, timber or services. An example of this occurred during the Kosovo crisis in the late 1990s, when the government of the Federal Republic of Serbia (FRY) confiscated the foreign exchange earnings of private companies held at the Central Bank of the FRY. A pre-assessment should therefore be undertaken on the likelihood and ease with which the target can obtain additional resources equivalent to those directly employed in the objectionable behaviour in the absence of external help. If the likelihood is high, sanctions should also cover those potential resources.

<sup>13</sup> Adebahr (2014).

<sup>14</sup> BBC (2014), *The Economist* (2014).

## 2. Leverage of the EU

Once the resources to be targeted have been identified, the vulnerability of these assets to EU sanctions has to be ascertained. Leverage is a dynamic element: it increases when EU partners are willing to associate themselves with the measures. Conversely, it decreases if the targets find partners ready to replace the role of the EU and its coalition,<sup>15</sup> or else if they can find domestic substitutes. Leverage will vanish if replacement providers or a substitute is available at no additional costs. In order to ascertain the leverage of the EU, the relative importance of each resource for the objectionable actions has to be determined. To this end, the following questions are useful:

- To what extent are EU entities involved in the provision of assets/resources linked to the objectionable policies (i.e. through their subsidiaries or foreign branches)?<sup>16</sup>
- What is the extent of involvement of other foreign providers?
- Which of these providers may be willing to replace assets withdrawn by the EU?
- How quickly and easily can each type of EU sanction be evaded?
- How could EU sanctions be evaded (i.e. through domestic action or by the action of foreign entities)?
- Which non-EU providers are willing to provide the assets concerned?
- How much does evasion or substitution increase the costs of acquiring the assets concerned?
- What is the volume of the stock of assets prior to the wielding of sanctions?

On the basis of the answers obtained, a reasonable estimate of the net impact of each set of sanctions on the resources concerned can be generated with the following formula:

*Net impact = gross impact – (minus) domestic and/or foreign neutralising, evasion, compensation, substitution.*

Finally, flexibility to expand, amend or lift sanctions should be allowed for in order to respond to progress or backsliding by the target:

- How quickly and easily can each type of sanction be expanded/amended/lifted?
- What procedural bottlenecks would have to be overcome?

## 3. Legality of measures

When imposing autonomous sanctions, the EU and its member states are bound by a number of European and international legal obligations that limit the flexibility enjoyed by the EU in the design of its measures:

- Is each set of sanctions compatible with the obligations of the EU and/or its member states under any international treaty subscribed by the EU or by member states (such as the UN Charter, GATT/GATS, bilateral agreements)?
- Does each set of sanctions meet the requirements of fairness and due process?

<sup>15</sup> Key EU partners like Serbia and South Korea have so far refused to associate themselves with Western sanctions against Russia (*Financial Times*, 2014, *Washington Post*, 2014).

<sup>16</sup> Some examples of EU involvement include co-ownership, bank accounts, loans, investment, financial and other services like insurance, transport, brokering, location of entities in the EU, family and/or historical, cultural, educational links, and travel behaviour.



#### 4. Cost of sanctions to the EU

The cost of sanctions increases markedly when sanctions are sustained over a long period of time. Although often overlooked, costs include the loss of revenue, employment, opportunity costs – defined as the loss of future revenue/markets for the private sector, public expenditure resulting from additional resources to be employed in implementation of the negative measures and costs resulting from possible countermeasures taken by the target. Furthermore, the distribution of the costs over the private and public sector and across member states, and the existence of compensation mechanisms, are elements that may influence the preparedness of European society to bear those costs. Political costs, although more difficult to quantify, also play a role.

In the cases of visa bans and assets freezes, the costs to the EU tend to be negligible. However, a different picture emerges from the broader economic sanctions in place on Iran, Syria and the Russian Federation.<sup>17</sup> Sanctions on Iran have brought significant losses in revenues from exports of goods and services, and interrupted important flows of Iranian energy products to the EU, leading to increased imports costs for member states that had to switch to alternative sources.<sup>18</sup> In the case of Russia, sanctions have sparked retaliatory measures like a ban on agricultural and food imports from the EU. In turn, the EU set up compensation funds to mitigate the loss of revenue in the agricultural sector.<sup>19</sup> A legislative initiative authorising the Kremlin to seize foreign assets to compensate individuals and businesses affected by Western sanctions has been tabled.<sup>20</sup> The following questions help to pre-assess and estimate the costs of EU sanctions:

- What are the expected political, economic and/or financial costs for the EU as a whole in the short, medium and long term of
  - each set of sanctions considered;
  - likely countermeasures against the EU;
  - possible compensation measures, including those for allies;
  - implementation efforts by the private and public sectors?
- How will these costs be distributed among EU member states and over the private and public sectors?
- Should compensation mechanisms for the affected sectors be established (and if so, how could they be funded)?

