

The State of EU Sanctions on Russia

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Introduction

In March 2019, the EU blacklisted eight Russian officials involved in the detention of Ukrainian seamen and the seizure of their vessels in the Kerch Strait connecting the Black Sea with the Sea of Azov last November, demanding their release. The officials were added to a blacklist featuring those individuals responsible for the destabilisation of Eastern Ukraine since 2014.¹ In turn, this blacklist is part of one of three different sanctions packages addressing distinct aspects of the 2014 Ukraine crisis. The first sanctions package is a response to the destabilisation of Eastern Ukraine and includes the suspension of high-level contacts and the blacklisting of individuals and entities. Since the summer of 2014, it has also entailed restrictions on access to the EU's capital markets for certain Russian banks and companies, an arms embargo, and limits on access to some technologies and services for oil production and exploration. The lifting of this sanctions regime was later linked to the full implementation of the accord that was reached in the context of the mediation talks held in Minsk, or the **Minsk Agreements**, which are still pending. A second separate sanctions regime consists of an economic embargo on Crimea, and a third froze the assets of the officials responsible for the misappropriation of Ukrainian state funds. The present contribution aims to contextualize this complex set of EU measures on Russian targets in the framework of its Common Foreign and Security Policy (CFSP). It will then review the current state of the sanctions regime and their sustainability before sketching some ideas as to how the current impasse could be surmounted.

What is New and What is Not

While there is a long tradition of sanctions in EU foreign policy, most sanctions measures wielded in the past have not been economic in nature. The bulk of EU sanctions imposed during the 1990s and 2000s consisted of arms embargoes and a prohibition on issuing visas to leadership members, top officials and their close associates in the target countries, often accompanied by a freeze of their assets held in European banks. Belarus, Zimbabwe and Sudan are cases in point. The EU has imposed economic measures rather exceptionally, and when it has done so, these have come about after a target has been under sanctions for a long time. When adopted, the economic measures have tended to remain limited in nature. A prohibition on the export of timber and precious stones was applied to Myanmar in 2007, sixteen years after the onset of the regime. Needless to say, the effect of this ban was negligible for the European economy.²

One of the most significant aspects about the sanctions package imposed on Russian targets is that it features an economic component which is bound to entail losses for EU industries. This is a development that EU business – with the exception of the defence industry – is unaccustomed to, and has had to adjust to. A second and most conspicuous novelty is the imposition of sanctions on a major global power. The only comparable instance in the EU's recent history was the arms embargo it imposed on China following the repression of the 1989 Tiananmen Square protests. However, that embargo does not go beyond banning the supply of military items, and it has not even been formalised into binding legislation.

¹ Council of the EU (2019) "Ukraine: EU responds to escalation at the Kerch Strait and the Sea of Azov, and renews sanctions over actions against Ukraine's territorial integrity", Press release 15/03/2019.

² Portela, C. (2010) *European Union Sanctions and Foreign Policy*, Routledge: London.

The combination of both elements in a single sanctions regime – that of imposing measures with economic implications, and wielding them on a powerful neighbour – would have seemed improbable just a few years ago. And the fact that the EU has been able to sustain a rather unusual sanctions regime of for as long as five years, despite the reticence voiced by some of its members, would have seemed even less likely to observers.

Sanctions Misunderstood?

It is often claimed that the sanctions have failed because they have not brought about a fundamental change in Russian policy, or that Russia's economy has shown its resilience to external economic pressure and not collapsed. These assessments of the effects of EU sanctions suggest that their **finalité** has sometimes been misunderstood. Specifically, such an analysis overlooks that Brussels never intended to bring the Russian economy to point of collapse. Instead, sanctions were crafted to inflict only limited harm to specific areas of the Russian economy.³ Sanctions were meant to increase the cost of Russia's actions to undermine Ukraine's territorial integrity and to promote a peaceful settlement of the crisis.⁴ They were meant to create an irritant, serving as a reminder of the EU's protest over Moscow's actions in Ukraine. But they were not designed to cause anything like large-scale damage – let alone bring about a breakdown of the economy.

