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Research Report

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SWP Comments, No. 18/2007

Provided in Cooperation with:

Stiftung Wissenschaft und Politik (SWP), German Institute for International and Security Affairs, Berlin

Suggested Citation: Portela, Clara (2007) : The EU's "sanctions paradox", SWP Comments, No. 18/2007, Stiftung Wissenschaft und Politik (SWP), Berlin

This Version is available at:

<https://hdl.handle.net/10419/256039>

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The EU's "Sanctions Paradox"

Clara Portela

The forthcoming Summit meeting between the European Union (EU) and Africa next December will be the first event of this kind in the past seven years. However, the row over the participation of Zimbabwe's President, Robert Mugabe, is casting a shadow over the upcoming event: A number of African states have threatened to boycott the meeting if Zimbabwe's leader is not invited, while the British government has indicated that it will not attend the meeting if he does. At the root of this row is an "EU sanction": a visa ban prohibiting the entry into EU territory to Zimbabwean high-rank officials. Zimbabwe has been under EU sanctions since the crisis of 2002. The visa ban and the arms embargo imposed then were supplemented shortly after by an assets freeze; however, no restrictions on trade between the EU and Zimbabwe have been imposed. European aid continues to flow to the country. So what do "EU sanctions" consist of? What kind of measures are they, and why is it that they forbid the issue of visas to foreign leaders but leave trade untouched? What do we know about the harm they cause to their targets? Ought current EU practices be improved upon?

EU "Targeted" Sanctions: An Unknown CFSP Tool

EU sanctions are not a new phenomenon. The EU has been imposing "autonomous" sanctions in the absence of a United Nations Security Council (UNSC) mandate since the early 1980s. Still, little was known about EU sanctions policy until the publication of a series of documents from 2003 onwards. Until then, the term "sanctions" was not even used in EU institutions: Embargoes and bans were referred to as restrictive measures, or *mesures négatives*. The EU Strategy against the Proliferation of Weapons of Mass Destruction (WMD), which was adopted in parallel to the Euro-

pean Security Strategy, first mentioned the potential use of sanctions when political and diplomatic measures failed. The June 2004 "Basic Principles on the Use of Restrictive Measures (Sanctions)" distinguishes two strands of EU sanctions practice. While it stresses its commitment to implement sanctions decided by the UNSC, the EU announces that "if necessary" it will also impose sanctions in the absence of a UN mandate, "in accordance with its Common Foreign and Security Policy (CFSP) and in conformity with international law." The EU will consider wielding autonomous sanctions in support of the fight against terrorism, the proliferation of WMD, and

the protection of human rights, democracy and the rule of law. Yet, the two-page “Basic Principles” contains only minimal information on the types of “targeted” measures used by the EU.

Current EU sanctions mostly lack an economic character, and have little to do with the traditional idea of economic sanctions *à la* Iraq. In the “Basic Principles,” the EU subscribes to sanctions geared to achieving maximum impact on those whose behaviour it wants to influence, while minimising “humanitarian effects or adverse consequences for persons not targeted or neighbouring countries.” This feature is not unique to EU sanctions: general trade embargoes have been replaced by targeted or ‘smart’ sanctions also in the practice of the UN and other international actors. The unpopularity provoked by the acute humanitarian consequences of trade embargoes, such as that imposed by the UN on Iraq brought about a preference for the use of targeted measures. Smart sanctions encompass measures that fall short of general embargoes: visa bans and assets freezes, flight bans, diplomatic sanctions, financial sanctions such as investment bans and embargoes on selected commodities (most commonly arms, but also oil, timber or diamonds). Many of them are not new; they used to be wielded in addition to general embargoes in the past. What is new is the idea that they can work by targeting only the responsible individuals. Since smart sanctions have been in operation for less than fifteen years, their use is still at an experimental stage. However, it has already become clear that some of these measures can have humanitarian consequences. In a notorious example, the UNSC refrained from imposing a planned flight ban against Sudan in 1996 due to the expected impact on humanitarian deliveries.

