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Beyond Foreign Policy? EU Sanctions at the Intersection of Development, Trade, and CFSP

Editors

Katharina Meissner and Clara Portela

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Editorial

Beyond Foreign Policy? EU Sanctions at the Intersection of Development, Trade, and CFSP

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Abstract
In the wake of unsettling conflicts and democratic backsliding, states and organisations increasingly respond with sanctions. The European Union (EU) is one of them: Brussels makes use of the entire toolbox in its foreign policy, and its sanctions appear in different forms—diplomatic measures, travel bans, financial bans, or various forms of economic restrictions. Yet, there is little debate between different strands in the literature on EU sanctions, in particular concerning measures under the Common Foreign and Security Policy and those pertaining to the development and trade policy fields. Our thematic issue addresses this research gap by assembling a collection of articles investigating the design, impact, and implementation of EU sanctions used in different realms of its external affairs. Expanding the definition of EU sanctions to measures produced under different guises in the development, trade, and foreign policy fields, the collection overcomes the compartmentalised approach characterising EU scholarship.

Keywords
Common Foreign and Security Policy; conditionality; development cooperation; European Union; restrictive measures; sanctions; trade

Issue
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Not only has the European Union (EU) long been at the forefront of including conditionality clauses in its international agreements, but sanctions have become an important tool in its external relations in the wake of unsettling conflicts in its neighbourhood (Portela, 2017; Richter & Wunsch, 2020). Yet, while this has led to increased scholarly attention to the EU as a sanctions sender (Giumelli, 2011; Kreutz, 2015), two key deficits can still be identified.

Firstly, recent research identifies the design of sanctions to be central to their outcomes (McLean & Whang, 2014). Understanding drivers of sanctions' design is important from an analytical and policy perspective. From an analytical viewpoint, most research on restrictive measures examines their (in-)effectiveness and consequences for target states (Hufbauer et al., 2007), while neglecting how this is linked to their design and the drivers of different options (McLean & Whang, 2014; Portela, 2016). Hence, there is a lack of fine-grained investigation into the design of EU sanctions, what factors motivate such decisions, and what impact specific designs have. To date, scholars have provided no systematic investigation into the design of EU restrictive measures.

Secondly, the overwhelming focus on sanctions adopted under the Common Foreign and Security Policy (CFSP) that prevails in European studies translates into little awareness that EU sanctions appear in different designs. Sanctions encompass diplomatic measures, travel bans, financial bans, and various forms

of economic restrictions (Drury, 2001). Few research attempts to bridge research traditions between CFSP measures, on the one hand, and trade and development policy (Koch, 2015; Meissner, 2021; Portela, 2010), on the other—let alone other sanctioning measures like the Treaty on EU (TEU) Article 7 (Hellquist, 2019) or conditionality in enlargement policy.

Our thematic issue seeks to remedy this double research gap by investigating systematically the design of EU sanctions used in its external affairs. We understand sanctions broadly as a "temporary abrogation of normal state-to-state relations to pressure target states" (Tostensen & Bull, 2002, p. 374). Hence, our understanding of sanctions is indiscriminate to the target's location—within or outside the EU—as well as to the measures abrogating "normal" relations. Sanctions, according to our definition, cover CFSP restrictions, conditionality clauses, aid freezes, withdrawal of trade preferences for political reasons, diplomatic sanctions, and measures under Article 7 TEU. In this sense, our conceptualization of sanctions goes beyond the narrowly-defined CFSP area and extends to development and trade policy (Meissner & McKenzie, 2018). The issue is, thus, innovative in that it overcomes the compartmentalised approach that EU scholarship has displayed so far, with development researchers looking into aid suspensions, trade researchers considering conditionality in international agreements, and international security scholars analysing CFSP sanctions.

Kim Olsen opens our collection by situating sanctions in the context of geo-economics and by conceptualizing sanctions as one ingredient of EU geo-economics diplomatic capabilities (Olsen, 2022). Olsen's endeavour rests on the observation that the EU has recently made a more assertive use of economic power in its external affairs, epitomised in Commission President Ursula von der Leyen's emphasis on the need for a new geo-economic approach for the EU's role in the world. Olsen presents sanctions as "policy tools situated at the intersection between the spheres of states and markets" (Olsen, 2022, p. 12). While Olsen considers sanctions as a tool within a range of multiple geo-economic instruments, Giselle Bosse explores the moral dimension of EU authority to employ sanctions (Bosse, 2022). In particular, in the absence of a United Nations Security Council mandate, Bosse argues that EU unilateral actions require moral authority. Drawing on Habermas' theory of communicative action, Bosse develops a framework for assessing the substantive and procedural standards of moral authority which she then applies to the case of CFSP restrictive measures imposed on Uzbekistan in 2005.

The following contribution explores specific designs of CFSP restrictive measures and their impacts. Focusing on asset freezes and visa bans, two recurrent types of CFSP sanctions, Clara Portela and Thijs Van Laer tackle the unexplored question whether the impact of listings on designees corroborates the EU's initial targeting choices (Portela & Van Laer, 2022). Relying on a unique set of interviews with sanctions designees, Portela and Van Laer investigate this question empirically in the cases of Côte d'Ivoire and Zimbabwe. Francesco Giumelli, Willem Geelhoed, Max de Vries, and Aurora Molesini shed light on sanctions' implementation by EU member states and the degree to which they conform to coherent national laws and enforcement (Giumelli et al., 2022). While researchers had identified the potential for variation in the implementation of sanctions across the EU (Druláková & Přikryl, 2016; Helwig et al., 2020; Meissner & Urbanski, 2021), no systematic study had yet been conducted on the transposition and application of restrictive measures within the EU. Interestingly, the authors find significant variation on how EU member states implement CFSP sanctions—a result which calls for further research.

In addition to CFSP, trade policy provides an important area of EU sanctions. Two trade policy tools for sanctioning third states are the Generalised Scheme of Preferences (GSP) and international trade agreements. Arlo Poletti and Daniela Sicurelli investigate the "negative case" Myanmar (2018), problematizing the Council's inaction in the face of Myanmar's Rohingya crisis despite vocal calls by the European Parliament and non-governmental organizations to withdraw tariff preferences (Poletti & Sicurelli, 2022). Adopting a political economy approach, the authors explain the Council's decision not to withdraw the GSP with the prevalence of European economic operators' interests in stable trade relations with Myanmar. María García studies the sanctioning options embedded in the new Trade and Sustainable Development (TSD) chapters for labour and environmental matters included in the EU's international trade agreements (García, 2022). Conditionality clauses in TSD chapters aim to ensure specific human and labour rights and environmental standards. While one way of enforcing these rights and standards is the use of conditionality clauses, García explores a second way of enforcing labour rights and environmental matters through the dispute settlement mechanisms. Analysing these dynamics in the EU–Korea preferential trade agreement, García shows that the TSD chapters and the dispute settlement mechanism are potentially strong tools to promote labour and environmental norms.

Jan Orbie, Antonio Alcazar, and Tinus Sioen take a post-development perspective on how the EU uses its trade policy to sanction third countries (Orbie et al., 2022). In particular, the authors problematize the GSP scheme with which certain human rights, labour norms, and environmental standards are pursued and the discourse adopted by EU elites. Shedding light on the GSP from a post-development perspective, they show how the discourse of EU elites and in Cambodia and the Philippines reinforces the hierarchical concepts of "developed" and "developing" countries.

In the concluding contribution, Johanne Saltnes and Martijn Mos suggest an integrated perspective on the EU's sanctioning tools by considering "material"

sanctions in addition to "social" sanctions (Saltnes & Mos, 2022). By social sanctions, the authors mean a naming and shaming of wrongdoings but also diplomatic endeavours like dialogue. With such an encompassing approach, Saltnes and Mos advocate that the non-adoption of "material" sanctions does not equal inaction but may imply the use of alternative tools such as "social" sanctions. The authors investigate the range of EU responses to LGBTI rights violations in Lithuania and Uganda.

With this rich collection of articles, produced by a gender-balanced group of scholars from eight nationalities, often co-authoring in cross-national partnerships, we hope to foster the exploration of both the multifaceted design of various forms of EU sanctions and their interlinkages.

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Conflict of Interests

The authors declare no conflict of interests.

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Article

Diplomatic Realisation of the EU's "Geoeconomic Pivot": Sanctions, Trade, and Development Policy Reform

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Abstract
At a time when policymakers of the European Union (EU) are pivoting towards a more assertive use of economic power in external relations, this article discusses the merits of situating the much-debated use of economic sanctions and other economic power-based instruments in the broader terminology of EU diplomatic capabilities. Pointing out a number of shortcomings in traditional literature on geoeconomics and economic statecraft, the article applies the concept of "geoeconomic diplomacy" to demonstrate how the EU's geoeconomic success will heavily depend on the abilities of diplomats and civil servants from institutions and member states to engage in viable relationships with relevant public and private actors in the state-market realm. Based hereon, it identifies institutional and context-specific challenges that could affect the comprehensive realisation of recent EU policy reforms relevant to the geoeconomic agenda: (a) institutional measures to ensure a more robust enforcement of sanctions, (b) a new anti-coercion instrument to counter coercive trade practices by third countries, and (c) a more efficient, focused, and strategic utilisation of EU development funds for purposes of stability and peace. The article concludes by discussing the prospects for bringing such instruments closer together at the level of practical implementation through the establishment of stronger relationships between practitioners working across the EU's various geoeconomic intervention areas.

Keywords
anti-coercion; development policy; economic statecraft; European Union; geoeconomic diplomacy; sanctions; stabilisation

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1. Introduction: Contours of the EU's "Geoeconomic Pivot"

Policymakers of the European Union (EU) have, in recent years, engaged in extensive deliberations on how to more assertively instrumentalise levers of economic power for foreign and security policy objectives. The revived preoccupation among Europe's highest political echelons with the intrinsic relationship between national wealth and strategic influence has first and foremost played out against the backdrop of the more forceful use of economic power policies by other global actors. Be it the United States' increasing deployment of economic sanctions, often with extraterritorial effects on European economic interests, or China's strategic use of trade and investment policies to either build relations or force concessions from states or private actors, the global tendency for the proactive instrumentalisation of economic resources has also animated EU policymakers to ponder about Europe's place and future in this reforming "geoeconomic" order.

Among the strongest proponents to emerge in favour of such a geoeconomic approach to re-defining the EU's role has been the president of the European Commission, Ursula von der Leyen. Already in her welcoming instructions to the new college of commissioners, von der Leyen (2019) starkly emphasised the imperative for the EU to strengthen the use of economic and finan-

cial instruments in its external relations. And words were soon followed by actions. In the course of 2021, the Commission, the European External Action Service (EEAS), and member states have presented numerous new initiatives aimed at introducing or ameliorating a set of geoeconomic instruments. This article focuses on three of the most prevalent. First, the announcement by the Commission of a series of measures to reduce well-known obstacles for ensuring the coherent implementation of EU unilateral sanctions. Second, the Commission's newly announced plans for creating a new EU anti-coercion instrument (ACI) designed to respond to economically powerful third countries' intensifying use of coercive trade measures to force the EU into political or economic concessions. Third, in eyeing the need for a more efficient, focused, and strategic utilisation of EU development funds, EU institutions and member states agreed on forming a new Neighbourhood, Development, and International Cooperation Instrument (NDICI) that, among other things, prioritises funding for so-called "peace and stabilisation" interventions to support EU foreign and security policy objectives in conflict situations.

This article argues that these three distinct policy announcements sharpen the contours of an emerging European "geoeconomic pivot." Habitually understood as states' strategic utilisation of national wealth to obtain geostrategic objectives (Blackwill & Harris, 2016), the analytical approach of geoeconomics has received renewed attention in both scholarly and policy-oriented spheres. Geoeconomic foreign and security policy instruments are here understood as those being used by policymakers to directly or indirectly instrumentalise global trade, finance, or value chains for purposes both of and beyond direct economic objectives. But whereas the relevance for a geoeconomic analysis of EU foreign and security policymaking has been well-established (Gehrke, 2020; Helwig, 2019; Schwarzer, 2020), the challenges that EU policy practitioners and diplomats might face when engaging in the instrumentalisation of market affairs is less understood. Indeed, an often-disregarded aspect of EU economic power politics is that the material basis for this power—i.e., national wealth and economic levers—is mostly either in the hands of or strongly influenced by private actors outside the direct sphere of government control. In other words, as policymakers do not directly control the market forces they seek to instrumentalise, they have to find innovative ways of turning economic levers into geoeconomic leverage.

To analyse this paradox, the article applies "geoeconomic diplomacy" as a conceptual pathway to examining the respective roles played by and relationships between diplomats, civil servants, and various non-state and private actors in realising policy ambitions at the intersection of power politics and market instrumentalisation. This allows a congruent analysis of possible implementation challenges of three evolving geoeconomic policy areas—economic sanctions, defensive trade measures, and peace and stabilisation assistance—that are all too often treated as separate fields, both analytically and politically. To this end, the article addresses two crucial questions concerning the EU's potential as a geoeconomic actor: first, the challenges that EU institutions and member states face at the level of everyday diplomatic practice in successfully implementing geoeconomic policies in the state-market realm; and second, whether individual geoeconomic instruments are designed and implemented with a view to ensure their practical interplay in ways that support broader EU foreign and security policy ambitions.

While the article does not claim to present an exhaustive analysis of these wide-ranging questions, it proposes a new pathway for discussing them. First, it explains the analytical necessity for moving beyond traditional concepts of geoeconomics and economic statecraft, which are largely dominated by realist assumptions about the state's ability to act as a unitary actor with unhindered access to national economic capabilities that it can use toward its strategic objectives. Second, it introduces the concept of geoeconomic diplomacy, arguing for the need to enhance our analytical sensitivity towards the actors, relationships, and processes that are relevant for translating economic levers into geoeconomic leverage. And third, it applies the concept to critically assess the everyday challenges and opportunities that diplomatic practitioners from EU institutions and member states can face when tasked with realising recent EU policy announcements in areas of sanctions, trade, and development policy. The article concludes by discussing the need to manage the expectations of both policymakers and observers in order for the EU to put its emerging geoeconomic pivot into practice, placing particular stress on the necessity for a more proactive EU geoeconomic diplomacy to forge practical ties between its various geoeconomic instruments.

2. Actors and Processes of Economic Power: Moving Beyond Geoeconomics and Economic Statecraft

While the terminology of geoeconomics is commonly utilised by both practitioners and scholars to make sense of international economic power-based competition, its exact meaning and implication remain matters of conceptual dispute. This article, for its part, sides with what seems to be slowly emerging as a consensus in the foreign and security policy related branches of the academic literature, understanding a geoeconomic policy as a state's application of economic means for obtaining specific geostrategic objectives. Just as the use of military means of power can entail numerous strategic, economic, and humanitarian consequences, the use of economic means of power can be used to obtain a wide range of different geostrategic objectives (Blackwill & Harris, 2016). This definition thereby not only stands in opposition to those identifying a geoeconomic policy based on its economic ends (Youngs, 2012). It also

implies a relational understanding of economic power resources, meaning that such resources are only relevant to geoeconomic analysis if they carry clear geographical relations or demarcations to a specific policy objective in question. The present analysis of the EU's geoeconomic pivot therefore does not include every projection of European wealth at the global stage, but only focuses on the economic levers the EU seeks to instrumentalise in the narrower realm of foreign and security policy.