#### 5. Unintended effects: exceptions, exemptions and adaptation

Although the impact of sanctions should theoretically be limited to the targeted resources, practice shows that unintended consequences are inevitable.<sup>21</sup> Much effort is devoted by the EU to avoid widespread human suffering through its sanctions. This desire is at the root of the very emergence of ‘targeted’ sanctions, and current regimes are typically endowed with

<sup>17</sup> Richter and Holz (2014), Ministry of Finance of Finland (2014), Portela (2012).

<sup>18</sup> Patterson (2014). Prior to the imposition of the EU oil ban, Iran supplied 34.2% of Greece’s oil imports, 14.9% of Spain’s and 12.4% of Italy’s (Esfandiary, 2013). Although no figures quantifying the losses incurred are yet available, analysts resent the fact that these economies bear a disproportionate burden of the sanctions’ costs (Tabrizi and Santini, 2012).

<sup>19</sup> Gros (2014).

<sup>20</sup> *New York Times* (2014).

<sup>21</sup> Biersteker et al. (2013) find that UN targeted sanctions display unintended consequences in 91% of the cases. For EU sanctions on Syria and Iran, see Moret (2014).

humanitarian clauses exempting items such as medical supplies and foodstuffs from the stipulated bans. However, sanctions can have other unintended effects, such as fostering repression and a decline in human rights conditions in the target countries. Ascertaining the expected effects of sanctions on both the humanitarian and the human rights situation in the target country could help to adjust the sanctions strategy to minimise or reverse such outcomes. Still, the provision of exemptions is not always sufficient to prevent potential unintended consequences. Although EU sanctions on Syria exempt trade in medical supplies, some European pharmaceutical companies complained that restrictions on the operation of the banking sector prevented them from receiving payment for their deliveries.<sup>22</sup>

Unintended consequences may also entail an increase in corruption and criminality as well as the diversion of resources. Often, they display ‘perverse effects’ that undermine rather than advance EU goals. Under the so-called ‘rally-round-the-flag-effect’, targeted leaderships register an increase in domestic support by presenting sanctions as an attack on the entire country rather than on their misguided policies.<sup>23</sup> A notorious example of miscalculation was the blanket arms embargo imposed by the UN on the Federal Republic of Yugoslavia during the Bosnian wars of the early 1990s. Instead of restricting the access to weapons to all contending parties, the arms embargo had the effect of disadvantaging the Bosnian Muslim population vis-à-vis the Bosnian Serbs, who continued to receive weapons from the indigenous arms industry located near Belgrade.<sup>24</sup>

The following questions help to orientate decisions regarding potential unintended effects:

- For each set of sanctions, what unintended/collateral effects are likely, and to what extent, in the short, medium and long term?
- How are sanctions expected to affect the human rights situation in the target country?
- In particular, how will each set of sanctions affect the resources employed by or closely linked to
  - the domestic opposition in its resistance against the objectionable behaviour (e.g. in case of an arms embargo)?
  - neutral persons and entities in the country/region where the objectionable behaviour takes place (e.g. through increased corruption, diminishing the rule of law)
  - EU partners?
- How easily can the damage caused by sanctions be repaired after their termination?
- For what targeted resources should exemptions be provided for (e.g. medicines, medical services and means guaranteeing minimum living standards)?
- What exceptions to the enforcement of sanctions should be authorised (e.g. services to allow participation in negotiations on terminating the objectionable behaviour)?
- What adaptation strategies and mechanisms can the EU envisage in order to deal with unintended effects and reactions to the sanctions?

<sup>22</sup> Interview with anonymous European MFA official.

<sup>23</sup> Galtung (1969). Russian President Putin’s domestic popularity boost after the invasion of Crimea and the imposition of EU and US sanctions is another example of this effect.

<sup>24</sup> Zucconi (2001), Paes (2008).

## 6. Reliability of information and assumptions

The imposition of sanctions is often undertaken on the basis of assumptions that have not been sufficiently validated empirically. Thus, imposing sanctions should become a more evidence-based activity that makes better use of academic research and intelligence units to improve institutional memory. This would require a robust and reliable data gathering and processing system. The following questions could help to increase the reliability of the results obtained during the pre-assessment and contingency-planning phase.

