

The use of sanctions or restrictive measures.

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- *How effective is the EU in establishing and implementing sanctions? What, if anything, should it do differently? Are there any gaps in competences that should be addressed (e.g. 'orphaned' sanctions that can't be implemented)?*

The necessary premise is that establishing the 'effectiveness' of sanctions in terms of assigning an overall mark to their use is a quite complicated exercise. For sure, sanctions are relevant foreign policy tools. They can be used to prevent the escalation of crises, to influence one or more actors in different phases of a conflict, and they provide a number of diplomatic alternatives before the use of force. Considering that the EU does not have that option, EU restrictive measures play quite a crucial role in determining the influence of the EU as global actor.

I worked on this subject and I have indicated that sanctions work in three ways. They can coerce a target, meaning that their behavior can be changed, but they are also very useful to constrain and signal targets. Constraining refers to the intention to weaken targets because we do not like what they are about to do. Signaling brings in the picture also the audiences, both domestic and international. Thus, sanctions would represent the intention to stigmatize certain behaviors and showing an audience that the EU is acting to, for instance, uphold a norm or a value in the international system. If these three ways in which sanctions work are considered, then a case-by-case analysis would show that sanctions are often useful both for the UK and for the EU as a whole.

The UK benefits from EU sanctions to the extent that multilateral sanctions are becoming more efficient over time. One of the problems with multilateral sanctions was that they multiplied the opportunities for sanctions busting, but the increasing cooperation among EU members has improved the overall impact while decreasing the loopholes of the system. However, implementation is still the weak link of the process.

First, there is not monitoring of what happens after the Council decides to impose restrictive measures. Member states authorities are still the key actor to implement the measures even if the subject would fall under the exclusive competence of EU institutions (economic bans and financial restrictions). This exposes the process to different interpretation of the sanction regimes opening critical loopholes that can undermine the whole regime. Additionally, it is hard to know what happens, what the impact is and how sanctions are evaded overtime, which would contribute positive to improving sanctions.

Second, the legal system of the sanctions has limitations when it comes to encourage member states to share information. Steps should be taken to favor, either by creating a database such as the SIS or similar, to allow states to acquire the same information on relevant suspects or sanctions busters that could help in improving the implementation of sanctions.

In terms of competence gaps, the main problem remains that EU institutions lack of what they need to ensure that restrictive measures are properly designed, implemented and monitored. It would be naïve to think that EU sanctions can provide a great advantage to UK interests if sanctions cannot be imposed by London alone, but sanctions busters can get to it through Italy, Spain, Romania, etc. The key is to empower EU institutions at least to monitor sanctions and to collect information on what happens after restrictive measures are imposed in Brussels.

- *What are the comparative advantages/disadvantages of working through the EU in the application and implementation of sanctions, rather than the UK working independently?*

Simply put, the UK would not have the same impact when imposing sanctions in isolation from the EU. The emerging role of the European Union, combined with the fact that it is now the largest trading block of the world, has *per se* an additional weight to such decisions. Aside from the fact that the UK would not have the same impact in most of the areas and, therefore, it should act in coordination with others in any case (for instance, the US), the coordination with other EU member states has an added value since the EU is more than the sum of the interests of its members.

The advantages are basically three: greater impact, relevance and normative message.

Greater impact refers to the fact that the EU market is larger than the one of the UK. A financial restriction or a commodity boycott is more likely to have an effect if the 27 members (plus associate countries in many instances) decide to stop trading with one actor. For instance, the oil ban on Syria and Iran would have a different impact if the UK imposed it outside of the EU framework.

Thus, EU sanctions are more relevant than UK sanctions. This is not only related to the greater impact, but also to the fact that the EU can deploy a number of foreign policy tools along with sanctions that can complement the instrument of sanctions quite well. For instance, EU aid, if properly coordinated, could represent an invaluable tool in negotiation post-conflict consolidation phases.

Finally, the UK alone would send a message of interested actor, while the EU as a whole is perceived as acting in the name of values, which gives strength to a foreign policy action. The UK would not be able to play this card.

On the other side of the coin lie a number of problems that could/should be solved only through greater coordination and cooperation: lack of shared interests, poor implementation and excessive legalization of political tool.