A second contested feature in the geoeconomic debate relates to the implicit assumptions that the terminology carries. Here, clarity is gained by distinguishing geoeconomics as an analytical category from its characteristic as a foreign and security policy practice (Scholvin & Wigell, 2018). As an analytical category, geoeconomics is often related to an ontological understanding of international power politics that builds on realist and mercantilist assumptions about zero-sum interests and inter-state conflict. This implicit perception of the conflictual drivers of world affairs was already captured when Luttwak, in the Cold War's final days, introduced geoeconomics as an analytical category, describing it as "the admixture of the logic of conflict with the methods of commerce—or, as Clausewitz would have written, the logic of war in the grammar of commerce" (Luttwak, 1990, p. 19).

Looking at geoeconomics as a practice of foreign and security policy, as this article does, entails analysing how policymakers seek to utilise economic means of power to obtain their specific geostrategic objectives. Oddly, however, most prevalent understandings of geoeconomics have not fully acknowledged how structural circumstances and influential non-governmental and private actors in the state-market realm might restrain policymakers in their effective use of economic means of power (Csurgai, 2018, p. 45). This has resulted in a lack of attention to practical difficulties related to geoeconomic policymaking. Arguably, this lack of critical reflection on whether geoeconomic instruments are under the full control of the policymakers that wish to use them might be a result of the conceptual literature's domination by realist-leaning approaches.

A less assumption-driven and more governance-oriented take on the study of economic power was originally presented by Baldwin in his seminal works on "economic statecraft." Baldwin introduced this conceptual approach in the mid-1980s as a means to scrutinise how state machineries translate economic levers into economic power and strategic influence in foreign and security policy. In defining statecraft as "the instruments used by [policymakers] in their attempts to exercise power" (Baldwin, 1985, p. 9), he insisted on the need for being analytically sensitive to the specific circumstances that governments face in the state-market realm. By orientating his analysis of economic power politics towards the governance structures behind the instrumentalisation of national wealth, Baldwin presented a useful pathway for understanding that economic power capabilities are not just resources that a state—or any polity—might possess, but that the use of them requires governance actors to engage in processes for translating economic levers into actual leverage.

But whereas Baldwin acknowledged that relations between states and markets are subject to specific tensions—particularly when it comes to questions about the former's degree of control over the latter—his analysis of the state's accessibility to the resources that form the material basis of its economic levers and the actors involved in shaping them was less expansive. For example, he was largely dismissive of the view that economic power instruments, such as sanctions, should be particularly challenging to implement. Difficulties in this realm would mostly be caused by governments' lack of economic expertise, which would often not be on par with their military or diplomatic knowledge (Baldwin, 1985, p. 139). But by failing to propose how to strengthen governmental expertise in the state-market realm, Baldwin's idea of economic statecraft was not sufficiently geared towards an analytical understanding of how a government's success at leveraging economic power is impacted by its ability to form and implement a geoeconomic policy on the ground. This is particularly the case when acknowledging that geoeconomic policies are normally implemented in highly complex, globalised, and interdependent spaces, dominated by myriads of public and, especially, private actors.

3. Geoeconomic Diplomacy and How It Relates to the EU's External Policies

Inspiration for fostering analytical sensitivities towards the "engine room" of foreign and security policymaking can be derived from diplomacy studies, a literature that examines the practices, institutions, and processes by which states and other polities represent themselves and their interests towards other international actors. Having consolidated itself as a subfield to international relations, the literature has identified a range of conceptual "diplomacies" relating to state-market relations, including typologies such as economic diplomacy, commercial diplomacy, business diplomacy, finance diplomacy, trade diplomacy, and corporate diplomacy, just to name a few.

While all relevant in their own right, none of them, however, exclusively encapsulates the diplomatic practices behind states' use of economic power (Berridge & James, 2003, p. 91). This also holds true for the widely used terminology of "economic diplomacy," which in recent decades has transformed from a mostly academic approach to the study of diplomatic actors and processes engaged in state-market affairs to also becoming a practical description of a specific branch of diplomatic work. As such, the terminology of economic diplomacy has been subject to a similar means-ends dispute as can be found in the literature on geoeconomics, i.e., whether it should be defined based on the economic means it

applies, the economic objectives it strives for, or governments' balancing of both (Okano-Heijmans, 2011). Contrary to the literature on geoeconomics, the prevalent use of economic diplomacy terminology has come to describe governments' diplomatic behaviour of supporting domestic businesses or national economic interests in foreign global markets or their diplomatic engagements in influencing trade negotiations and agreements (Woolcock, 2013). In other words, economic diplomacy has successfully described the economic agenda of diplomatic practice, particularly governments' role in supporting the creation of national wealth. But it has not proven sensitive to thoroughly describing the diplomatic behaviours, actors, and challenges that are special to cases where states seek to instrumentalise economic levers in the field of foreign and security policy (Lee & Hocking, 2018, pp. 4–5).

To fill this conceptual gap in the literature, and to have an analytical tool to critically reflect on the possible challenges dwelling underneath the EU's geoeconomic pivot, this article suggests the use of "geoeconomic diplomacy" as a conceptual lens that takes seriously the relational and actor-focused nature of diplomacy in geoeconomic analysis (Olsen, 2020). Understood here as the particular realm in which governments pursue the ability to employ national economic capabilities to realise specific geostrategic objectives in the conduct of their relationships with other international actors, it helps to focus our attention on the processual and relational dynamics that come into play when geoeconomic policies are to be converted into tangible action. The concept is thereby based on the assumption that the effective realisation of geoeconomic foreign and security policy instruments might be hampered by policymakers' lack of direct control over state-market relations. In the absence of such controls, it looks for the ability of government representatives to manage relationships with other state and non-state actors that might underpin or impede a government in realising a specific geoeconomic policy.

The concept intentionally does not draw any theoretical demarcation lines around what types of actions and practices are, a priori, to be defined as those of geoeconomic diplomacy, but remains open to the empirical study of the behaviour and processes that geoeconomic practitioners engage in. The conceptual inclusion of various governing actors as well as actors in the non-state and private spheres sets the study of geoeconomic diplomacy further apart from studies of economic *statecraft*, as it underlines a specific understanding of the geoeconomic field as inherently driven by multiple types of actors. In focusing on the practical ability of those who govern to leverage economic means of power through relationship-building at the level of diplomacy, the concept also relates to the study of virtuous individuals that have a prudence or practical wisdom for doing things well for the society they are embedded in (Goddard et al., 2019). In the case of geoeconomic diplomacy, this could include finding ways of influencing either technical civil servants or highly independent market actors, traditionally not embedded in processes of power politics, for supporting the instrumentalisation of economic levers for foreign and security policy purposes.

Applying the concept of geoeconomic diplomacy to the study of the EU's external policies, three aspects of how this article interprets the concept's use should be noted. First, the concept's broad definition allows one to analyse all types of diplomatic activities relevant to the geoeconomic field, be they intra-EU relationships between diplomats and civil servants from either EU institutions or member states and non-state and private sector actors, or extra-EU relationships formed between EU diplomatic practitioners and their external, third-state counterparts. As will be discussed below, this article will apply the former focus, scrutinising possible practical impediments in the geoeconomic field due to intra-EU relationships between various types of actors. By suggesting an analytical approach that allows one to reflect on the compatibility of various geoeconomic policy areas and instruments, the article thereby particularly complements existing literature on states' use and implementation of sanctions. Scholars have, for example, demonstrated the value of analysing the EU's use of sanctions, formed as part of the EU's Common Foreign and Security Policy (CFSP), jointly with other types of geoeconomic instruments at its disposal, such as the Generalised System of Preferences (GSP; Portela & Orbie, 2014). Others have argued that the rise of global interdependencies has enhanced international actors' potential use of the sanctions instrument into policy areas outside the classical politico-economic realm—such as climate change or international terrorism—and hence called for integrated analytical approaches to understand whether the breach of a specific international policy norm might be sanctioned or not (Fürrutter, 2019).

Second, while the definition of geoeconomic diplomacy holds as a premise that geoeconomic power is first and foremost related to the instrumentalisation of *national* wealth, this does not preclude the concept from being applied to analyse states' attempts to utilise their economic power resources jointly. In the EU context, such processes form part of the widely studied topic of joint EU foreign and security policymaking (Müller et al., 2021). But contrary to most of this vast literature, this article's focus is not on the conditions under which member states are able or not to reach joint foreign and security policy agreements. Rather, it asks how the level of diplomacy can help to ensure that cumulative economic power, once decided upon, is used in the most effective way.

Third, the article contributes to a broader discussion of the possibilities and limitations of geoeconomic policymaking when embedded in governance models of liberal market capitalism with significant degrees of state-market independence. As such, the analysis forms part of an intensifying academic discussion on the challenges that policymakers from the EU, US, and similar

proponents of state-market independence face in comparison with their counterparts operating in contexts of state-capitalism, such as in China and Russia where policymakers arguably have more opportunities to instrumentalise domestic market forces for geostrategic purposes (Gertz & Evers, 2020; Norris, 2016).

4. Implementation Challenges to the EU's "Geoeconomic Pivot"

This section applies the concept of geoeconomic diplomacy as a pathway for discussing the implementation challenges that could present themselves in the EU's pivot towards intensifying the use of economic levers in various aspects of its external relations. While not claiming to be an exhaustive review of every possible impediment, it offers brief analyses of three individual cases relevant to the EU's current efforts to revitalise well-known foreign and security policy instruments that all carry geoeconomic characteristics: economic sanctions, defensive trade instruments, and development assistance targeted at peace and stabilisation. It should be noted that these instruments only represent a small handful of the wide array of various EU geoeconomic policies that are currently subject to political discussions. Others include, inter alia, a recast of the EU's export controls regime for preventing the dual-use of goods and technologies for military and security-related purposes; new due diligence legislation that holds EU-based companies responsible for adherence to human rights and good governance in their entire value chain; a reform of the GSP that can be used to remove import duties from select developing countries; and a new screening mechanism for foreign direct investments that sets up minimum requirements for member states' screening obligations as well as a framework for information-sharing between them.

In acknowledging these alternatives, the article maintains its choice of the three cases below for demonstrating the value of analysing EU geoeconomic diplomacy. Firstly, the cases represent a broad array of instruments whose geoeconomic qualities are generally not recognised in an equal manner. While economic sanctions and defensive trade instruments—especially when framed in the terminology of "anti-coercion"—are readily understood as forming part of the EU's geoeconomic toolkit, the use of certain development funds might be seen as a less obvious geoeconomic case. However, as will be explained below, the analysis zooms in on a specific area of EU development funding that can be used to grant financial support to certain parties to political and/or armed conflicts, emphasising the relevance of geoeconomic considerations in specific areas of development policy. Secondly, the three instruments are decided on and implemented through different legal and practical models, each of which opens its own institutional and geographical decision and implementation space. Sanctions are unanimously decided in the Council of the EU, while the implementation authority is with member states. Trade policies are the exclusive responsibility of the Commission, which diminishes the role of member states in specific policy decisions, although the implementation of trade policies might often involve specialised agencies at the national level. Development policies are subject to a dual structure, where both EU institutions and individual member states, with varying degrees of alignment, implement their respective development programmes.

4.1. Sanctions: Improving the Enforcement of Restrictive Measures

In the first weeks of 2021, president von der Leyen's vision of creating a "geopolitical Commission" was further substantiated in a communiqué from the Commission to various EU institutions. Besides advocating for a stronger role of the euro in the international currency system and the strengthening of the structures underpinning Europe's financial markets, the priority area most directly linked to the EU's geoeconomic ambitions was the plan to further improve the implementation and enforcement of EU sanctions. Emphasising sanctions as playing "a critical role in upholding the EU's values and in projecting its influence internationally," the Commission explicitly acknowledged that the "implementation [of sanctions policies] is not as uniform across the EU as it ought to be" (European Commission, 2021a, pp. 15–16).

From the viewpoint of geoeconomic diplomacy, the communiqué could be understood as EU policymakers' first public acknowledgement of a critical point raised for years by both sanctions scholars and practitioners regarding the complexity of implementing restrictive measures on the ground: EU sanctions are, by design, subject to unique implementation challenges due to the large amount of state and non-state actors and structures involved at both the EU and the national level, which can lead to an uneven implementation practice across member states (Druláková & Přikryl, 2016; Portela, 2015). Even if the Commission, in its role as guardian of the treaties, is nominally responsible for monitoring the coherent implementation of the Council decisions and regulations that form the legal basis of the EU's sanctions, member states bear ultimate responsibility for sanctions compliance through national "competent authorities" appointed by each member state. Lists of national competent authorities often consist of a myriad of actors. Besides "traditional" diplomats from the ministries of foreign affairs, competent authorities include experts and civil servants from ministries of finance and economic affairs, national banks, law enforcement, custom authorities, and other specialised agencies. The enforcement of one of the EU's most popular CFSP instruments is thereby delegated to more than 180 competent national authorities and further subject to different national investigative and judicial systems across the 27 EU member states (Giumelli, 2020, p. 131). The EU's decentralised approach to sanctions implementation has

come at a cost for diplomats, who have had neither centralised enforcement capacities nor comprehensive databases or information sharing mechanisms to ensure an overview of suspected or verified sanctions violations across the EU.

The recent policy announcement presents plans to address some, but not all, of these deficiencies that have traditionally blocked diplomatic practitioners' ability to ensure coordination when putting EU sanctions into practice. First is the new Sanctions Information Exchange Repository, which is to serve as a joint knowledge base to track sanctions implementation in various member states. Second, a single Brussels-based contact point for cross-border issues—for example, in certain cases member states can grant national sanctions waivers for companies or NGOs filing for humanitarian exemptions that are then valid across the Union—as well as an EU-wide whistle-blower mechanism to detect sanctions violations. Third, there are plans to establish an expert group with representatives from member states and the EEAS, which are inter alia mandated to address issues related to the EU's so-called blocking statute, intended to protect EU entities against the extra-territorial effects of legislation from third countries. Finally, EU institutions are to strengthen their ad-hoc consultations with NGOs and civil society representatives in order to obtain their views on the potential humanitarian impacts of EU sanctions policies.

These promising announcements for bolstering capacities at the intra-EU actor-relational level notwithstanding, there is still an important omission, i.e., the failure to address the systemic integration of non-state actors into institutionalised processes of sanctions implementation. In other words, while geoeconomic diplomats and civil servants will experience new channels for mutual exchanges at the intra-EU level, outreach to non-state actors such as NGOs, businesses, interest organisations, and banks—often operating transnationally across numerous EU countries—runs the risk for remaining primarily at the level of member states. This ultimately impedes diplomatic practitioners' ability to ensure a "uniform" engagement with private and non-state actors relevant to sanctions implementation.