- For any set of sanctions considered, what are the sources of information and their reliability and precision in respect of
  - the resources directly linked to the objectionable policies;
  - the leverage of the EU and the impact of sanctions;
  - the costs of sanctions for the EU and its allies;
  - the unintended effects?
- Is there a need to strengthen information-gathering in respect of certain sets of sanctions?
- What are the underlying assumptions about the effectiveness of each set of sanctions?
- How reliably can these assumptions be validated?

## 7. Coherence of sanctions with overall EU external relations

Sanctions are but one instrument in the CFSP toolbox, and are invariably used in combination with other tools, such as positive incentives. Whichever set of tools is chosen, each of them serves the objective of discouraging the objectionable policies. However, incoherence can arise between different CFSP tools, between the CFSP policy and other EU policies (such as trade, development cooperation or energy) or with private sector activities that undermine the effectiveness of the EU's response to the objectionable behaviour.<sup>25</sup> Each set of sanctions should therefore be checked against concurrent EU policies that are directly or indirectly linked with the assets targeted. The following questions can be helpful in ensuring coherence between the different policies of the EU's external relations.

- Are there incompatibilities between
  - the sanctions and other tools considered for addressing the objectionable behaviour?
  - the set of sanctions contemplated and other EU internal and external policies?
  - the sanctions considered and policies of the European private sector regarding the resources utilised in the condemned behaviour?
- Will any of these contradictions seriously undermine the effectiveness of any set of sanctions?
- How can these drawbacks be corrected?

Mechanisms designed to ensure coherence in the CFSP, such as the 'Political Framework for Crisis Approach' (PCFA), which is currently being developed in the framework of the EU's Common Security and Defence Policy, could provide a model to inspire appropriate arrangements in the field of sanctions.

## 8. Expected contribution of sanctions to EU goals

On the basis of the answers to the foregoing questions, the following questions can be dealt with:

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<sup>25</sup> Portela and Raube (2012).

- How and in what time frame will any given set of possible sanctions contribute to the attainment of EU objectives?
- Which sets of sanctions show the best cost/benefit ratio in the short, medium and long term?
- How serious does the EU consider the threat to its security or the reprehensible behaviour to which it responds with sanctions?
- Does the imposition of sanctions help the EU advance additional objectives beyond their declared aims, such as expressing support for its key allies?

## 9. Communication

Given the poor reputation of sanctions as an instrument of foreign policy, better communication of the reasons for imposing them could broaden support for the measures among the European public. This need is particularly acute when sanctions carry significant costs to the EU. Equally, the EU should clearly communicate the objectives of the sanctions to the targets, and in particular to those persons and entities not directly engaged in the wrongdoing that may be affected by the measures. In the absence of information, targeted individuals often give credence to their leaders' rhetoric that sanctions are directed at society as a whole, or that the EU's true intention is to bring about regime change. This is clearly exemplified by the Zimbabwean leadership, which has instrumentalised sanctions to present itself as a victim of 'Western imperialism' and to galvanise pan-African solidarity.<sup>26</sup> During the pre-assessment and contingency planning phase, the following questions should be addressed:

- Which authorities will be primarily responsible for the communication strategy within the EU, within the country/region where the wrongdoing is taking place, and in respect of other third parties supporting or opposing the sanctions?
- Which is the most adequate means of communication?

## A way forward

Autonomous sanctions are susceptible to circumvention and to countervailing measures. The more comprehensive the sanctions, the more costly they tend to be. Decision-making on autonomous and non-targeted sanctions would benefit most from a thorough pre-assessment and contingency planning.

The present report has identified a set of key elements that the EU needs to address in a pre-assessment and contingency-planning phase. These questions can be viewed as a 'checklist' whose items should be ticked off in order to obtain a reasonably reliable assessment of the impact and effectiveness of any particular set of sanctions. The introduction of a pre-assessment and contingency planning phase is feasible without considerably increasing existing resources. There is already a steady flow of information coming from open and private sources already that can be tapped into to obtain answers to the questions posed, including regular reporting by EU delegations and member states' representations in third countries; the EU's early warning system, academic scholarship on sanctions; and media reporting – in particular the economic and financial press. The problem does not lie primarily in the availability of information but in the organisation of data collection and evaluation. As the recent sanctions imposed on the Russian Federation illustrate, the EU is

<sup>26</sup> Darracq (2010), Portela (2014).

able to allocate resources to this exercise, giving thorough consideration to the types of measures and to the distribution of their costs among EU member states. The challenge ahead lies in transforming these 'good practices' into habits.