EU Sanctions: Catalogue and “mode d’emploi”

The EU Treaty empowers the Council to impose sanctions against third countries within the framework of the CFSP. These are agreed by unanimity through legally binding Common Positions. After the Common Position has been adopted, sanctions which do not affect EC competence, such as visa bans and arms embargoes, are implemented directly by the Member States. Sanctions which impinge upon EC competence, such as financial sanctions, necessitate the adoption of additional EC legislation: This has come to be known as the “two-steps” procedure. Before the creation of the CFSP, sanctions were announced in Presidency statements. Sanctions regimes adopted at the time were gradually formalised into Common Positions once this instrument was available—with the notable exception of the arms embargo against China, which remained in its original form. Sanctions regimes have come to incorporate a one-year “expiry date,” so that the Council decides anew on the extension of sanctions yearly. Since 2004, the Council formation RELEX/Sanctions has been in charge of drafting the Common Positions and monitoring their implementation.

Diplomatic sanctions

Routinely, the limitation of contacts is the first sanction that the EU adopts in order to signal disapproval. This is a traditional diplomatic sanction consisting in the interruption of high-level meetings and visits: Bilateral contacts continue to take place, but they are held less frequently and between officials at a lower level. Belarus serves as a current example: EU-Belarus meetings take place at the so-called level of directors or experts, that is, officials below the ministerial rank, while political postings are excluded from direct contact with the EU. Diplomatic sanctions can also consist in the downsizing of the personnel in the representations of the Member States accredited to the target country. EU Mem-

ber States with embassies in Burma recalled their military attachés in 1991, while they expelled the Burmese military attachés of their representations in the EU. The traditional pallet of diplomatic sanctions also features the recall of ambassadors and the complete interruption of diplomatic relations. However, the EU refrains from employing such wide-ranging measures: A minimum of diplomatic relations is always maintained. Diplomatic sanctions are often adopted as part of larger sanctions packages. In the aftermath of the Tiananmen events of 1989, the EU imposed an arms embargo and agreed the “reduction of programmes of cultural, scientific, and technical co-operation” with China.

Visa bans

Visa bans have become—together with arms embargoes—the most frequently issued CFSP sanctions. They constitute one of the initial steps in the EU’s sanctions sequence. Visa bans are currently in force against Burmese, Zimbabwean, Belarusian, Uzbek and Transnistrian leaders and high-ranking officials: Blacklisted individuals are not allowed to participate in Summit meetings with regional groupings. The effects of visa bans are comparable to those of diplomatic sanctions—however, the visa ban is a stronger measure in so far as it not only prevents the blacklisted persons from attending official meetings, but also from travelling to the EU for private purposes, such as holidays, education, shopping or visiting relatives. At the same time, visa bans represent the only CFSP sanction that the EU can wield against members of non-state entities, such as alleged members of terrorist organisations, or the Transnistrian leadership.

Member States’ adherence to EU visa bans has not been optimal. President Mugabe was refused boarding into a transfer flight in a British airport and was sent back to Zimbabwe. Yet, France allowed him to attend the Franco-African Summit in Paris in 2003, and Italy granted him per-

mission to travel to the Vatican for the Pope’s funeral in 2005. While these deviations undermine the ban politically, they are formally legal: The Common Positions provide for the granting of exceptions when Member States are “bound by obligations as hosts” to international organisations and UN conferences, or under agreements conferring privileges and immunities. Exemptions from the ban are permitted on the grounds of humanitarian need. Blacklisted individuals might be allowed into the EU to attend meetings geared towards promoting human rights, democracy, and the rule of law. A Member State wishing to grant a visa to a blacklisted person on these grounds has to notify its intention to the Council. If objections are raised, the Council might still decide to grant the proposed exception by qualified majority. In the absence of objections within 48 hours, the visa is deemed to be granted.