On the positive side, the communiqué emphasises plans for strengthening interlinkages between the sanctions' realm with the other geoeconomic instruments examined in this article. Not only does it underline the importance of actively ensuring that EU development assistance is used in full compliance with EU sanctions. It also explicitly articulates the intention for a revised approach for bringing sanctions enforcement in direct alignment with the EU's planned anti-coercion measures. While it remains to be seen how the comprehensive ambitions will play out in practice, the unequivocal mentioning of the links between sanctions with trade and development policies is a useful stepping stone for sanctions practitioners to engage in geoeconomic questions beyond their own silo.

4.2. Defensive Trade Measures: A New Anti-Coercion Instrument

A second recent policy announcement that underlines the EU's striving for a clearer geoeconomic profile is a new ACI designed to counter what EU policymakers have identified as third countries' increasing use of coercive trade and investment measures against the EU or individual member states. One recent example of such coercive practices was China's threat to impose tariffs on European car imports in retaliation for a German decision to ban "untrustworthy" vendors of 5G technology—including the Chinese company Huawei—from its market. Another was China's overt pressure on multinational companies to cut ties with or downgrade their business in Lithuania in the aftermath of Taiwan's opening of a representative office in Vilnius. By using an explicitly geoeconomic framing, trade commissioner Valdis Dombrovskis hence emphasised in March 2021 that the ACI is to be seen "as part of our new EU trade policy approach, [where] we have committed to being more assertive in defending our interests" (European Commission, 2021d). If economic adversaries such as China and Russia are not countered, the Commission argued, their coercive use of financial and economic instruments would continue "to compromise the economic and geopolitical interests of the EU and its members" (European Commission, 2021b, p. 2).

The Commission's proposal for a new ACI was presented in December 2021 (European Commission, 2021c). Just as it had been advocated by observers during the initial public consultation process (Hackenbroich & Zerka, 2021), the Commission's proposed ACI toolbox includes a wide range of measures. Besides restrictions on trade, foreign direct investments, and access to EU capital markets, it also aims at the use of tariffs and the exclusion of third parties from EU services and programs. Although the ACI proposal has yet to be negotiated with the Council and the European Parliament, it already seems clear that many of the proposed components are technically reminiscent of existing EU defensive trade measures targeted at protecting the competitiveness of EU industries. Understanding such measures as a means of EU geoeconomic leverage might, at the outset, be less obvious than the example of CFSP sanctions. Nevertheless, the quality of defensive trade measures as relevant to the geoeconomic realm comes to light when acknowledging that any protection of a domestic market against foreign involvement might imply a loss of export or investment opportunities for a competitor state (Baldwin, 1985, pp. 46–50). This is particularly true when protective measures are targeted at geostrategic rivals, which happens to be the case in the bulk of the EU's pending investigations of illegal dumping and subsidised imports, for which most companies under suspicion are from China (28), India (seven), and Russia (four).

With the new ACI, EU trade practices will be further embedded in the logic of economic power politics.

Analysed from the viewpoint of geoeconomic diplomacy, a key question about the ability of EU practitioners to implement the ACI effectively will be defined by the practical cooperation between the Commission and the Council in unchartered waters. Whereas the Commission holds exclusive institutional responsibility for the EU's Common Commercial Policy (CCP), the Council is responsible for CFSP matters. And while the Commission's trade practices are technically aligned with the EU's principles for external action enshrined in the Treaty on European Union's articles 21(1) and 21(2) (Ott & Van der Loo, 2018), and member states have historically been able to influence the Commission in trade negotiations (da Conceição, 2010; Gstöhl & De Bièvre, 2018), the Commission's Directorate General for Trade holds a large degree of operational autonomy in trade-related matters. In its proposal for the new ACI, the Commission explicitly seeks to maintain this vital role as it suggests that ACI measures will also be enforced as part of the CCP and hence via the EU's comitology procedures. Complex in nature, this framework would de facto leave it to the Commission to initiate so-called implemented acts and delegated acts designed to target third-party actors deemed to be involved in coercive behaviour against the EU. Member states would ultimately confirm or reject the proposed measures via qualified majority voting.

If maintained, this decision-making procedure would stand in stark contrast to the use of CFSP sanctions, dependent on a unanimous vote in the Council. The new ACI thereby has the potential to rupture established competencies and responsibilities between the Commission, the EEAS, and member states (Verellen, 2021). As such, diplomats from the foreign and security policy realm will grow even more dependent on receiving and understanding timely and comprehensive information from private European actors about allegedly coercive trade practices conducted by third parties. So far, the collection of economic intelligence about dumping activities and potentially illegal foreign investments has largely depended on the lobbying by European companies and business interest groups, mainly targeted at EU trade practitioners (De Bièvre & Eckhardt, 2011). In order to realise the political ambition behind the ACI, which is essentially aimed at creating a stronger linkage between the EU's trade relations and its CFSP policies, various practitioners who have generally been working in very different political contexts will not only need to engage in discussions around decision-making procedures, but also widen their mutual understanding of the subject matter. Identifying an unfair business practice is one thing; agreeing on whether a given behaviour by a foreign state or state-influenced company amounts to a coercive attack that threatens wider EU interests is another. These difficulties notwithstanding, the new ACI has the potential to help bring the geoeconomic realms of sanctions and trade policies, and the respective practitioners implementing them, closer together.

4.3. Development Assistance: A More Targeted Use of EU Funds for Peace and Stabilisation

Collectively forming the world's largest donor of development assistance, EU institutions and member states have recently underscored their ambitions for using development funds to achieve geoeconomic ends. This ambition is, to some degree, reflected in the set-up of the EU's new comprehensive development instrument, NDICI, which was ultimately endorsed by the Council and the European Parliament in March 2021. With a total worth €79.5 billion financed as part of the EU's Multiannual Financial Framework (MFF) for 2021–2027, a prominent objective of NDICI relates to EU engagements in the thematic area of peace and stabilisation (Regulation 2021/947 of the European Parliament and of the Council of 9 June 2021, 2021) with a total budget of €4.09 billion. Although it is difficult to directly compare the integrated NDICI approach to the previous stand-alone EU "Instrument contributing to Stability and Peace," financed under the MFF for 2014–2020 with a total budget of €2.34 billion and applied in more than 75 countries, it seems fair to suggest that peace and stabilisation-related activities will not receive less attention in the NDICI framework.

As is the case with EU trade measures, EU development assistance is not formally integrated into the CFSP framework, though it is bound to follow the principles for external action as listed in the Treaty on European Union's articles 21(1) and 21(2) (Broberg, 2018, p. 261). In practical terms, however, peace and stabilisation funds can be distinguished from general development assistance in that they are often used to support CFSP priorities, for example, through the provision of financial assistance for governments, groups, or individuals that share EU interests in the context of crisis or conflict. Observers have hence argued that peace and stabilisation assistance can play a role as "a jurisdictional bridge-builder between the development and security policy areas" (Furness & Gänzle, 2016, p. 150), further manifesting its relevance in the geoeconomic realm.

From the viewpoint of geoeconomic diplomacy, a number of impediments prevent EU practitioners from building bridges between EU development assistance and its foreign and security policy objectives. One aspect of this is the coordination of various levers. Even though it is a key ambition of the NDICI to streamline the use of peace and stabilisation assistance with other types of EU development engagements, a myriad of geoeconomically relevant economic assistance instruments has also been fostered beyond the NDICI framework. One example is the recent creation of a "European Peace Facility" (EPF). Financed outside the MFF, and hence in addition to NDICI, with a €5 billion budget for 2021–2027, the EPF is a financial instrument for providing stabilisation measures in relation to EU Common Security and Defence Policy (CSDP) missions. While not a tool of development assistance, the EPF can be seen as an

additional instrument in the EU's geoeconomic toolbox, and thus another one that geoeconomic practitioners need to coordinate. A similar example is the coexistence of member states' bilateral peace and stabilisation programmes, which collectively outperform the EU's own instruments in financial scope (Rotmann et al., 2021). For example, the German Federal Foreign Office's budget for crisis prevention and stabilisation for 2021 was €434 million, i.e., more than is annually allocated under the EU-wide NDICI.

Since member states will continue to act as independent donors in their own right, practitioners are challenged to monitor the degree to which European-funded peace and stabilisation activities are implemented in different, and sometimes mutually contradictory, manners. EU development finance institutions and member states have for decades declared their commitment to ensuring coordination by using various mechanisms ranging from traditional inter-service consultations between various Commission directorates-general to the recently launched "Team Europe Initiatives," which were created to align initiatives and messaging on the use of EU development funding. However, such alignment attempts can be particularly challenging in the often politically sensitive interface between development cooperation and foreign and security policy. For example, a recent independent evaluation of the EU's support to conflict prevention and peacebuilding concluded that "on the ground" coordination between EU institutions, member states, and other international actors had been characterised by substantial difficulties (Ball et al., 2020, p. 28). Discords of this nature ultimately hamper the effectiveness of the geoeconomic leverage to which the EU aspires.

Another aspect that could impede the EU's geoeconomic leverage, and which EU institutions and member states are only becoming more aware of, lies in situations where peace and stabilisation assistance and sanctions are used in the same country context. Potential conflicts between the two instruments might be easier to solve on paper than on the ground: First, accountability for funds spent through development projects and compliance with EU sanctions policies can be difficult to monitor. This is because the implementation of peace and stabilisation projects often relies on diplomats' cooperation with complex networks of international organisations, NGOs, private consultants, and for-profit implementers, as well as local state or non-state actors. The challenges are particularly high in contexts where diplomats and development specialists do not have physical access to the actors and geographical areas receiving the assistance. Second is the well-known problem of sanctions' blocking of aid delivery, which remains a highly relevant yet unresolved issue. With its explicit commitment to ensuring the proper inclusion of humanitarian exemptions in EU sanctions regimes, and to consulting humanitarian actors, the Commission seeks to address a long-standing tension between the use of humanitarian and development funds and sanctions. Examples of such challenges have, inter alia, been visible in the context of Syria, either when EU-sanctioned individuals allegedly benefitted from EU-funded development activities (Haid, 2019), or when the implementation of targeted development and humanitarian aid would be impeded by EU sanctions stipulations (Moret, 2015). If practitioners of geoeconomic diplomacy are to understand and mitigate such risks, it will be necessary to strengthen relations between development-focused actors and those intrinsically engaged in CFSP deliberations, particularly when it comes to ensuring that various geoeconomic instruments are not implemented in a contradictory manner.

5. Conclusions: Managing Expectations of EU Economic Power Policies

This article has called for the need to critically assess the practical implementation challenges that could hamper the realisation of current aspirations among EU policymakers for a pivot towards a stronger and more efficient use of geoeconomics in their foreign and security policies. To this end, it has argued for the need to analyse different geoeconomic instruments based on their shared contextual circumstances, namely as policy tools situated at the intersection between the spheres of states and markets.

Acknowledging that geoeconomic instruments often share crucial and interlinked challenges at the level of practical implementation, this article has applied the concept of geoeconomic diplomacy to move our analytical attention from the level of policy objectives to the everyday dynamics essential for translating a geoeconomic policy ambition into tangible foreign and security policy practices in the state-market realm. Through an analysis of the possible implementation challenges related to various recent geoeconomic policy reforms at the EU level, the article has also used the concept of geoeconomic diplomacy to discuss how "traditional" diplomatic practitioners, operating in the logic of foreign and security policy, will only be further pushed to engage with myriad state and private actors playing key roles in the state-market realm. However, these actors will often operate far from the political and institutional logics of foreign and security policy, a feature that challenges geoeconomic diplomats to engage in new forms of outreach and alliance-building.

Furthermore, this analysis has pointed to various examples of where the intensifying EU posture in the geoeconomic field could lead to more frequent interplays and possible frictions between different types of (diplomatic) practitioners implementing various EU geoeconomic instruments. One example could evolve from plans for the EU's new ACI, which in all likelihood would enhance the institutional encounters between foreign policy-oriented sanctions practitioners and those engaged in the trade realm. Another example could arise out of the EU's sustained application of peace and

stabilisation development funds in conflict areas, especially in cases where EU sanctions and development funds are applied in the same context. In these situations, the implementation of development projects could be negatively impacted by the imposed sanctions regime or create conditions for circumventing the EU's own attempts to deprive its geostrategic adversaries of economic gain. In any of these cases, the risks of "silo thinking" and communication deficiencies between diplomatic practitioners engaged with different aspects of the EU's geoeconomic agenda would have to be mitigated.

EU institutions' intensifying focus on addressing concrete implementation challenges related to the use of sanctions should therefore be seen as a welcomed reorientation towards improving the framework conditions for a joint engine room of EU geoeconomic diplomacy and foreign and security policymaking. That being said, this isolated step must be the first of several towards a more comprehensive process to further align EU geoeconomic instruments. Until then, the expectations of those eyeing a bright geoeconomic future for the EU will have to be managed by emphasising that the coherent and efficient application of the EU's potential geoeconomic capabilities will largely depend on the establishment and maintenance of relational attitudes and contacts at the level of diplomatic practitioners, both those inside and outside the traditional circles of foreign and security policymaking.

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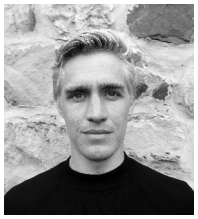
About the Author



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Article

Does the EU Have Moral Authority? A Communicative Action Perspective on Sanctions

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Abstract
The European Union (EU) states in its 2016 Global Strategy that it intends to be a "responsible global stakeholder" and to "act worldwide to address the core causes of war and poverty, as well as to promote the indivisibility and universality of human rights" (European Union Global Strategy, 2016, pp. 5–8, 18). However, the Global Strategy is silent on the credentials or prerequisites that give the EU the authority to act globally and address conflicts and violations of human rights, including through the use of sanctions against non-EU states. How far the EU has the authority to use sanctions, which are essentially coercive measures, is especially relevant when the EU resorts to unilateral sanctions based on obligations owed *erga omnes*, namely measures without explicit United Nations Security Council authorisation and based on obligations owed to the international community as a whole. Drawing on Habermas's theory of communicative action, this article introduces an analytical framework—the "moral dimension" of EU authority—which maps the substantive and procedural standards to guide the assessment of whether the EU has the appropriate credentials to qualify as an authority with the right to intervene forcibly into the internal affairs of non-EU states. The analytical value of the framework is examined empirically in the case study of the EU's restrictive measures (sanctions) imposed in response to state violence against anti-government protests in Uzbekistan in 2005.

Keywords
deliberative legitimacy; European Union; foreign policy; Habermas; sanctions; theory of communicative action

Issue
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1. Introduction

This article aims to examine how far the European Union (EU) has the authority to resort to unilateral sanctions against non-EU states (third countries) and, if so, based on which standards.

The 2016 Global Strategy for the European Union's Foreign and Security Policy outlines that a "fragile world calls for a more confident and responsible" EU, promising to become a "responsible global stakeholder" and to "act globally to address the root causes of conflict and poverty, and to champion the indivisibility and universality of human rights" (European Union Global Strategy, 2016, pp. 5–8).