The lack of shared interests and solidarity can weaken, and sometimes prevent, effective actions. Cases such as Burma/Myanmar, Uzbekistan and Moldova, for instance, have been battlefields for EU member states where different views of sanctions conflated, resulting in sanctions strategies that were not always consistent overtime and coherent with other foreign policy tools. This can also delay the implementation of sanctions, but timing is everything for certain targeted sanctions to have any impact (e.g. freeze of assets should be imposed even before they are declared).

Poor implementation, or the absence of certainties regarding their impact, can weaken the sanctions tool for the UK. It provides sanctions busters with opportunities to circumvent and, in occasions, to profit from different interpretation of sanctions by the competent authorities. Poor implementation also offers the opportunities to sanctions critiques and targets to perceive sanctions as cheap talk, especially when they can easily avoid the pain after pompous discussions in the media about it.

Finally, the Lisbon Treaty has further empowered the Court of the European Union to review the decisions of the Council in sanctions matter. Judicial review for foreign policy is not common and it represents a limit to UK (and others) policy. Sanctions are fundamentally political tools, and the consequences of such decisions should be considered as such. If sanctions can be reviewed by the Court, then the Council becomes subjected to judicial review for decisions in foreign policy, which will overtime empty this instrument as the Council will not want to act if the Court can strike down (or simply slow down) the process of sanctioning.

- *Would a different division of EU and Member State competence in relation to sanctions produce more effective policy and delivery? If so, how and why? What would the implications be for the UK (e.g. in terms of international trade, our power to influence within the EU)?*

One of the main problems for EU sanctions (and therefore for the UK) is the lack of monitoring power from EU institutions. While it is clear that this would be a sacrifice in terms of classical national powers, denying such power to EU institutions creates a lose-lose scenario for the UK and the EU (so for every EU member).

Today, EU members do not impose sanctions outside of the EU framework. This is a clear reduction of authority if we compare it with thirty years ago. This is not bad news as said above, EU members have greater say within this framework. However, EU states still refrain from allowing EU institutions to monitor the implementation of sanctions.

So while EU states do not have power to sanction, they are undermining EU sanctions to be effectively implemented. This is a scenario in which EU sanctions are not implemented, and EU member states (therefore the UK as well) do not impose sanctions anymore.

The solution is to give monitoring power to EU institutions. Through greater expertise, the UK would be able to influence the process and be a key actor in it, but the obvious consequence will be that overtime Brussels will become the center for such decisions.

- *How might the UK national interest be served by action on sanctions being taken at a different level (e.g. regional, national, UN, OECD, G20) either in addition or as an alternative to action at EU level?*

This is a difficult question to answer as it falls under the classical dilemma between unilateral and multilateral sanctions as I was describing above. On the one hand, the more multilateral sanctions are, the more likely they are to be watered down to satisfy all the interests on the table and the more likely it is that others will try to free ride on sanctions. On the other hand, the more unilateral sanctions are the better they can be designed and implemented, but targets would have more opportunities to restructure their demands and to adapt to the sanction since they would look for other buyers/sellers that they could find in the market.

I believe that the UK should not consider the EU and other 'levels' as comparable. The EU is a political entity to which the UK belongs, and the other 'levels' could act in coordination with the EU (bearing in mind what I wrote above about multilateral sanctions).

Probably, the best way to fully benefit from a higher international coordination would be to focus on building institutional capacities that can be used, eventually, for monitoring and implementing sanctions as well. An interesting example is provided by the efforts to fight money-laundering at the international level. Efforts were stepped up after the 9/11 attacks, an international regime on countering the financing of terrorism was built and it can now be used to enhanced sanctions implementation. Something should be done to monitor more effectively the trade in commodities, which is a key aspect of sanctions busting with fake trade and illegal smuggling. There is very little monitoring in that sector, and a greater coordination at the UN, OECD and at the G20 level can provide an important added value to the possibility of the UK to further its interests.

- *If you have any other thoughts or suggestions on the current EU balance of competence with regard to sanctions, we would be very glad to hear them.*

As it is clear by now, my main suggestion that goes in the interests of the UK and the EU is to enhance the monitoring capacities of EU institutions. It seems to me that there is not a way out of the little credibility of sanctions if we do not turn the lights on implementing problems that are left to national competent authorities. The UK as a state with advanced capacities in monitoring and implementing sanctions has only to benefit from overlooking at how other EU members are implementing, interpreting and deciding on EU sanctions.