Freezing of assets

As with visa bans, assets freezes are imposed through a CFSP Common Position with a blacklist annexed. The freezing of assets often constitutes the second stage in the EU gradualist strategy: Following flawed elections in Belarus in 2001, the EU wielded a visa ban against the leadership, which was expanded to an assets freeze in reaction to the again fraudulent elections of 2006. A freeze affects funds and economic resources “owned, held or controlled” by the listed individuals, and it is accompanied by a prohibition to make funds available to them “directly or indirectly.” Again, the Common Positions foresee exceptions: Funds may be released when intended for basic needs or for the payment of professional fees, and a more general clause providing for extraordinary exemptions also exists. A Member State wishing to grant an exemption is obliged to inform the Commission and the other Member States two weeks in advance. Contrary to the visa ban, no procedure for

objections exists. Since this measure concerns Community competences, banks are obliged to notify the Commission of the freezing of assets under the names of black-listed individuals.

Arms embargoes

Embargoes on arms and military equipment that can be used for internal repression are frequently wielded in situations involving violence. Common Positions imposing arms embargoes feature a list of items covered by the embargo, and are routinely accompanied by the suspension of military co-operation. Arms embargoes are sometimes imposed during armed conflicts between a government and rebel forces, and they are often superseded by identical UN measures in a matter of months. This was the case with the 1999 EU embargoes against Eritrea and Ethiopia and the 1991 embargo against the Socialist Federal Republic of Yugoslavia. Most frequently, though, the EU imposes arms embargoes in reaction to acts of internal repression, or one-sided violence by state forces against the civilian population. This pattern repeats itself in the EU arms embargo imposed against China following the Tiananmen events in 1989, Indonesia in 1999, Sudan in 1996, and Uzbekistan in 2005. Virtually all regimes under CFSP sanctions have repressed violently civilian demonstrations. Due to their media resonance, these events lend themselves to strong EU reactions, and they are often linked to the reluctance by autocratic regimes to give way to democratic reforms, for example, Burma, Zimbabwe, China and Belarus.

Selective economic sanctions

Selective economic and financial sanctions have been used only rarely by the EU: embargoes on specific commodities (other than arms), flight bans, investment bans and a ban on payments. The EU imposed all four measures against the Federal Republic

of Yugoslavia (FRY) during the Kosovo conflict as part of its most sophisticated sanctions operation to date. The oil embargo, the flight ban and the ban on payments imposed against the FRY are unique EU autonomous measures: no prior or later use is known. The investment ban is the only measure that was applied once again: In 2004, the EU prohibited European companies and organisations from providing loans and equities to Burmese state-owned enterprises. The investment ban and the oil embargo against the FRY displayed some unique features, revealing a creative use of the sanctions tools. In spite of the EU oil embargo, the “Energy for Democracy” programme created selective exemptions allowing for oil to be supplied to Montenegro, Kosovo and the districts under the control of the Serbian opposition. Similarly, the investment ban exempted those enterprises whose lack of links to the Milosevic regime could be proved. However, this inventive approach was never re-applied after the Kosovo episode was concluded.

Non-CFSP EU sanctions

The EU also wields sanctions outside the framework of the CFSP: They are adopted “informally” by the Council in Presidency Conclusions. The common denominator of these measures is that they are not labelled “sanctions.” However, such measures correspond to the standard definition of sanctions. Indeed, before the creation of the CFSP, the Council routinely agreed sanctions in Presidency statements. The legal basis of the 1989 China arms embargo, or the 1991 Burma sanctions, was merely a Presidency statement. The practice of imposing measures in the form of statements has not been entirely replaced by the use of CFSP acts. In parallel to these, the EU continues to adopt sanctions “informally.” Member States preferred to react to the 1998 India/Pakistani nuclear tests, and to Russian human rights violations in Chechnya in 1999 with the adoption of measures included in the Council Conclusions. The

type of measures also differ from those imposed under CFSP: They consisted in the deferral of the signing of co-operation agreements, or in the redirection of aid. More recent examples include the deferral of negotiations on an agreement with Iran pending the signature of the International Atomic Energy Agency Additional Protocol, and the diplomatic sanctions against Cuba of 2003, which prescribed the invitation of dissidents to the national celebrations in EU embassies in Havana.