The Global Strategy acknowledges the EU's growing international obligations but does not elaborate on the credentials or prerequisites which entitle the EU with the authority to act globally to address conflict and human rights violations, including the use of coercive measures, such as sanctions (restrictive measures). Whether and how far the EU has the authority to impose sanctions are especially relevant questions when the EU resorts to such measures against third countries without explicit United Nations Security Council authorisation. So far, all of the EU's military operations have received prior authorisation by the United Nations Security Council. However, the EU increasingly demonstrates its readiness to act without UN authorisation, especially in pursuit of humanitarian goals. Over the past decades, the EU has resorted to unilateral sanctions against third countries found in violation of international law or guilty of serious human rights violations against their own citizens.

While sanctions cannot be equated with the use of force, they are considered a "foreign policy instrument closest to the use of force" (Giumelli et al., 2021, p. 5). And, as it lacks its own military force, the EU predominantly uses sanctions to live up to its role as a responsible global stakeholder.

While the EU, as an international organisation (IO), has the power under general international law to adopt countermeasures (sanctions) to react to "international wrongful acts that injure it directly" (Tzanakopoulos, 2015, p. 148), most EU sanctions have been imposed in response to serious human rights violations in third countries. This is one of the most problematic types of sanctions, since the EU has not been directly injured by an internationally wrongful act, but rather acts in the general interest of the international community. The legality of these sanctions in the general interest remains a matter of significant controversy (Biersteker & Portela, 2015, p. 2; Sicilianos, 2002; Tams, 2005). In its Global Strategy, the EU has also explicitly committed itself to "promote the responsibility to protect" (European Union Global Strategy, 2016, p. 42), through which the EU (potentially) assumes the right and authority to use coercive measures, such as sanctions, in case of supreme human rights emergencies. In light of these developments, it appears all the more pertinent to enquire into the sources of the EU's authority to resort to unilateral sanctions against third countries.

Therefore, the main question guiding this article is: What are the sources of the EU's authority to resort to unilateral sanctions against non-EU states? And based on which standards may such measures be justified?

To date, only a few scholarly works have engaged with the question of the EU's authority to resort to unilateral coercive measures such as sanctions, and in particular "countermeasures in the general interest"—that is, measures in reaction to violations of obligations *erga omnes* (obligations owed to the international community as a whole). An enquiry into the EU's authority to use coercive actions against third countries is also relevant in the wider context of ongoing scholarly discussions about the moral responsibilities of states, IOs, and non-state actors to intervene in human rights emergencies when a UN authorisation is prevented due to power politics among the veto players in the Security Council (e.g., Brown, 2004; Erskine, 2004, 2014). In some of these discussions, the EU is often viewed as a likely candidate to assume such responsibilities because societies that are "evolving in post-national and post-sovereign directions may have…the skills that are needed to build tolerant societies elsewhere" and "promoting more humane forms of national and global governance" (Linklater, 2007, p. 78).

The article is structured as follows: In Section 2, the article reviews the literature to examine how far current scholarship has engaged with the EU's authority to resort to unilateral sanctions against third countries and point to a number of research gaps. In Section 3, the article introduces the theoretical framework, the "moral dimension" of EU authority, to analyse the moral and ethical sources of the EU's authority to resort to unilateral sanctions and standards that justify such measures. Drawing on Habermas's theory of communicative action (1987/2006), the framework maps two standards, the substantive commitment to ethical and moral reason and the procedural commitment to discourse ethics, which help to assess whether the EU has the appropriate credentials to qualify it as a moral authority allowing it to unilaterally use coercive actions such as sanctions against sovereign non-EU states. In Section 4, I will assess the analytical value of conceptualising the moral dimension of EU authority in the context of an illustrative case study, probing into the EU's authority with regards to its decision to impose, and subsequent decision not to prolong, the unilateral sanctions against the government of Uzbekistan, in reaction to the massacre of civilians in the Uzbek town of Andijon following anti-government protests in May 2005.

2. EU Coercive Measures Against Third Countries: State of the Art

An academic exchange on whether the EU possesses the moral authority to resort to unilateral coercive measures such as sanctions against non-EU states—and, if so, based on which standards—has yet to take place. Much debate has centred on the properties of the EU as a normative power: How far norms adequately describe "who the EU is" (Forsberg, 2011; Manners, 2002), and whether normative power adequately describes key characteristics of EU foreign policy and the promotion of norms (Hyde-Price, 2006; Lucarelli & Menotti, 2006; Tocci, 2008). An implicit and largely unquestioned assumption of these debates is that the EU has the *inherent* moral authority as a normative power to act upon its principles, including the possibility of using coercive actions, such as sanctions or military force, in the pursuit of normative goals. Yet, while the EU certainly possesses qualities of normative power as an international actor (e.g., Manners, 2006), a significant body of literature demonstrates that EU foreign policy is often based on the EU's own economic and geopolitical interests and the particularistic interests of its member states (e.g., Bosse, 2012; Ghazaryan, 2014; Pace, 2009), and that its normative role is increasingly contested in a transitional international order (e.g., Badescu, 2014; Newman, 2013; Newman & Stefan, 2020), thereby calling into question the EU's intrinsic credentials as a legitimate authority to resort to unilateral coercive measures against third countries. Moreover, general international law remains ambiguous on the question of whether an IO, like the EU, can actually invoke international responsibility for the breach of a so-called *erga omnes* obligation, that is, an obligation in the general interest of the international community as a whole, as this obligation may only apply to states (Tzanakopoulos, 2013, 2015, pp. 156–157).

Among the few scholarly works that do address the standards based on which the EU can assume the authority to act globally are those that examine the EU's sources of authority based on legal criteria, through the prism of EU law and the international legal order (e.g., Schmidt, 2020), or pre-defined sets of principles pertaining to community-based duties, rules, and outcomes/consequences that could serve as guidelines for a responsible role of the EU in global affairs (e.g., Mayer, 2008; Mayer & Vogt, 2006).

The focus on legal rules, community-based duties, and consequentialist ethics provides key benchmarks for analysing the EU's authority to use sanctions against sovereign non-EU states unilaterally. However, the current literature misses two crucial aspects for determining the EU's authority: The first omission relates to the substance of the EU's authority. The current literature predominantly links sources of authority to ethical responsibilities towards fellow citizens, which can only arise from being part of an (artificial) political/legal community (cf. Mayer, 2008). As such, scholarly works operate with the assumption that the EU *only* resorts to countermeasures such as sanctions in cases where the EU itself is *individually* injured by a breach of international law committed by a third country or instances of intra-EU sanctions. What is missing is an account of sources of moral authority, which considers that international actors (states or IOs) may act out of a sense of collectively agreed upon duty towards fellow human beings, a duty that is not conditional upon the values held by any particular community. These sources of authority are of immediate relevance to unilateral sanctions imposed in response to serious human rights violations, which constitute the majority of coercive measures taken by the EU so far. These sanctions are so-called "countermeasures in the general interest" based on obligations owed *erga omnes*, that is, to the international community as a whole. Considering that the legality of such measures remains a matter of significant controversy in general international law (Dawidowicz, 2017; Sicilianos, 2002; Tams, 2005), the lack of focus on the standards that may authorise the EU to resort to such measures is a critical oversight.

The second omission pertains to *how* the EU arrives at a judgement or decision on unilateral sanctions against third countries. Restrictive measures (sanctions) are a core tool of the EU's Common Foreign and Security Policy (CFSP), where strategic bargaining in pursuit of the member states' interests is considered the primary mode of decision-making (e.g., Dyson & Konstadinides, 2013). However, decisions pertaining to ethical and moral questions—such as whether it is "right," "good," or justified for the EU to take unilateral coercive measures, especially with regards to the legally ambiguous and controversial obligations owed *erga omnes*—can hardly be reached through bargaining. In strategic bargaining, member states' economic and (geo-)political interests most likely overpower any deliberation on the "general interest" of the international community. However, a growing number of scholars have demonstrated that deliberation and argument do play a significant role in CFSP, including decisions on EU sanctions, which are often "pre-cooked" in deliberative CFSP committees (e.g., Breuer, 2012; Kurowska & Kratochwil, 2012; Tonra, 2015). Committee discussions often include the Commission, which also prepares proposals for regulations on sanctions for adoption by the Council of the EU. In other words, the mode of decision-making at the EU level is critical with regards to the authority of the EU to resort to coercive measures such as sanctions against third countries, considering that a decision based on bargaining always represents particularistic member state interests (or a lowest common denominator) rather than a decision in the "general interest" of the international community.

Therefore, a critical source of the EU's moral authority to resort to unilateral sanctions against third countries pertains to the decision-making processes and whether due deliberation (rather than strategic bargaining) has prevailed in the search for the final decision on resorting to such coercive measures. Put differently, a theoretical framework is required that is able to determine whether the EU's decisions to resort to unilateral sanctions against non-EU states are primarily driven by deliberation geared towards acting in the general interest of the international community (cf. Barnett & Finnemore, 2005, pp. 172–173) or by the strategic cost-benefit calculations of EU member states. Habermas's theory of communicative action offers a valuable analytical point of departure to address this problem.

3. Sources and Standards of EU Authority: A Communicative Action Perspective

Although Habermas' theory of communicative action (1987/2006) was introduced to the discipline of international relations over a decade ago (Risse, 2000) and has even found application in studies on the legitimate use of force (e.g., Bjola, 2005), it has so far not been operationalised in the context of EU decisions pertaining to coercive measures such as sanctions, in order to define standards of EU moral authority.

Moral authority here is defined as a source of authority from which IOs, such as the EU, derive the legitimacy and ability to act. According to Barnett and Finnemore (2005, p. 172–173), IOs are "created to embody, serve or protect some widely shared set of principles" of the international community and "supposed to be more moral (ergo more authoritative) in battles with governments because they represent the community against self-seekers."

In my work on a critical theory perspective on EU normative performance (Bosse, 2017), I identified that two aspects of Habermas's work in particular are relevant for defining the standards of EU moral authority with regards to resorting to unilateral coercive measures.

First, Habermas offers a comprehensive definition of ethical and moral sources of authority, differentiating between ethical reason (what is good for us as a community?) and moral reason (what is good for all involved?). This distinction helps to conceptualise the standards, or justifications, for resorting to unilateral sanctions that go beyond the obligations arising from injuries incurred by the EU (individually) as a community, but also obligations owed *erga omnes*—that is, to the international community as a whole. And second, Habermas elaborates a set of ideal-type procedural standards for taking legitimate decisions pertaining to the use of coercive measures (the *responsibility* of decision-makers to commit to the search for the "better argument"). These ideal-type procedural standards pertain to the notion of deliberative legitimacy. Deliberative legitimacy is understood as the "non-coerced commitment of an actor to obey a norm adopted based on criteria and rules reached through a process of communicative action" (Bjola, 2005, p. 279), based on which the points of contention between actors' justifications to use coercive measures can be ascertained and validated.

The following section explains each aspect of Habermas' work and, drawing on my earlier writings on EU normative performance, develops the parameters of the moral dimension of the EU's authority to resort to unilateral sanctions against third countries.

3.1. Ethical and Moral Reason as Sources of Authority

Habermas offers definitions of normative principles and sources of moral authority which transcend the narrow perspective of any particular individual or group. He differentiates between authority based on *ethical* reason and authority based on *moral* reason (Habermas, 1993, p. 2). Both types of reason operationalise different sources of authority.

According to Habermas, *ethical reason* recognises that actors act on the basis of social identities, including a particular conception of "us" and the values represented by a specific community (Habermas, 1993, pp. 11–12). Ethical obligations are "rooted in bonds of a pre-existing community, typically in family ties" (Habermas, 2015, p. 22). Habermas accepts that ethical obligations presuppose "political contexts of life, hence contexts that are legally organised" (Habermas, 2015, p. 24). Yet, he distances himself from the notion of "national solidarity" (responsibilities towards fellow-nationals and national community). For Habermas, "robust" ethical responsibilities towards fellow citizens can only arise from being part of an (artificial) political/legal community (civic solidarity) rather than from "organically" evolved nationhood (Habermas, 2015). The EU may thus justify its response to violent oppression and conflict in a country in its Eastern neighbourhood based on responsibilities toward members of the *organic* community of fellow *Europeans* or *European* countries, or fellow members of the (European) liberal democratic community.

Moral reason recognises that actors act on the basis of a (collectively agreed upon) duty towards fellow human beings, which operates independently of the values held by any particular community (Habermas, 1993, pp. 12–14). This type of reason relates to moral claims and duties arising from common human nature and responsibilities arising from our shared humanity (Habermas, 1993, pp. 68–69). According to Habermas (2015, p. 23), "moral commands should be obeyed out of respect for the underlying norm itself" (they have "categorical" force) without regard to the future compliance of other persons. Two main "duties" arise in the international arena: the duty not to engage in wars of aggression and not to commit crimes against humanity (responsibilities of sovereign states/passive responsibility). At the same time, Habermas foresees a *collective responsibility* of the international community to prevent war and enforce human rights (active responsibility). With regards to the standards for legitimate intervention and the authority to use coercive measures, Habermas prioritises that any form of intervention is legitimised by international courts or by a political decision of the United Nations (Security Council). However, unilateral coercive measures can also be regarded as legitimate through the tacit authorisation of the society of a world citizen's community, in "anticipation of the cosmopolitan order to come" (Habermas, 2015, p. 24). The EU may thus justify coercive measures against a third country with reference to the country's obligations as a sovereign state or with reference to obligations owed *erga omnes* to the international community as a whole.

From the discussion above, we can identify two main standards which lend the EU the moral authority to resort to unilateral sanctions against third countries: The EU commits not only to *ethical reason* (responsibilities for and between fellow Europeans or European civic/political community) but also *moral reason* (responsibilities for and between human beings in a global society) to justify such coercive measures.

3.2. Authority Through Deliberative Legitimacy

The standards for the authority of the EU to use unilateral sanctions against third countries can, however, not solely be derived from how the EU itself justifies such interventions. The EU's official rhetoric provides important clues on how the EU justifies such coercive measures vis-à-vis third countries, the wider international community, and towards EU citizens. But it reveals little about how the EU arrives at decisions to use unilateral sanctions, namely whether the actors involved in the decision-making process have tried to reach a "reasoned consensus" on the need for coercive measures, or whether such decisions were pushed by member states advocating the use of coercive measures which "just engage in power games" with no "visible intention to achieve argumentative consensus" on the intervention (Bjola, 2005, pp. 279–280).

The concept of deliberative legitimacy is key to addressing this question.