Dedicated staff at the EU could also be supported by the establishment of an independent panels of experts. The system in place at the United Nations could inspire a similar mechanism at EU level, where findings of the expert panels have prompted profound reforms of the sanctions regimes they monitor.<sup>27</sup> Panels of experts with research functions and a mandate to oversee the implementation of EU sanctions regimes could be set up to report regularly to the Council of Ministers.<sup>28</sup>

Our checklist constitutes a useful tool to determine the most adequate set of sanctions to be used. By providing clarity about a number of key criteria related to the imposition of sanctions, the 'checklist' would facilitate the agreement at Council level on the design and adaptation of sanctions in light of their observed effects – positive or negative – as well as those stemming from other foreign policy tools addressing the objectionable policies. Rather than being a final product, the proposed checklist should constitute a starting point for a more sophisticated and evidence-based instrument purporting to optimise sanctions decision-making in the EU. Finally, the checklist could also inspire discussions in the European Parliament, in member states' national parliaments and among the European public at large.

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<sup>27</sup> Vines and Cargill (2010), Carisch and Rickard-Martin (2011).

<sup>28</sup> Portela (2014).

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## Appendix. Nine-point Sanctions Checklist – A Summary

### 1. Identification of resources

#### A. employed in the wrongdoing

- What resources are directly employed in the objectionable behaviour concerned?
- Which of these resources are essential, non-replaceable, subsidiary, and/or fungible?
- To what extent can these resources be generated domestically?
- What is the organisational strength of the human resources involved in the wrongdoing?
- What is the strength of psychological, moral, religious, ethical, financial/material or other attachment to the reprehensive action of these persons?
- To what extent does the wrongdoing augment the resources directly employed in it?

#### B. linked to the wrongdoing

- What resources are closely linked to the resources directly contributing to the objectionable actions?
- To what extent does the objectionable behaviour increase the resources closely linked to the objectionable behaviour?
- How easily can these resources be used for the objectionable behaviour itself?
- Which domestic resources can be appropriated by the target state to perpetuate the wrongdoing?

### 2. Leverage of the EU

- To what extent are EU entities involved in the provision of assets/resources linked to the objectionable policies?
- What is the extent of involvement of other foreign providers?
- Which of these providers may be willing to replace assets withdrawn by the EU?
- How quickly and easily can each type of EU sanction be evaded?
- How could EU sanctions be evaded?
- Which non-EU providers are willing to provide the assets concerned?
- How much does evasion or substitution increase the costs of acquiring the assets concerned?
- What is the volume of the stock of assets prior to the wielding of sanctions?
- How quickly and easily can each type of EU sanction be upgraded or downscaled?

### 3. Legality of measures

- Is each set of sanctions compatible with the international obligations of the EU?
- Does each set of sanctions meet the requirements of due process?

### 4. Cost of sanctions to the EU

- What are the expected political, economic and/or financial costs for the EU of sanctions; likely counter-measures against the EU; possible compensation measures, including those for allies and implementation efforts by the private and public sectors?
- How will costs be distributed among EU member states and between private and public sectors?
- Should compensation mechanisms for the affected sectors be established?



## 5. Unintended effects

- What unintended/collateral negative impacts are likely, in the short, medium and long term?
- How will sanctions affect the resources employed by or closely linked to the domestic opposition in its resistance to the objectionable behaviour?
- How easily can the harm caused by sanctions be repaired after their termination?
- For which targeted resources should exemptions be provided for?
- What exceptions to the enforcement of sanctions should be authorised?
- How are sanctions expected to affect the human rights situation in the target country?
- What adaptation mechanisms can address unintended effects and countersanctions?

## 6. Reliability of information and assumptions

- What are the sources of information and their reliability and precision in respect of the resources directly linked to the objectionable policies, the leverage of the EU and the impact of sanctions, the costs of sanctions for the EU and its allies and the unintended effects?
- Is there a need to strengthen information gathering?
- What are the underlying assumptions about the effectiveness of each set of sanctions?
- How reliably have these assumptions been validated?

## 7. Coherence of sanctions with overall EU external relations

- Are there incompatibilities between the sanctions considered and other tools addressing the wrongdoing, non-CFSP EU policies, or policies of the European private sector regarding the resources utilised in the condemned behaviour?
- Will any of these contradictions undermine the effectiveness of sanctions?

## 8. Expected contribution of sanctions to EU goals

- How and in what time frame will any given set of possible sanctions contribute to the attainment of EU objectives?
- Which sets of sanctions show the best cost/benefit ratio in the short, medium and long term?
- How acute does the EU consider the threat to its security or the wrongdoing it responds to?
- Does the imposition of sanctions advance EU objectives, such as support for allies?

## 9. Communication

- Which authorities will be responsible for the communication strategy within the EU, within the country where the wrongdoing is taking place, and in respect of other third parties supporting or opposing the sanctions?
- What constitutes the most suitable means of communication?