The preference for informal measures often reflects the reluctance of Member States to antagonise major partners like Russia, or the existence of intra-EU disagreements on policies towards the country in question, as with Cuba. This approach offers evident advantages: They are only political in nature. Since the duration or scope of the measures is left unspecified, they often “die a natural death.” Technical and scientific co-operation between China and Member States gradually resumed in the absence of any Council decision revoking the sanctions. The weak character of these sanctions has sometimes been mocked by observers: The 1999 sanctions against Russia were labelled “pseudo-sanctions,” while the measures concerning Cuba are referred to as “cocktail” sanctions. The withdrawal of trade preferences under the Generalised System of Preferences (GSP) and the partial suspension of development aid can also be considered sanctions; however, they are adopted in more rigid legal frameworks.

Effectiveness by Stigmatisation?

Can this toolbox of limited measures, mostly lacking economic bite, have any impact on the individuals and situations it attempts to affect? EU sanctions do not deprive their targets of essentials. Travel bans can be circumvented with false passports. Names in Cyrillic-script can be transcribed into Latin-script in different forms. Blacklisted individuals interested in conducting business abroad can resort to

intermediaries to travel to third countries. For the purposes of vacations, shopping, or education of their children, they can turn to other destinations. The same applies to the freezing of assets: Funds can be transferred easily to bank accounts outside Europe before the freeze comes into effect. Indeed, only small amounts have been frozen under the assets freezes. Generous provisions for the granting of exceptions avoid causing serious disutility to the targets. Arms embargoes imposed by a single entity are bound to remain irrelevant: They are issued late and on areas where arms abound, and targets always find alternative suppliers. They might have prevented some states like Uzbekistan or Burma from acquiring certain high-technology items, but their purchasing power would not allow them large-scale orders anyway. The deferral of the signing of treaties are short-term, easily revocable measures, while redirections of aid do not involve but a fraction of the funds foreseen for the recipients. Diplomatic sanctions are by their very nature regarded as merely symbolic gestures. Measures which entail economic components, such as selective embargoes or flight bans, might hold more promise of damaging the target, but given that these are hardly employed by the EU, it is difficult to ascertain their usefulness.

In some instances, blacklisted individuals resent the disruptive effects of the sanctions—the impact of the measures varies largely from case to case. The bans caused substantial discomfort to the cosmopolitan elites of rich African countries such as Zimbabwe or Nigeria, who were used to sending their children to British universities and to shopping in European capitals. By virtue of the EU’s geographic proximity, Belarusian officials are reportedly fearful of being included in an EU blacklist. President Lukashenko himself is known to have routinely spent his holidays in Austria prior to the imposition of the ban.

The fact that EU sanctions are mainly “symbolic” does not mean that they lack impact. In fact, the few “successes” but also

the various “failures” of EU measures show that sanctions can have an effect by means of that very symbolism: EU sanctions have served as irritants in the relations between the EU and its targets. As EU officials put it, “some degree of discomfort in bilateral relations” was consistently maintained thanks to the presence of sanctions. The seemingly negligible “cocktail” sanctions triggered a major diplomatic crisis with Cuba. Even the intractable military junta of Burma is not totally insensitive to the international stigma of being the subject of sanctions. China consistently complained that the persistence of the EU arms embargo constituted a source of humiliation.

The maintenance of a minimum of diplomatic relations entails various benefits. It has helped to canalise signs of discontent that could not have been communicated otherwise. At the same time, it has permitted the conduct of activities of interest to the EU. Trade continues with all countries “under EU sanctions.” Some forms of co-operation exist with Belarus, notably in the energy field. Some development assistance flows to Sudan and Burma, even if political relations remain constrained. With China, the persistence of an arms embargo has not hindered the flourishing of trade relations.