According to Habermas, the processes pertaining to decisions on ethical and moral questions—whether it is "right," "good," or justified for the EU to resort to unilateral coercive measures against a third country—must be arrived at through dialogue and argumentation in a process of communicative action. To eventually agree on "the better argument," all parties involved must be able to present, justify, and defend their specific claims on "what is right." A vital prerequisite for such communication is that participants act (and recognise each other) as "persons capable of taking responsibility for their actions" (Habermas, 1993, p. 66). In other words, participants in decision-making processes share responsibility for committing to and ensuring a fair decision-making process. Habermas argues that the ideal speech situation, that is, the *ideal* process of fair communication, depends on three main standards (cf. Habermas, 2006, p. 185; see also Bjola, 2005, p. 280; Bosse, 2017; Head, 2008) which must be met for deliberative legitimacy to be achieved:

- Prior argumentation: Decisions on using coercive measures must be derived on the basis of truthful and complete facts, drawing on the best evidence and most compelling arguments available. Decisions are only accepted if they are justified.
- Inclusive processes: The communication and decision-making allow for the participation of all affected parties, who should have equal rights with regards to making or challenging an argument. Power games or coercion should not obstruct the deliberations.
- Genuine interest: Participating actors must display a genuine interest in argumentative reasoning and in finding a consensus (the "better argument") with regards to the use of coercive measures. Actors must be denied opportunities to resort to strategic manipulation or deception.

In Sections 3.1 and 3.2 above, the article outlined the main sources of and standards for the EU's moral authority to resort to unilateral coercive measures such as sanctions against non-EU states. The sources of the EU's authority pertain to the EU's justifications for resorting to unilateral coercive measures (*invoking and acting upon ethical and specifically moral responsibility*). In addition, three main standards for EU moral authority were outlined, based on the concept of deliberative legitimacy, which is applied to decision-making processes on EU coercive measures (*recognising and acting upon the responsibility to agree on the better argument*). The EU can only be considered to have the moral authority if it justifies sanctions based on ethical or moral reason and provided that all three standards of deliberative legitimacy are met. A form of *partial* authority can be considered if the first two standards are met because decisions on coercive measures are derived on the basis of facts and as complete evidence as possible, and from inclusive argumentation free from power games and coercion (cf. Bjola, 2005, p. 281).

3.3. Case Study

The analytical value of the standards of moral authority presented above will be assessed empirically in an illustrative case study of the EU's decision to use unilateral coercive measures in response to the massacre of civilians in the Uzbek town of Andijon following anti-government protests in May 2005. The case study is relevant because it is the first unilateral sanction regime imposed by the EU after the Council adopted the Basic Principles on the Use of Restrictive Measures (Sanctions) in 2004. The Basic Principles outline, for the first time, the EU's main principles guiding the imposition of sanctions by the EU in the absence of a UN Security Council mandate, including to "uphold respect for Human Rights, democracy, the rule of law and good governance" (Council of the European Union, 2004). The EU's decisions to impose, and subsequently lift, the sanctions against Uzbekistan mark the beginning of the EU's formal commitment to and systematic use of unilateral coercive measures based on a set of clearly defined principles. The Uzbekistan case is, therefore, a logical starting point for examining the EU's authority to impose unilateral coercive measures, opening a research line, and providing the theoretical framework for future comparative case studies analysing EU moral authority in the context of unilateral sanctions that the EU has imposed since it intervened in Uzbekistan. The case serves as a benchmark for the EU's capacity to learn and adjust decision-making on sanctions over time in view of meeting the relevant standards of authority. How far such adaptations have been made over the past decade is assessed in the concluding section. Finding data to conduct an analysis on the EU's sources and standards of moral authority is very demanding. The case study, therefore, draws on a variety of data sources which are triangulated to increase the validity of the findings (Flick, 2018), including primary data (EU official documents and 15 semi-structured interviews with EU officials and member state diplomats in Brussels conducted in 2006 and 2009), and secondary data (think tank reports and international news outlets).

4. The EU's Response to the Uzbek Government's Brutal Crackdown on Opposition Protests in 2005

On May 13, 2005, thousands of unarmed protesters took to the streets in Andijon, Uzbekistan, to demonstrate against poverty and government repression. Later that day, troops associated with the Uzbek government forces fired into a crowd, killing between 200 and 1,000 people. The EU reacted to the Andijon massacre by imposing unilateral coercive measures in November

2005, including an arms embargo on the Uzbek regime and a visa ban on top Uzbek government officials directly responsible for the excessive, disproportionate, and indiscriminate use of force by Uzbek security forces in Andijan. In 2009, the EU decided not to prolong the sanctions against the Uzbek regime.

4.1. Ethical and Moral Reason as Sources of EU Authority

In the conclusions of its Council in November 2005, the EU justified its decision on the imposition of sanctions against the Uzbek regime, stating that it "deeply regrets the appalling loss of life and expresses its sympathy to the people, who have suffered as a consequence of violence" (Council Common Position 2005/792/CFSP of 14 November 2005, 2005, p. 15). The Council further detailed that it "strongly condemns the reported excessive, disproportionate and indiscriminate use of force by the Uzbek security forces and calls upon the Uzbek authorities to act with restraint in order to avoid further loss of life." (Council Common Position 2005/792/CFSP of 14 November 2005, 2005, p. 15). Further, the Council stated that it "calls upon the Uzbek authorities to respect their international commitments to democracy, the rule of law and human rights" and "recalls, in particular, the commitments and the existing mechanisms in the framework of the EU-Uzbekistan Partnership and Cooperation Agreement and in the OSCE [Organisation for Security and Cooperation in Europe]" and that it "urges the Uzbek authorities to carry out domestic reforms, which are essential for the social and economic development and the achievement of democracy and stability in the country" (Council Common Position 2005/792/CFSP of 14 November 2005, 2005, p. 15).

The EU thus justified the unilateral sanctions against Uzbekistan partly for moral and partly for ethical reasons. It highlighted the moral failure of the Uzbek government to protect human rights by deploring the excessive use of force by the government against civilians. Moreover, the EU explicitly expressed its "sympathy" to the Uzbek people and their suffering (Council Common Position 2005/792/CFSP of 14 November 2005, 2005, p. 15), which demonstrates that the EU recognised or at least implied that the Andijon massacre was a concern for the EU by virtue of its shared humanity with those who have experienced violence (moral obligations owed *erga omnes*). Yet, this recognition did not prompt the EU to spell out any specific duties or responsibilities vis-à-vis the Uzbek people. Rather, the statement focused on the EU's strong condemnation of the Uzbek government. The EU also projected duties on the Uzbek government pertaining to its (failed) obligations as a liberal democratic state (e.g., obligations to achieve democracy and to reform flowing from legal agreements with the EU and OSCE commitments). This implies that the EU implicitly recognised a shared ethical responsibility based on the assumption that Uzbekistan ought to adhere to the same standards as those countries comprising the European civic/political community.

4.2. Deliberative Legitimacy as a Standard of EU Moral Authority

Initially, EU member states were not able to find a consensus on the imposition of coercive measures (sanctions) against the Uzbek regime. On June 13, 2005, EU foreign ministers deplored that the Uzbek government had failed to accept an international investigation into the Andijon events. The EU reiterated its intention to partially suspend the Partnership and Cooperation Agreement should the Uzbek regime fail to meet the deadline to reconsider its position by the end of June 2005. However, when it became clear that the Uzbek regime continued to refuse to allow an international investigation and when repressions against civil society increased even further, the EU did not suspend the Partnership and Cooperation Agreement and therefore failed to act on its earlier threat. Instead, the EU foreign ministers meeting on July 18 only decided to dispatch the EU's Special Representative for Central Asia to the region "as soon as possible" (Human Rights Watch, 2005; Leicht, 2005).

It took until November 2005 for the EU member states to reach a decision on the imposition of an arms embargo and restrictive measures (visa bans) against top Uzbek officials responsible for the excessive, disproportionate, and indiscriminate use of force by Uzbek security forces in Andijan in May 2005. The member states were under considerable pressure from human rights groups and domestic publics to find a consensus on sanctions against the Uzbek regime. Advocates of the sanctions, such as the UK government holding the EU presidency at the time, engaged in prior argumentation, drawing on the best evidence and most compelling arguments available. The UK government justified the imposition of sanctions based on reports prepared by Human Rights Watch, Amnesty International, and the OSCE. All available evidence, including personal accounts of Uzbek refugees who had fled following the violent crackdown (OSCE, 2005, p. 8), confirmed that the Uzbek security forces had indeed used "excessive, disproportionate and indiscriminate" force during the Andijon crackdown.

During the negotiations among the member states, the UK government not only presented the best evidence available from a wider range of sources but also allowed for an inclusive process. Among others, human rights NGOs and experts from think tanks and academia were invited to present statements and reports during the negotiations, and several member states also put pressure on the German government to refrain from insisting on its national strategic interests (interviews with EU officials and human rights NGOs in Brussels, 2006). At the time, Germany used the Termez base in Uzbekistan to support its military mission in Afghanistan and was keen to maintain the base and had grounded its argumentation mainly on strategic cost-benefit considerations

(interviews with EU officials in Brussels, 2006; see also Borrut, 2009).

Eventually, the German government accepted the decision on the imposition of sanctions, though it remains unclear whether this decision was based on a genuine interest in argumentative reasoning and acceptance of the better argument. According to several EU officials, the German government may have only accepted the decision because it had managed to strike a deal with the Uzbek regime that would have allowed it to continue to use the Termez base even if the EU imposed sanctions (interviews with EU officials in Brussels, 2006). There are no alternative sources available to triangulate this claim. However, after the EU had imposed sanctions, the Uzbek regime notified several EU countries that they could no longer use Uzbek territory as a rear base for operations in Afghanistan, with the notable exception of Germany which received no such notification ("Germany seeks Uzbek base alternatives," 2005).

With regards to deliberative legitimacy, the authority of the EU to impose unilateral coercive measures on Uzbekistan can therefore be considered *partial*. The decision-making process was inclusive, and argumentation based on the best available facts, while it remains unclear to which extent the German government had a genuine interest in argumentative reasoning.

By contrast, the EU's decision to lift the sanctions in 2009 was not based on true and complete facts. The grounds upon which the EU had imposed the arms embargo against Uzbekistan (failure by the Uzbek authorities to respond adequately to the UN's call for an independent international inquiry into the Andijon events and the risk of internal repression) had remained unchanged. And even though the Uzbek government agreed to abolish the death penalty in 2008, the level of internal repression had further increased. In its October 2009 conclusions, the Council never provided an official basis for suspending the sanctions (Council of the European Union, 2009). During the meeting in October, the EU foreign ministers merely delivered a brief statement, stating that they wanted "to encourage the Uzbek authorities to take further substantive steps to improve the rule of law and the human rights situation…and taking into account their commitments, the Council decides not to renew the remaining restrictive measures" ("EU lifts Uzbek sanctions despite rights concerns," 2009). The statements' "truth-claims" are difficult to verify. The basis for lifting the sanctions is derived from the Uzbek government's (potential) future behaviour, rather than its actual (and observable) behaviour. At the same time, the justification diverts attention away from the main point of contention by implying that the sanctions were based on broader concerns about human rights and the rule of law (commitments that are more difficult to quantify) rather than the Andijon massacre and the level of internal repression. According to EU officials, the decision to suspend the sanctions "followed the release of several political prisoners and the abolition of the death sentence" (as cited in Castle, 2009, p. 1). This statement also shifts the focus away from the Andijon investigation and toward the Uzbek government's other, and exclusively positive, efforts and actions.

Some member states' main argument in favour of easing the sanctions, which was most prominently pushed by the German government, was that "the sanctions are not working and may be counter-productive" (Traynor, 2007, p. 1). This statement negates the very foundation of the arms embargo discussion. Rather than permitting a factual check on whether the Uzbek government had complied with EU demands, the statement turns the focus to a new question: whether the EU's sanctions are effective. The EU's and member states' statements in favour of lifting the embargo were thus attempting to avoid engaging in a truthful and fact-based communication on whether the EU's demands—as explicitly stated in the first decision to impose the sanctions—had been met by the Uzbek government.

Likewise, the German government showed no genuine interest in argumentative reasoning and reaching a consensus on lifting the restrictive measures. Officials in the Council of Ministers' secretariat and several member states, including France, the UK, and the Scandinavian countries, had argued, based on the best available evidence, that the crackdown on dissent had not relented and that the EU should therefore get even tougher with the Uzbek regime (interviews with EU officials in Brussels, 2009; cf., Taylor, 2006; see also Spiller, 2006). However, instead of engaging in factful argumentative reasoning, the German government used its powers as a larger member state. It exploited the fact that a prolongation of sanctions would have required a unanimous decision by all member states to coerce other member states into accepting an end to the sanctions (interviews with EU officials in Brussels, 2009). The German government was not driven by concern over ethical or moral obligations towards the international community but rather its own strategic geopolitical interests. Aside from its strategic interests in the Termez base, Germany was about to assume the EU's presidency and was planning to launch the strategy for central Asia, with a focus on the security of energy supplies, and a key role for Uzbekistan, which has the second-largest gas reserves of the former Soviet states after Russia (Hall, 2007). Moreover, the Uzbek regime had been lobbying the German government very actively and successfully to get the sanctions overturned (Stroehlein, 2006).

5. Conclusion

This article set out to examine how far the EU meets the standards of moral authority that allow it to resort to unilateral coercive measures (sanctions) against non-EU states (third countries). It has been argued that little attention has so far been given to better understanding the sources of and standards for the EU's authority to resort to unilateral coercive measures such as sanctions,

and, in particular, legally and politically controversial measures in reaction to violations of obligations *erga omnes* (obligations owed to the international community as a whole). When assessing the EU's moral authority, analysing dynamics within decision-making processes has been found crucial: It makes a difference if EU decisions have been determined by only the most powerful member states using bargaining, coercion, manipulation, or deception to enforce their strategic interests, or if decisions are derived from fact-based, inclusive, and non-coercive deliberations geared towards acting in the general interest of the international community.

To better capture the sources and standards of EU authority and to complement existing (legal) scholarship, the article developed the framework of the "moral dimension" of EU authority, drawing on Habermas's theory of communicative action. The framework maps a set of "ideal-type" standards of moral authority, namely the commitment to moral reason and the commitment to deliberative legitimacy, which help to assess whether the EU has the "appropriate moral credentials" (Linklater, 2007, p. 78), authorising it to resort to unilateral coercive actions such as sanctions abroad. Deliberative legitimacy, in particular, helps to assess how the EU arrives at decisions on such measures.

In the case study of the EU's decision to impose sanctions against Uzbekistan, the article empirically explored the framework's analytical contribution. The analysis revealed that the substantive and procedural standards of moral authority were partially satisfied. The EU justified the sanctions based on predominantly moral reason and obligations *erga omnes*, but it refrained from spelling out specific duties vis-à-vis the Uzbek people. And while the EU's decision to enact sanctions met two of the standards of deliberative legitimacy—accuracy of justifications and inclusive, deliberative process—doubts remain as to whether the most powerful member states had a genuine interest in argumentative reasoning, despite their consent to imposing the sanctions. The EU's decision to lift the sanctions in 2009 met none of the standards of deliberative legitimacy. Evidence pertaining to ongoing and increasing human rights violations by the Uzbek regime was purposefully negated, rendering the EU's justifications for lifting the sanctions contradictory and inaccurate. By showing the analytical value of the framework of the "moral dimension" of authority, the article highlighted the potential of developing a broader research agenda for assessing how far the EU has the authority to resort to coercive measures such as sanctions against non-EU states in the absence of a UN Security Council mandate. As the EU's security and defence policy is integrating further, potentially leading to the launch of military operations *without* UN Security Council mandate in reaction to violations of obligations *erga omnes*, this research agenda will become even more relevant.