The widespread misperception of what EU sanctions were meant to accomplish can be ascribed to two circumstances. Firstly, the very term sanctions evokes apocalyptic images of extreme deprivation. From a semantic point of view, it is extravagant that the same word that designates measures responsible for the humanitarian catastrophe in Iraq in the 90s refers to measures that prevent a handful of people from taking a flight to Dublin, Rome or Prague. However, the nature of the instrument has changed – almost all sanctions nowadays are “targeted”, meaning that they are limited measures meant to affect specific individuals, elites, territories or sectors, rather than an entire country.⁵ A second circumstance that is causing confusion is the public's lack of familiarity with Brussels' approach to sanctions, which differs considerably from Washington's. US measures often start out small but are ratcheted up significantly over time. Also, they display extraterritorial effects, meaning that Washington fines

non-US persons and firms for disobeying its bans.⁶ By contrast, EU measures tend to be more modest, are tightened slower and reach lower degrees of severity. They attempt to create discomfort rather than genuine damage and show a commitment to the original notion of targeted sanctions.

Stagnation and Sustainability

While the EU sanctions regime on Russian targets has proved to be resilient and stable, having survived unaltered for as many as five years, it currently finds itself in a state of stagnation. While member states have sustained the measures that were adopted in 2014, they are unprepared to escalate them. This reticence is observable in the differences between EU and US responses to the most recent crises. Washington has been upgrading its sanctions measures gradually since the spring of 2018, most recently in reaction to the poisoning of two British citizens of Russian origin in Salisbury, interference in US domestic politics via cyberattacks, the Azov Sea incidents and Russian military actions in Syria. Despite Washington's habitual pressure on the EU to follow suit, Brussels has so far refrained from replicating any of these bans. Instead, it has moved to adopt horizontal sanctions, i.e. thematic blacklists designed to include individuals and entities responsible for breaching a specific norm. The first horizontal list concerns the use of chemical weapons. Shortly after its adoption in 2018, it saw the designation of the Salisbury suspects, alongside a Syrian laboratory and some scientist who had already been listed under the EU sanctions regime on Syria.

A horizontal sanctions regime on cyberwarfare is under preparation, and one that is meant to list individuals and entities involved in grave human rights violations is in conversation. Horizontal sanctions are rare in the EU – only one existed prior to 2018: the anti-terrorism blacklist. Their proliferation appears to be linked to a reticence to further escalate the existing sanctions package on Moscow with a new sanctions regime featuring the name of Russia on it.⁷ Listing Russian targets on multinational, themed blacklists allows Brussels to address the breaches without implying an official connection to the Kremlin – an approach that could gain traction in other areas of EU foreign policy. Its benefits are obvious: Firstly, it allows the bridging of persistent divisions among those member states who are advocating the stepping up of measures and those

³ Christie, E. (2016) 'The design and impact of Western economic sanctions against Russia', *RUSI Journal* 161(3): 52–64.

⁴ Council Regulation No 833/2014 of 31 July 2014, p. 1.

⁵ Brzoska, M. (2003) 'From dumb to smart? Recent reforms of UN sanctions', *Global Governance* 9(4): 107–19.

⁶ Lohmann, S. (2019) 'Extraterritorial U.S. Sanctions', *SWP Comment* 2019/C 05.

⁷ Portela, C. (2019) 'The Spread of Horizontal Sanctions', *CEPS Commentary*, CEPS: Brussels.



who are unfavourable to escalating existing sanctions, and so maintains EU unity despite these conflicting viewpoints. At the same time, it gives a message of solidarity to Kyiv as well as Washington and Ottawa, which have been responding in unison to developments in the Ukrainian crisis. The reluctance to further antagonise Moscow is matched by attempts to seek cooperation with the Kremlin on these issues: Member states such as Spain have even launched initiatives to fight cyber-attacks jointly with Russia.⁸