Even when the affected leaderships publicly claim indifference to EU measures, their reactions reveal a desire to recover some international recognition. Observers have noted that the Transnistrian leadership reacted to international condemnation by mimicking the establishment of democratic institutions. Belarusian leaders attempted to avoid the suspension of GSP preferences by enacting legislation imitating—but falling short of—the International Labour Organisation standards protecting the freedom of trade unions. The Uzbek leadership, while initially reluctant to discuss the 2005 Andijon events, replaced the governor of the province in the aftermath of the imposition of EU sanctions. While these cosmetic changes ultimately failed to correct the flaws which triggered the sanc-

tions, the targeted leaderships implicitly acknowledged the legitimacy of EU aims. In this sense, EU actions appear to contribute to “shape conceptions of the normal,” as suggested in the normative power scholarship.

The desire to avert the stigma of being the object of sanctions is linked to the target’s aspiration to recognition and prestige. China, which yearns to be regarded as a responsible power, has actively lobbied for the lifting of the EU embargo. The only target which has had a CFSP sanctions regime almost totally lifted is Uzbekistan, a country aspiring to become the regional leader in Central Asia. By contrast, the parochial leadership of Burma, which regards as its primary goal the defence of the state against numerous rebel groups, is least amenable to influence through international stigmatisation. In some countries where the leadership seems unyielding, the desire to recover international respect is also reflected in the fact that officials from circles close to the leaderships often approach the EU about the removal of the sanctions. These contacts normally take place in the diplomatic milieu and remain out of the public eye, but they show that sanctions do create discomfort. Yet, this sensitivity often fails to compel leaderships to change behaviour in the way desired by the EU. The absence of this automatism constitutes the main difficulty with the operation of sanctions—as was already the case with twentieth-century trade embargoes.

The EU’s Sanctions Paradox

While stigmatisation harms, it has rarely proved effective in extracting concessions from the targets. Why does the EU refrain from adopting more forceful measures? Given the economic weight enjoyed by the EU, it appears that those targeted measures at the economic end of the smart sanctions spectrum could prove more persuasive than the symbolic sanctions employed so far. Selective economic sanctions have been

wielded very rarely, and sometimes in situations in which they were bound to remain without impact: The investment ban against the FRY was deprived from any effects given that EU companies were hardly investing in the FRY at the time. Equally, hardly any investment takes place in Burma due to the prevailing volatile environment. It appears paradoxical that a major trading power renounces the use of economic tools to influence third countries. To borrow the term from the International Relations scholar Daniel Drezner, this can be labelled the “EU’s sanctions paradox.”

A series of factors prevent the EU from imposing measures with some economic bite: First, the EU has an extreme humanitarian concern for sparing the population from suffering. This preoccupation, enshrined in the “Basic Principles,” is often reiterated in public declarations. In the aftermath of the 2006 flawed Belarus elections, Commissioner Ferrero-Waldner claimed that “sanctions which harm the wider population” should be avoided, announcing that Commission assistance would not stop. This idea is consistent with practice: EU aid in direct support of the population and civil society continues to flow to countries under CFSP sanctions. Since the imposition of sanctions in 2002, the amount of EU aid provided to Zimbabwe has actually increased—although it is no longer channelled through the government, and primarily consists of humanitarian assistance. EU “humanitarianism” extends even to the blacklisted persons: They can be exempted from the visa ban on humanitarian grounds, while the assets freeze does not apply to funds the target requires in order to cover “basic needs.”