The case study also allows a broader reflection on the evolution of the EU's decision-making on sanctions since the early 2000s and implications for the standards of the EU's authority to resort to unilateral coercive measures. A first key development was the introduction of clearer guidelines on restrictive measures. However, while EU guidelines improved, EU decision-making on sanctions continued to be made "on the basis of assumptions" that had "not been sufficiently validated empirically" and lacked reliable data and data collection and processing (de Vries et al., 2014, p. 9). Recent examples of the EU imposing restrictive measures, such as the 2014 sanctions against the Russian Federation, demonstrate that additional resources were indeed allocated to improve data gathering and evaluation ahead of the decision-making (Fischer, 2015, p. 3). Yet, there are occasions on which little effort was made to collect robust and reliable data. The EU's decision in 2016 to lift sanctions against the authoritarian regime in Belarus, for example, was justified based on the (unvalidated) assumption that the human rights situation had improved. Robust evidence on increasing levels of human rights violations committed by Belarusian security forces was not sufficiently considered in the decision-making process, partly because of lacking or biased intelligence and partly because of strategic manipulation in pursuit of geopolitical interests (Bosse & Vieira, 2018, pp. 18–19).

A second key development has been the improvement of the legality of the EU's restrictive measures and the extent to which they meet the requirements of fairness and due process (de Vries et al., 2014, p. 6). Since the early 2000s, the European Court of Justice has been reviewing the legality of restrictive measures against natural and legal persons, allowing them to challenge individual listings before the courts (Chachko, 2019, p. 13). While the European Court of Justice rulings have led to the annulment of hundreds of listings, they have forced the EU to better justify its decisions on restrictive measures and to provide more detailed reasons and supporting evidence for listing specific individuals (and entities) on its sanctions lists. The restrictive measures against Belarus imposed between 2020 and 2021 are good examples in that regard.

Over the past decades, the EU has thus taken steps to improve and expand evidence-based decision-making on unilateral sanctions. However, in respect to decision-making based on deliberation unobstructed by strategic bargaining and particularistic self-serving state interests, the EU still has some way to go before it fully meets the standards of moral authority which would endow it with legitimacy to resort to unilateral coercive measures.

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Conflict of Interests

The author declares no conflict of interests.

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Article

The Design and Impacts of Individual Sanctions: Evidence From Elites in Côte d'Ivoire and Zimbabwe

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Abstract
Since the 1990s, sanctions senders like the European Union, the United States, and the United Nations have been imposing visa bans and asset freezes on individuals as a key element of their sanctions packages. Notwithstanding the growing centrality that individual sanctions have acquired in international sanctions practice, little is known about the impact of sanctions listings on designees. Some researchers have scrutinised targeting choices, while others have explored the effects of sanctions on designees. However, no study has yet examined the fit between targeting choices and impacts on designees. First, we interrogate the theory of targeted sanctions to identify the expectations that it generates. Second, we examine the effects on designees and contrast them with the targeting logic of the sender, in a bid to ascertain their fit. Our analysis of the cases of Côte d'Ivoire (2010–2011) and Zimbabwe (2002–2017) benefits from original interview material.

Keywords
Côte d'Ivoire; European Union; impact of sanctions; targeted sanctions; United Nations; Zimbabwe

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1. Introduction

Sanctions against individuals, i.e., travel bans and asset freezes, have become a regular feature of the international sanctions practice of most senders, including the United Nations Security Council (UNSC), the United States (US) and the European Union (EU). Yet, notwithstanding the frequency of their use, little is known about their impact on the individuals to whom they are applied. Scholars scrutinised the feasibility of targeted sanctions (Tostensen & Bull, 2002), questioned their ability to prevent humanitarian harm (Gordon, 2019), or discussed their morality (Pattison, 2015) and compatibility with human rights and due process guarantees (Happold, 2016). A few works have examined the impact of sanctions listings on the attitudes and behaviour of designees (Cosgrove, 2005; Eriksson, 2011). However, an examination of the fit between target selection and the actual effects they bring about on individual targets is still missing.

The present article intends to fill that gap. Indications are that anticipated and actual effects on individuals diverge. In their microanalysis of targeting choices by the UNSC, Wallensteen and Grusell (2012) found that most targets were mid-ranking officials, private facilitators, or "middlemen" rather than leaders. Most importantly, they concluded that designation tactics reflected a weak understanding of how individual sanctions would be perceived, which ultimately undermined the credibility of the sanctions. Moreover, their microanalysis hinted at anecdotal evidence of a mismatch between the design of targeted sanctions and their actual impact in the field: Illustratively, their research revealed that a 2004 United Nations (UN) blacklist was mocked locally for featuring

only three designees who were viewed as peripheral in terms of political power.

The present article investigates the fit between design and impact, focusing on individual sanctions. This article proceeds in four steps. First, it analyses the concept of targeted sanctions as formulated in the context of the "Sanctions Reform Process," a series of expert meetings which specified the notion of targeted sanctions and produced recommendations for their design and implementation: the Swiss-convened Interlaken process, the German-launched Bonn-Berlin process, and the Swedish-sponsored Stockholm process (Vines, 2012). A second section reviews research findings regarding the impact of targeted sanctions, while a third section identifies the expectations that these theoretical assumptions generate and explains our methodology. Next, the article examines the actual effects on targets according to their own accounts, after which it contrasts expectations from the targeted logic with the impact of sanctions, in a bid to ascertain their congruence, before the article's conclusion. In order to explore this issue, the sanctions experiences in Côte d'Ivoire (2010–2011) and Zimbabwe (2002–2017) serve as case studies, benefiting from first-hand interview material.

2. Re-Inventing the Tool: The Rationale of Targeted Sanctions

The idea of targeted measures was first developed in response to the UNSC's negative experiences with comprehensive trade embargoes. The UNSC became acutely aware of the magnitude of the humanitarian effects of sanctions due to the international outcry provoked by the embargo-induced catastrophe in the Iraq of the mid-1990s. As a consequence, the five permanent members of the UNSC (the P-5) issued a "non-paper" stipulating that "any future sanctions regime should be directed to minimise unintended adverse side-effects of sanctions on the most vulnerable segments of targeted countries" and pledging to assess the "short- and long-term humanitarian consequences of sanctions" (UNSC, 1995). This encouraged the development of targeted sanctions, as part of a broader transformation in the design of UN sanctions regimes in the post-Cold War era. By the start of the century, the UNSC usually combined travel bans and asset freezes against individuals, who were often decision-makers (Doxey, 2009). Targeted sanctions became the instrument of choice of the UNSC (Charron et al., 2015).

The principal feature of targeted measures is their discriminatory nature, i.e., their ability to affect specifically those responsible for objectionable actions. The objective is to "apply coercive pressure on transgressing parties—government officials, elites who support them or members of non-governmental entities" (Biersteker, 2001, p. ix). Conversely, this entails avoiding impacts on others or keeping them to a minimum. Then-Secretary General Kofi Annan spoke of "*minimising* the negative effects of the sanctions on the civilian population and neighbouring and other affected states" (UN, 2000, emphasis added). The EU rapidly embraced targeted sanctions after some of its members had promoted them at the UN (Brzoska, 2003). Its first programmatic document on sanctions policy, entitled *Basic Principles on the Use of Restrictive Measures* (Council of the EU, 2004), subscribed to this notion, confirming previous practice under the Common Foreign and Security Policy (Portela, 2016). Both the EU and the UN currently impose targeted sanctions, although their measures display varying degrees of discrimination (Biersteker et al., 2016; Wallensteen, 2016).

The intent of hitting the actual wrongdoers goes beyond the mere promotion of justice: "It is designed to hit at the interest of individuals or groups in positions of power directly, rather than the entity they control" (Stenhammar, 2004, p. 150). The disappointing record of comprehensive sanctions in terms of their effectiveness encouraged the refinement of the tool (Brzoska, 2001, p. 10). The hope was that "better targeting of such measures on the individuals responsible… and the elites who benefit from and support them would increase the effectiveness of sanctions" (Biersteker, 2001, p. ix). The assumption that targeted sanctions can be more effective than comprehensive embargoes was predicated on the idea that distinguishing between responsible rulers and the population at large prevented the identification of the population with the targeted leadership, thereby avoiding the "rally-around-the-flag effect" famously formulated by Galtung (1967). In addition, targeted measures could decrease support for those targeted among elites that constitute the power base of rulers. This notion found some elaboration among scholars positing that targeted sanctions are better suited to pressure regime supporters than general embargoes (Kirshner, 1997), weakening autocrats who relied on a small elite or "selectorate" (Brooks, 2002; Park & Choi, 2020).

However, critics question the viability of targeting sanctions, pointing to the complexity of their implementation and the impossibility of eliminating harm to the population (Gordon, 2019; Tostensen & Bull, 2002). In this vein, an examination of UN practice suggests that human rights are still more likely to worsen in a country under targeted sanctions compared to countries where sanctions are absent (Carneiro & Apolinário Jr, 2016). Another criticism concerns the purported lack of efficacy of targeted sanctions. Some experts suggest that targeted measures are less efficacious than comprehensive embargoes. According to Elliott, "more targeted impact also means more limited impact, also for those targeted" (2005, p. 11). Similarly, Cortright and Lopez contend that "where economic and social impact have been greatest, political effects have also been most significant" (2002, p. 8). The Bonn-Berlin process recognised aviation and travel bans as "not much more than a nuisance for targeted elites" (Brzoska, 2001, p. 70). This led some to

suggest that "options other than smart sanctions should be pursued" (Drezner, 2011, p. 97). Optimistic assessments do not go beyond contending that the efficacy of targeted sanctions is comparable to that of comprehensive embargoes (Biersteker et al., 2016).

3. What Do We Know About the Impacts of Individual Sanctions?

The trend towards individualisation observable in sanctions practice has not been matched by a scholarly effort to ascertain the impact of targeted *individual* sanctions on designees. Despite the growing tendency for sanctions to target individuals, sanctions assessment is routinely conducted with reference to states rather than to the elites targeted, and considers the entire duration of the sanctions regime, without taking into account how the set of measures applied evolve over time. Although some studies have disaggregated country cases into episodes (Biersteker et al., 2016; Eriksson, 2011), most analyses do not systematically evaluate the effects of sanctions on designees.

Scholars highlight the diminished impact of individual sanctions compared to comprehensive sanctions. Elliott examined the impacts of travel and assets sanctions on UN sanctions designees in the post-Cold War era. She found that in some episodes, the political impact is visible, but the economic impact is not. By contrast, where broader sectoral sanctions were applied, evidence of economic as well as political impact is observable in more than half the episodes (Elliott, 2016). Contrary to expectations, she found psychological impacts to be uncommon, even when sanctions publicly and prominently target individuals. Moreover, the psychological impact is never associated with any degree of sanctions effectiveness (Elliott, 2016). According to her findings, stigmatisation was more evident in cases involving armed conflict, where it often eroded political support for targets, than in cases of actors involved in terrorism, repression, or coups d'état (Elliott, 2016).

Cosgrove investigated the effects on two designees under the UN bans on Sierra Leone (1997–2010) and Liberia (2003–2016), two closely related regimes. Mr. Golley, a lawyer from Sierra Leone, confirmed the presence of psychological impact in terms of stigma, as well as significant loss of professional prestige caused by his inclusion in a UN blacklist. At the same time, he did not attribute any changes in his political allegiances resulting from the pressure he came under due to the sanctions (Cosgrove, 2005). Mr Carbah, a former member of the Liberian cabinet, explained that his listing confirmed his loyalty to the Liberian leadership, dissipating any suspicion of proximity with hostile foreign powers. He reported that he did not feel singled out because he viewed the blacklist "as a punishment on the government" to which he belonged (Cosgrove, 2005, p. 220).

Peace researchers Wallensteen and Grusell (2012) analysed data on 450 individuals who featured on eight different UN lists addressing (post-)conflict situations. Their inquiry sheds light on various aspects. Firstly, while designation criteria gained in specificity, the seniority of listed individuals decreased over time. Wallensteen and Grusell criticise the trend of designating persons other than political leaders, given that the lower the individuals are in the decision-making hierarchy, the fewer opportunities there are to influence the course of action that sanctions seek to address. In measuring the ability of designations to bring about target compliance with UNSC demands, Wallensteen and Grusell conclude that the compliance ratio for individually targeted sanctions is not higher than with other sanctions, estimated between 20% and 34%. Nevertheless, the authors contend that the performance of targeted sanctions could increase with the help of improved targeting policies, ascribing the inefficacy of measures to unsound designee selection.

4. Expectations, Research Design, and Methodology

4.1. Expectations

Little information is available on the targeting strategies followed by senders, i.e., the calculations that lead to the design of blacklists. Still, certain assumptions can be derived from the logic underlying targeted sanctions outlined above (Wallensteen, 2016). The rationale for targeted sanctions does not explicitly entail assumptions on the anticipated effect on designees; instead, the focus often lies on the impact on populations and elites, who are expected to withdraw their support from the targeted leaderships. In the case of elite members, the expectation may be that designees occupying powerful positions in government may raise the issue of the sanctions for the discussion of remedial action in decision-making circles (Wallensteen & Grusell, 2012).

Once elite members are threatened with a listing, or find themselves listed, they can feel compelled to sever links with more senior targets or switch sides to forestall or reverse designation. Recent scholarship highlights the power of threats, which are often believed to be more effective than imposed measures (Hovi et al., 2005; Whang et al., 2013). Finding themselves deprived of the backing of erstwhile supporters and facing increased unpopularity, leaders may align policy with sender preferences, which, in our cases, entail organising free and fair elections or stepping down, as this option is preferable to being unseated by force. There are, however, no reasons to believe that designations are meant to modify the political persuasion of the targets. Instead, targeted actors are expected to behave strategically.

Key to the operation of targeted sanctions are the effects on group dynamics. In 2004, the panel of experts monitoring the sanctions on Côte d'Ivoire recommended avoiding targeting an entire group in order to prevent them from bonding in opposition against the sender. Accordingly, initially modest listings that can be escalated

subsequently are often preferred. Following this logic, we can only expect blacklists to hinder group cohesion if designations do not extend to entire groups.

Thus, we put forward the following set of expectations:

> H1: Designations have disruptive effects on the political and professional activity of targets, and sometimes on their subjective wellbeing, but fail to modify their political views and conduct.
>
> H2: The designation of high-ranking officials promotes the discussion of possible remedial action in decision-making circles, but is susceptible of strengthening elite cohesion concurrently.