Meanwhile, there are signs that the transatlantic convergence on sanctions has reached its limits. Most recently, Congress adopted new sanctions legislation which threatens to affect EU members' involvement in energy projects with Russia.⁹ Here, the EU is not only reluctant to replicate the measures, but it is likely to oppose them. Brussels and Washington have already found themselves at odds over the extraterritorial application of sanctions: The Helms-Burton Act on Cuba caused a transatlantic rift in the 1990s, and most recently, the renewed US sanctions on Iran and its revocation of the waiver on Cuba for EU companies threaten to do likewise.¹⁰ Disagreements over the sanctions on Russian targets are unlikely to reach the level of discord witnessed over Cuba or Iran. However, Brussels can hardly be expected to step up its sanctions on Russian targets when the path marked by Washington squarely contradicts the interests of the member states. Moreover, the recent creation of a "special purpose vehicle" to allow transfers to Iran that circumvents US prohibitions demonstrates an unusual determination to oppose Washington over measures it disagrees with.

A Way Forward

If the current package is frozen and further escalation is improbable, can we expect an easing of sanctions instead? A glance at the history of EU sanctions suggests that a relaxation of sanctions is a standard scenario. One of the key advantages of targeted sanctions packag-

es is their scalability, which means they can be phased out gradually. And this is the approach that the EU has often followed with the targets of its measures. Indeed, Brussels has sometimes been ready to end sanctions in order to reciprocate progress that fell short of full compliance.¹¹ However, such moves invariably followed at least some degree of cooperation with the EU, in implementation of a bilateral accommodation that must be negotiated discreetly – normally behind closed doors. After all, the legislation imposing the measures stipulates that they "will be kept under review and may be suspended or withdrawn ... in light of developments on the ground".¹²

Prospects for easing vary across the different regimes at hand. The measures imposed in response to the destabilisation of Eastern Ukraine could be relaxed in response to limited steps to be taken towards compliance. This could be accomplished with the unbundling of existing conditionality, linking progress to the gradual easing of the measures.¹³ The sanctions addressing the misappropriation of Ukrainian state assets appear to be the most fragile regime, particularly in view of its vulnerability to legal challenges.¹⁴ However, this sanctions regime is only tenuously related to Russia, given that designees are former Ukrainian officials. By contrast, the embargo on Crimea, the most stringent regime, is also the least susceptible to alteration. Because this embargo is linked to the inviolability of borders, a principle cherished across EU capitals, its easing is difficult to imagine without some sort of understanding with Kyiv – a remote scenario at present.

Clara Portela participated in the 9th EUREN meeting on "Digital transformation and connectivity: prospects for economic interaction between the EU and Russia in times of sanctions" on 28 February/1 March in Moscow. This paper is based on her presentation. Its content is the sole responsibility of the author and does not represent the position of individual EUREN members or EUREN as a group.

⁸ Abellán, L. (2018) 'España y Rusia pactan un foro de ciberseguridad contra la desinformación', El País, 6 November, available at: https://elpais.com/politica/2018/11/06/actualidad/1541514798_739002.html.

⁹ Lohmann, S./ Westphal, K. (2019) 'US-Russland-Politik trifft europäische Energieversorgung', SWP Aktuell 2019/1, SWP: Berlin.

¹⁰ European Commission (2019) Joint Statement by High Representative/Vice President Federica Mogherini and Commissioner for Trade Cecilia Malmström on the decision of the United States to further activate Title III of the Helms Burton (Libertad) Act, Brussels, 17 April 2019, available at: http://europa.eu/rapid/press-release_STATEMENT-19-2171_en.htm

¹¹ Portela (2010), see above.

¹² Council Regulation No 833/2014 of 31 July 2014, p. 1.

¹³ Fischer, S. (2017) 'A Permanent State of Sanctions? Proposal for a More Flexible EU Sanctions Policy toward Russia', SWP Comment 2017/C 11, SWP: Berlin.

¹⁴ Portela, C. (2019) 'Sanctioning Kleptocrats', Civil Forum for Asset Recovery: Berlin.