Secondly, trade sanctions, even if limited, would harm the business interests of some European companies. The abundant EU arms embargoes concern only the defence industry, a largely state-dependent sector used to constraints in its exports. The European business community would react negatively to trade restrictions outside a UN mandate. The embargo against Argen-

tina in 1982—the first EU autonomous trade measure—affected only the import of Argentinean goods to the EU, not the export of European products to the target. Finally, there is also a lack of agreement among Member States regarding the general usefulness of sanctions. Some Member States, headed by the United Kingdom and the Scandinavian countries, conceive of sanctions as a useful policy tool, while Mediterranean countries have traditionally opposed their use. This division is compounded by further disagreements regarding the management of the sanctions tool. This concerns notably the question of how to proceed when a target takes limited steps towards compliance with EU aims. While some Member States favour the easing of sanctions as way of encouraging further progress, others prefer to leave sanctions in place in order to maintain pressure on the target. These diverging attitudes in the Council often result in compromise decisions, which send potentially ambiguous signals to the target.

Departure from Half-heartedness?

In theory, the EU has two alternatives to the current state of affairs. It could relinquish its autonomous sanctions completely, and adopt instead the idea that stigmatising countries is pointless and often counterproductive. Indeed, the EU suffers the direct consequences of its own sanctions. Officials resent that limiting diplomatic contacts with Belarus has hindered co-operation at a practical level, such as on border-related issues. EU diplomats were unable to even meet their Cuban counterparts for several months. The EU provided humanitarian aid to vulnerable populations in Sudan for a decade without investing in the development of a viable economy. Even the cancellation of summit meetings, such as that with Africa, is resented since these provide instrumental impulses for co-operation. Abandoning the practice of imposing sanctions would facilitate co-operation by eliminating discord from a number of EU

external relationships. In reality, this option is impracticable: First, for an EU which prides itself for promoting Human Rights and democracy, failing to react to scandals such as Andijon would be inconsistent with this self-proclaimed image. The European Parliament is also a strong advocate of most EU sanctions regimes. Secondly, the EU is often compelled to impose sanctions by its main international partners, primarily the United States. Ever since its first autonomous sanctions episode, the grain embargo against the USSR in 1981 in reaction to the Polish crisis, to the China arms embargo and then to the Transnistrian visa ban, the EU has coordinated sanctions policies with its main transatlantic partner. In fact, the EU is “out of step” with its Western partners in terms of sanctions imposition: Canada and the US had withdrawn GSP preferences from Belarus a decade before the EU did. The US lifted its arms embargo on Indonesia some years after the EU lifted its own. And needless to say, US restrictions on Burma and Cuba are far more forceful than EU responses.

The second alternative would consist in designing sanctions with efficacy in mind. This option does not imply a return to comprehensive sanctions—EU ‘humanitarianism’ would not allow it. Rather, it would consist in crafting sanctions not only to convey a strong condemnation, but with a view to causing sufficient disutility to the targets to compel them to change behaviour. The advantage of this approach is that it would unleash the potential leverage of EU sanctions while being consistent with humanitarian precepts and the transatlantic dimension of sanctions policy. It would require three major steps at different levels. First, EU Member States should work towards a consensus at the political level on the usefulness of targeted sanctions as a foreign policy tool, as well as on their management. Current sanctions policy suffers from excessive ad-hocism. The “Basic Principles” represents an embryonic exercise which should be expanded to a

more substantial agreement. The objective here is not to draft a programmatic document, but rather to build a consensus on what is the place of sanctions in EU foreign policy, what they are expected to achieve, and how their use can be optimised. The EU already has some “Guidelines for implementation” and some “Basic Principles” for the use of sanctions in place; it now needs a “sanctions strategy.” Secondly, the EU should *plan for success*: Before wielding sanctions, it should study thoroughly the vulnerability of the target with a view to crafting a sanctions package with bite. Finally, the pallet of EU sanctions instruments should be strengthened. The EU should “resurrect” the use of selective economic measures, the sort of sanctions wielded during the Kosovo crisis: flight bans, partial embargoes and financial bans. The efficacy of the measures employed in that episode was largely hindered by their experimental nature, and ultimately by NATO’s military intervention. Yet, their results were highly promising and should be further explored. In the absence of such upgrades, the EU will remain a “self-restrained” sanctions power with limited efficacy.

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ISSN 1861-1761