The aim of our research is to broaden our knowledge of the effects of individual sanctions by illuminating the dynamics at play. By contrast, we do not intend to ascertain whether the measures contributed to the outcome desired by the senders, a complex question that exceeds the scope of this article.

4.2. Case-Study Selection

The case studies selected for our research are two governance crises in sub-Saharan Africa, the world region with the highest density of international sanctions (Charron, 2013): the sanctions imposed on Côte d'Ivoire following the controversial presidential elections of November 2010, and those on Zimbabwe triggered by the land reform and electoral crisis of 2002. These episodes were selected because they correspond to the type of crisis that attracts EU and US sanctions, characterised by the presence of civil strife and democratic backsliding (Dipama & Dal, 2015). Importantly, they were both at the receiving end of EU sanctions: in Côte d'Ivoire, complementing UN restrictions, and in Zimbabwe, acting in concert with the US and other Western countries. While individual sanctions were a significant component in their respective sanctions packages, they were accompanied by broader restrictions of an economic or financial nature as well as other international measures.

Since the blacklists on both countries reached record numbers, the abundance of listings increased the likelihood of locating designees willing to share their experiences in an interview. At the same time, important differences set these cases apart, making their exploration intriguing. Of special note, Côte d'Ivoire experienced a wide array of sanctions by multiple senders: the UN, the EU, the US, and regional organisations, which proved unusually active (Bellamy & Williams, 2011), providing a case of interaction between UN, regional, and extra-regional measures (Piccolino, 2012), in addition to military force. In contrast, the protracted Western sanctions enacted on Harare after the electoral crisis of 2002 lacked regional and UN support (Giumelli & Krulis, 2012; Grebe, 2010).

4.3. Methodology

The lists for Côte d'Ivoire and Zimbabwe included numerous politicians who were no longer in power and whose designations under UN or EU sanctions regimes had elapsed, although US listings remained in force for some Zimbabweans. This elite profile is more accessible to researchers than other frequent designee types such as commanders of armed groups, heads of the security services, or private facilitators such as arms dealers, who would be almost impossible to reach, let alone interview. Accessibility is of paramount importance given that our research aimed at collecting data from multiple designees. Data was collected in the course of fieldwork in Côte d'Ivoire and Zimbabwe in 2018. The sample selection was guided by pragmatism: Contacts in Côte d'Ivoire and Zimbabwe were approached with the intention of locating former designees. Those who could be located and agreed to be interviewed were asked to facilitate further contacts with fellow designees, as they were integrated in identical networks. The sizable number of listings, combined with the facilitation role of some designees or their associates, yielded a number of five to six interviews in each country. We can thus rely on first-hand data.

Cosgrove's original methodological approach (2005), later replicated by Eriksson (2011), was adopted: Semi-structured, in-depth interviews were conducted with designees with the help of an interview guide reproduced in Annex II of the Supplementary File. Due to the delicate nature of the issue under study, the sample selection followed a pragmatic rationale: Not all designees who could be located agreed to be interviewed. Admittedly, this approach is susceptible of creating a selection bias. Because the elite members self-select into respondents, a specific profile of designees might have been attracted, such as those who lacked significant influence over government decisions (as they indeed claimed) or wished to protest about their victimisation. Cognizant of this selection bias, we have taken it into account in our assessment. Yet the stigma associated with designations, coupled with the voluntary nature of participation in the interviews, makes it difficult to contemplate alternatives to the approach adopted.

The interview guide focused on questions that relate to the key elements of targeted sanctions, as well as specific risks associated with their use, as identified in existing literature and outlined above. They can be clustered around several issues: (a) the target's reaction to the (threat of) sanctions; (b) the effects of the designation in terms of restricting the targets' professional and personal activity, as well as psychological effects; (c) consequences of these effects on political behaviour and views of the targets; and (d) impact on group cohesion (see Annex II in the Supplementary File). The analysis of the interview material is articulated around our two main hypotheses, the first of which centres around the

individual level, while the second focuses on the collective level.

The semi-structured format of the interview and a flexible use of the interview guide allowed for a dynamic exchange with interviewees in which additional questions could be asked (or skipped) to delve into the most intriguing responses, yielding rich, sometimes unexpected testimonies. Interviews were conducted in French in Côte d'Ivoire, where it is the official language, and in English in Zimbabwe, where it is the lingua franca, to allow respondents maximum ease of expression. Translations from French are the authors'.

5. Sanctions in Governance Crises

5.1. The Côte d'Ivoire Crisis

More than a decade of instability, which saw the application of sanctions by the UN and the EU, preceded the 2010–2011 crisis in Côte d'Ivoire (Bellamy & Williams, 2011). In 2000, an uprising had brought Laurent Gbagbo to power, after General Robert Guéï, who had promised a transition after a 1999 coup, failed to step down. Yet, in 2002, a rebellion contesting Gbagbo's rule erupted, dividing the country into a rebel-controlled north and a government-controlled south. A UN peacekeeping force was deployed to separate the parties, soon reinforced by military forces dispatched by the former colonial power, France. Several peace agreements failed to be implemented (O'Bannon, 2012), which led the UNSC to impose sanctions in 2004 (UNSC, 2004). Presidential elections were finally called in November 2010, pitting President Gbagbo against Alassane Ouattara, who claimed victory based on provisional results proclaimed by the electoral commission, certified by the UN. Gbagbo lodged an appeal to the Constitutional Council, which annulled the provisional results and proclaimed his victory with 51.5% of the votes (Cook, 2011). Most international actors, however, called on Gbagbo to step down. The African Union and the Economic Community of West African States (ECOWAS) suspended the membership of Côte d'Ivoire (African Union, 2010) and dispatched mediators, but even ECOWAS' threat of a military intervention failed to persuade Gbagbo to step down (Cook, 2011). In a bold step, the West African Economic and Monetary Union (UEMOA) granted Ouattara authority over UEMOA-related transactions conducted via the Central Bank of West African States (BCEAO) in late December 2010 (UEMOA, 2010).

The UN, the EU, and the US enacted sanctions in response to the post-electoral crisis. The US imposed a visa ban on members of Gbagbo's regime in December 2010, which it expanded in January 2011, barring designees from financial transactions (US Treasury, 2011). The EU followed suit, imposing a visa ban on Gbagbo and 18 individuals for "obstructing the process of peace and national reconciliation, and… jeopardising the proper outcome of the electoral process" (Council Decision 2010/801/CFSP of 22 December 2010, 2010). As the situation deteriorated, in January 2011 the EU extended its blacklist to 85 individuals and 11 entities, including the harbours of Abidjan and San Pedro (Council Decision 2011/18/CFSP of 14 January 2011, 2011). In March 2011, the UNSC listed five individuals, in addition to the three individuals listed since 2004, threatening further sanctions. The situation escalated into a military conflict as Ouattara formed an armed movement, the *Forces Républicaines de Côte d'Ivoire* (FRCI). The UN mission, together with French forces, proved decisive in breaking the deadlock. On 11 April 2011, FRCI troops backed by UN forces arrested Gbagbo and installed Ouattara as president (Abatan & Spies, 2016). Gbagbo and militia leader Charles Blé Goudé were handed over to the International Criminal Court, which acquitted them in 2019. At Ouattara's request, sanctions were gradually eased until their complete lifting in 2016 (Council Decision (CFSP) 2016/917 of 9 June 2016, 2016; The White House, 2016; UN, 2016).

5.2. The Zimbabwe Crisis

Sanctions against the Zimbabwean leadership were imposed in 2001–2002. Their origins lie in a violent land expropriation campaign of white farmers, followed by the crisis surrounding the 2002 parliamentary elections which saw the harassment of the opposition and the rejection of international observers. In 2001, the US imposed restrictions on multilateral financing, followed by financial sanctions and travel bans against selected individuals and entities, a ban on defence business and a development aid freeze (US Congress, 2001). In February 2002, the EU suspended aid and enacted an arms embargo along with a visa ban and assets freeze against President Mugabe and members of his party, the Zimbabwe African National Union—Patriotic Front (ZANU-PF). Australia, Canada, and others followed suit, but neither the UN nor African organisations enacted sanctions. Meanwhile, in parallel to the political crisis, a major economic crisis turned Zimbabwe into the world's fastest shrinking economy. In the following years, the EU gradually expanded the number of individuals on its list, which reached a peak in January 2009 with 203 individuals and 40 entities.

Following the signing of the Global Political Agreement, under which President Mugabe shared power with two opposition leaders, the EU started a partial easing of sanctions. In February 2011, Brussels de-listed 35 individuals in recognition of progress while leaving on the list 163 people and 31 businesses for human rights abuses and undermining democracy and rule of law (Council Decision 2011/101/CFSP of 15 February 2011, 2011). In 2013, the EU suspended sanctions on 81 individuals in response to the peaceful vote to approve a new constitution, and in 2014, Brussels suspended measures against all individuals and entities, except for Mugabe, his wife, and Zimbabwe

Defence Industries (Council Decision 2013/160/CFSP of 27 March 2013, 2013; Council Decision 2014/98/CFSP of 17 February 2014, 2014). In November 2017, Mugabe was forced to resign after the military took control of the country, and passed away in September 2019. Currently, EU sanctions remain in force against Zimbabwe Defence Industries, while those against four remaining designees are suspended. The US maintains sanctions on 38 entities and 25 individuals.

6. Impacts on Target Elites

We now review our interview material with reference to our hypotheses. Eleven (former) designees were interviewed: six Ivoirians and five Zimbabweans. Tables 1 and 2 display their elite groups as well as the entities that designated them, respectively. A summary overview of selected responses is displayed in Annex III of the Supplementary File.

> Finding 1: Designations had disruptive effects on the political and professional activity of the targets, and sometimes on their subjective wellbeing, but failed to modify their political views.

The travel bans inconvenienced some targets in their personal as well as professional capacity. "Not being able to travel is a big political handicap," stated a respondent from Côte d'Ivoire: "There was no way of evading the sanctions. One cannot make a trip clandestinely….We were in need of a repositioning, of taking a new impetus; thus, we needed to travel" (C1). Particularly affected were those who were already under UN sanctions, given the universal reach of UN bans. Some pointed to the mutually reinforcing effects of travel bans and freezing of assets, as a senior Ivorian politician indicated: "One cannot travel with an asset freeze; this is the most penalising measure" (C1). The obstructive effect of the restrictions is most visible in the statement by an Ivorian designee, who claimed that had there been no travel bans, "we could have exported the fight to the sub-regional level'' (C4).

In the Ivorian case, the restrictive effect of sanctions was magnified by the high level of regional co-operation and by the continuation of the asset freezes by the Ouattara government after it took control. The West African region was unusually active in enforcing international restrictions and in imposing its own measures, notably in the form of ECOWAS membership suspension and BCEAO's financial measures. "The… asset freeze affected me a lot… my children did not attend school….How are we meant to pay rent?" (C2), one of those affected said. Others complained: "I could not receive my salary, this disrupted my life" (C6); "my accounts here were blocked… this complicated my life" (C5). Several individuals reported that they were unaware of why they had been listed or what they could do to try to be taken off the list. One respondent claimed: "I was never notified I was under sanctions. I saw it in the newspapers" (C2). A senior pro-Gbagbo journalist stated: "I was not aware that I was on the EU's list" (C6).

While most respondents maintained that they were not psychologically affected by the sanctions, some complained about severe impacts. A former pro-Gbagbo youth leader admitted: "I was shocked. I felt revolted and not understood" (C4). Zimbabwean interviewees characterised the experience as "really traumatic" (Z2) or "devastating….You can't be the same anymore….All your hopes are dashed. You fall into debt, your entity [business] cannot perform" (Z5). Those who saw family members affected or owned companies suffered most from the sanctions, as did those who conducted professional activities which involved the senders.

In line with our expectations, none of the respondents reported having modified their political views because of the sanctions. On the contrary, they insisted on the lack of legitimacy of the measures. An Ivorian politician summarises: "There was a rebellion attacking us… they took up arms. They were not told [off], it was on us… they imposed sanctions" (C4). Zimbabwean respondents accused political adversaries of calling for the imposition of sanctions and suggesting designations to the senders (Z1–Z3). By contrast, respondents displayed a proclivity to contestation of both the sanctions and the specific grounds for which they were personally targeted, criticising what they perceived as the one-sided character of the sanctions. In the words of one respondent: "There was a flavour of partiality [to the

Table 1. Distribution of respondents by profile.

Example	Ivorian targets	Zimbabwean targets
Leaders	1	1
Administrators	2	2
Supporters	3	2

Table 2. Distribution of respondents by designation sender.

UN	EU	US
C1, C4	C2, C3, C5, C6, Z1–Z5	Z1–Z5

sanctions], of side-taking by the international community. That created frustration" (C1). In Côte d'Ivoire, the EU only sanctioned the pro-Gbagbo camp, although inquiries concluded that serious human rights violations, some possibly amounting to international crimes, were committed by both sides to the Ivorian conflict (Human Rights Council, 2011): "There was never an investigation of Ouattara [who] also committed crimes against humanity," a former pro-Gbagbo official claimed (C2). There was also contestation of the international rejection of the constitutional court's decision, as one interviewee stated: "The international community should not decide. Conformity with the law cannot represent a problem!'' (C2). The grounds and procedure for blacklisting were rebutted by several. One of the designees complained: "Europe is the continent of law, but they never gave me the right of reply" (C2). A pro-Gbagbo newspaper editor listed by the EU for incitement to hatred and violence said: "I asked [about the reasons for the sanctions], but I was not given any explanation" (C6).

When respondents admitted having had a change of heart, this was attributed to other reasons. An opposition leader who opted for moderation after Gbagbo was arrested indicated that "sanctions do not have an effect on ideology. That did not dictate my line of action; the country's situation did" (C1); a sanctioned youth leader claimed: "They did not have any impact on my actions" (C4); and a former minister even said: "It hardened my position" (C6). Yet some respondents did report having changed their political views, deepening their mistrust of international institutions and Western countries. Respondents in Côte d'Ivoire often refer to the French leadership rather than to the EU, reflecting Paris' prominence with regard to its former colony. Statements included: "It was France that decided" (C2); "it was France, Sarkozy and his friends who were behind the sanctions" (C6); "at the UN, Côte d'Ivoire is France's preserve" (C4). According to one respondent, experiencing sanctions changed his perspective on the EU and the UN: "One should not be under any illusion about how they advance their interests. One must play politics in order to avoid being targeted" (C1). Former Ivoirian designees claimed that "the international community discredited itself" (C3) or: "I did not believe the UN was capable of such injustice" (C4). For their part, Zimbabweans under EU and US sanctions said: "I learned more about how imperialism works" (Z1) or "the US is still a colony of Britain" (Z4).

> Finding 2: There is no evidence that designations of high-ranking officials promoted the discussion of possible remedial action in decision-making circles; instead, they strengthened elite cohesion.

There was a clear recognition that sanctions played a role among members of the political elite: "Of course we took into account the sanctions….They had an impact, whether you like it or not," a well-known politician in Côte d'Ivoire explained (C1). However, respondents invariably claimed that changes in policy remained beyond their control, despite the fact that they held positions of responsibility within government or the ruling party. A former party stalwart claimed that sanctions were not discussed in his (ruling) party: "There was no change in position in ZANU-PF [because of the sanctions]. We never discussed it" (Z3). It could be ventured that rulers under sanctions might centralise all political authority in themselves, so that any political decision might be taken by the leader alone. Yet the statement by a former minister who was interviewed points to the dilution of responsibility in the context of collective decision-making: "As a minister, you cannot take decisions outside the government. You go by what the majority decides. You are member of a collective" (Z1). For their part, former deputy ministers interviewed in Zimbabwe affirmed that they did not partake in government decisions. One of them said: "All I had to do was implement policies made by the political party or parliament. I had no capacity to influence decisions as a deputy minister. I did not attend cabinet meetings" (Z2). Similarly, another former deputy minister claimed: "I was not in a position to change anything. If you are on a plane, you depend on the cabin crew" (Z4). This can be explained by a selection bias embedded in our sample of voluntary interviews: Only individuals without responsibility in grave human rights abuses might have agreed to be interviewed, while others held back.

Some bonding due to sanctions was reported in both Zimbabwe and Côte d'Ivoire, where an interview explained: "In a certain environment, sanctions had a political meaning. Some carry their designation with pride, as a symbol of their fight" (C1). A former Zimbabwean minister claimed that while sanctions had a negative impact, they "did bring people together, those on the list. There was a sense of belonging, we forged ahead" (Z5). In Côte d'Ivoire, the de-listing of moderate opponents was used to discredit them, as one of those affected stated: "Some wanted to instrumentalise the sanctions against normalisation. They interpreted the lifting of sanctions as complicity" (C1).

Separately from group cohesion among decision-making elites, several respondents explained that being under sanctions increased social bonding with the networks they relied on. One of them said: "I experienced plenty of sympathy, plenty of support—this increased my popularity" (C4). A women's leader of Gbagbo's political party said that "it was thanks to the solidarity of certain people that I did not have problems" (C5). In the same vein, a pro-Gbagbo publicist indicated: "My acquaintances did not accept this situation; they helped me survive" (C6). Some used the sanctions to ramp up support among their electorate, as a former Zimbabwean deputy minister and member of parliament explained: " 'Down with the sanctions' became a chorus" (Z2). Nevertheless, the high number of designations dilutes the impact of the measures, in line with the warning by the UN panel of

experts mentioned at the outset. Respondents pointed to the large number of designees when justifying the lack of impact of the measures on their political orientation—"we were very many under sanctions," said a leader of the Ivorian Popular Front (C5)—or their designation: "The whole cabinet was sanctioned," according to a Zimbabwean respondent (Z4). A former Zimbabwean minister went as far as stating: "If I had been left out, I would have felt not recognised for my efforts in the liberation struggle" (Z3).

7. Conclusions

Our exploration confirms earlier insights about the effects of sanctions on elite members. The very fact that some individuals challenged their listing in court indicates that designations inconvenience targets: Zimbabwean and Ivoirian designees on the EU sanctions list, including some of our respondents, lodged complaints at the European Court of Justice, requesting the annulment of the sanctions (e.g., *Gbagbo and others v. Council*, 2013). Our interviewees reported at least some level of disruption of their political and professional activity, as well as of their personal life and sometimes even subjective wellbeing, as a statement from a respondent in Harare illustrated: "It changed me; made me more hostile" (Z2).

Yet, and in line with previous findings, while respondents admitted having experienced some level of inconvenience in their personal or political activity, this did not translate into any modification of the leadership's policy or any meaningful discussion of possible remedial action in decision-making circles. Although one can only speculate as to the reasons that prevented such deliberations, two insights emerge from our exploration. Firstly, there was a lack of awareness among the designees about their own listings; most of them claimed to have learnt about their designation from newspapers, or even not to have learnt about it until the interview. Several said they did not know why they had been listed, which limited the possibility for them to comply. By the same token, they never established communication with sender entities to discuss de-listing, as a former member of government in Zimbabwe said: "I was never in touch with EU or the US. What for? I would meet only people on our side: China, Russia, Cuba and developing countries'' (Z1). Secondly, there is some evidence that long blacklists foster cohesion among elites. This was particularly visible in EU and US blacklists: Even though these senders share the UN preference for an initially small number of designations, their blacklists grew quickly in both cases under study, as new waves of designations followed in close succession, mirroring the escalation of the political crises. Soon, the initially short blacklists encompassed virtually the entire ruling political elite. There are indications that this fostered cohesion among members of the political elite, and even strengthened solidarity bonds with their entourage, while it prevented the emergence of other groups in the ruling elite—themselves not under sanctions—who could have counterbalanced blacklisted hardliners. This bonding feeds on feelings of spite among those targeted, who invariably contested the legitimacy of the sanctions, rebutting the grounds for listings and accusing the senders of partiality.

Assuming that these reactions are genuine—as we do—they show the operation of individual sanctions in a new light. Firstly, several designees reported being unaware of their listings, which implies that, in most cases, senders did not make use of threats prior to the actual designations. This seems counterintuitive, as threats of sanctions have often proved more successful than sanctions imposition itself (Hovi et al., 2005; Whang et al., 2013). The Council of the EU is legally bound to "communicate its decision, including the grounds for listing, to the person or entity concerned, either directly… or through the publication of a notice" (Council Decision 2010/801/CFSP of 22 December 2010, 2010). The notices for our respondents were only published in the Official Journal of the EU and did not reach the designees. Lack of awareness of the listings and of the corrective action expected to obtain de-listing failed to afford designees the information that might have compelled them to negotiate either remedial action or their removal from the blacklist (International Crisis Group, 2012). None of the designees mentioned that a possible accommodation with the senders was discussed, either individually or in collective circles, to promote the removal or the easing of the measures. Instead, designees were left with the perception that blacklisting is merely a form of punishment, as evidenced in their discourse—"punishment does not change you" (Z5); "it was just a blanket… collective punishment" (Z4)—replete with allusions to criminal justice: "It is like being accused of a crime you have not committed" (Z4); "nothing was proved" (C4). Designees did not approach senders unless they fell out with other members of the leadership. As a result, the lack of communication between sender entities and designees leaves us in the dark as to whether individual sanctions could have facilitated a negotiated resolution of the crises.

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Conflict of Interests

The authors declare no conflict of interests.

Supplementary Material

Supplementary material for this article is available online in the format provided by the author (unedited).

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Article

United in Diversity? A Study on the Implementation of Sanctions in the European Union

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Abstract
The implementation of European Union (EU) policies has been investigated for several policy areas, but Decisions made under the Common Foreign and Security Policy (CFSP) have rarely been considered. While many CFSP measures are applicable throughout the EU without the need for further action on the domestic level, some Decisions must be implemented by Council Regulations. These Council Regulations adopted with the intent to implement CFSP Decisions have qualities of Directives, which delegate implementing tasks to member states and require transposition. The aim of this article is to investigate whether restrictive measures imposed by the EU are uniformly implemented across the member states, and, if not, to what extent implementation performance varies. We observe significant differences in implementation performance across member states. The findings of this article are twofold. First, we claim that implementation and compliance studies should involve CFSP decisions more systematically. Second, empirical confirmation is provided of how uneven transposition and application occurs also in CFSP matters. This study is based on empirical work that consisted of desk research and semi-structured interviews with national competent authorities of 21 EU member states taking place between March 2020 and January 2021.

Keywords
CFSP; European Union; implementation; sanctions

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1. Introduction

The implementation of European Union (EU) policies at the national level is the centre of attention in European studies (Mastenbroek, 2005). The past few decades have seen studies on the implementation of environmental policies, transportation rules, and equal treatment measures, among other areas (Bache, 1999; Blom-Hansen, 2005; Bugdahn, 2005). However, scholarship has rarely considered Decisions made under the Common Foreign and Security Policy (CFSP; Bicchi, 2010; Wunderlich, 2012). This lack of attention paid to the implementation of foreign policy measures is clearly unwarranted. While many CFSP measures are applicable throughout the EU without the need for further action on the domestic level, some Decisions adopted under the CFSP must be implemented by Council Regulations containing more stringent requirements for member states in terms of implementation and oversight (Giumelli, 2013, 2019). These Council Regulations frequently delegate tasks to member states, for instance they ask the latter to define penalties applicable to infringements. As such, Council Regulations adopted with the intent to implement CFSP Decisions have qualities of

Directives, which delegate implementing tasks to member states and require transposition. Although the Treaty of Maastricht attributed CFSP competences to the EU already in November 1993, and foreign policy success is dependent on member states coordinating their deeds, the domestic implementation of CFSP Decisions and the related Regulations has received surprisingly little attention from researchers. This research aims, then, to address this lack of scrutiny.

The article focuses on the domestic implementation of EU foreign policy. More specifically, the aim here is to investigate whether restrictive measures imposed by the EU are uniformly implemented across member states, and, if not, to what extent implementation performance varies. In doing so, we focus our attention on restrictive measures as an example within the broader field of foreign policy. The area of restrictive measures is particularly interesting because it contains instruments that require strict implementation on the domestic level, while at the same time leaving some room for member states to choose the method of implementation. This naturally creates the possibility of uneven implementation. Indeed, we observe significant differences in implementation performance (also implementation variance) across member states. To this end, we analysed restrictive EU measures as an illustrative case of how foreign policy and internal-market rules are interrelated. We adopt Duina's (1997) multifaceted definition of "implementation," which understands the latter as a three-dimensional concept composed of the transposition of legislative acts, their application, and the enforcement of policies. Within the scope of this analysis, we focus exclusively on transposition and application. Regarding transposition, we look at the maximum penalties set for sanctions violations under administrative and criminal law. Regarding application, we examine the institutional architecture of export procedures in all EU member states. Thus, we carry out empirical research consisting of desk research and semi-structured interviews with national competent authorities of 21 EU member states taking place between March 2020 and January 2021.

The article is divided into five sections. Section 1 reviews the literature on EU implementation to show the research gap in the area of CFSP. Section 2 introduces the restrictive-measures policy of the EU in highlighting the institutional overlap between the former first and second pillars. Section 3 introduces the conceptual framework upon which we base the empirical observations. Section 4 presents the empirical findings of the research. Section 5 discusses potential trends that emerge from the analysis and identify their relevance. Finally, we conclude by reviewing the main empirical findings of the article and by shedding light on future research avenues.

2. What Do We Know About Uneven Implementation?

The topic of policy implementation does not originate in EU studies, but is a typical problem for any public policy that is implemented by complex organizations (Pressman & Wildavsky, 1984). In general terms, policy implementation can be viewed both from a top-down and a bottom-up perspective. In the top-down perspective, central authorities tend to retain decision-making powers and this approach privileges a standardized outcome with lower-level actors not foreseen as having discretionary power. The main problem of this approach is that the central legislators are unaware of the details of local conditions and have limited resources, therefore failures in implementation are explained by lack of clarity in the provisions and scarcity of means to appropriately implement policies (Meter & Horn, 1975; Sabatier & Mazmanian, 1979). Conversely, the bottom-up approach views the role of local implementers in shaping the policy outcome by exercising a wider discretionary power assigned by the central authority to the periphery. However, the variance of implementation practices and the concomitant needs for flexibility then constitute the core of the problem, since either the policy outcome will be unequal or the requests and desires from local authorities will be too demanding (Hjern, 1982; Lipsky, 1980).

The implementation of EU legislation within member states has contributed significantly to the debate on EU integration (Falkner et al., 2005; Mastenbroek, 2005; Sverdrup, 2005), but the central concept for academic debate in European studies became the one on *Europeanization* (Cowles et al., 2001; Héritier, 2001). This concept referred to the idea that EU member states over time would adopt policies more in line with European rather than exclusively with national interests and, consequently, transform their practices to mirror EU standards (Chatzopoulou, 2015; Sampson Thierry & Sindbjerg Martinsen, 2018). Whereas the Europeanization debate focused on how the EU influences the domestic "polities, politics, and policies," others investigated the way in which member states implement EU legislation. As described by Versluis, Van Keulen, and Stephenson, "the main issue addressed in these studies has been how to explain variations in the implementation of EU legislation between member states" (Versluis et al., 2011, p. 192; also see Steunenberg & Toshkov, 2009). For instance, Treib (2014) elaborated a typology with four categories of states and respective explanations. Another analytical framework is offered by Di Lucia and Kronsell (2010), who write about the "willing, unwilling, and unable" in their analysis on how the EU Biofuels Directive was poorly implemented in member states. Yet another study by Börzel et al. (2010) found that powerful member states are most likely to violate EU laws, whereas smaller ones with efficient bureaucracies are the most compliant.

This can often imply that, in a certain policy area, transposition will occur unevenly across the EU or implementation performance will vary (Thomann & Sager, 2017). Some researchers have looked at the substance, scope, and effort in analysing implementation performance with a case study in the field of environmental

policy (Bondarouk & Mastenbroek, 2018). Others have focused on the role of street-level bureaucrats in implementation with a bottom-up approach preferred to a top-down one as suggested by compliance studies (Dörrenbächer, 2017; Sampson Thierry & Sindbjerg Martinsen, 2018; Schmälter, 2019). Several areas pertaining to the internal market have been discussed. Without the possibility to do justice to a very rich debate, examples of these are tax crimes (Rossel et al., 2021), air quality in Germany (Gollata & Newig, 2017), cohesion policy (Blom-Hansen, 2005), social policy (Hartlapp & Leiber, 2010), regional policy (Bache, 1999), and environmental policy (Börzel & Buzogany, 2019; Bugdahn, 2005). Migration has also received scholarly attention (Wunderlich, 2012). The growing gap in implementation performance led some to consider "one-size-fits-all solutions [to be] often neither politically feasible nor normatively desirable" (Falkner et al., 2005, p. 1). This has also been explored as "gold-plating" and "customization" practices across the EU, with a focus on Justice and Home Affairs and environmental policies (Thomann & Zhelyakova, 2017). At the other extreme, certain scholars have also discussed cases of non-compliance (Börzel, 2021; Börzel et al., 2010; Falkner et al., 2004; Siegel, 2011).

In this rich debate on effective implementation, implementation performance, and non-compliance, CFSP matters have rarely been investigated however. Recent efforts at studying the implementation of restrictive measures (Drulakova & Zemanova, 2020; Lohmann & Vorrath, 2021) suggest that coordinated action within the EU is necessary to ensure that foreign policy decisions have higher chances of success. Therefore, there is a clear societal relevance for studying variance in the transposition of EU policy measures. This article intends to close this research gap in two ways. First, it contributes to defining a fuller picture of EU implementation studies by including CFSP matters and, second, it provides an empirical study on even and uneven transposition of EU decisions by focusing on sanctions policy.

If CFSP decisions require common-market adjustments, this means that a review of the fundamental principles constituting the internal market is necessary. Uneven transposition practices could cause economic operators to benefit more from activity in some member states than in others. In other words, uneven transposition in CFSP matters would have similar effects on the internal market as in other policy areas.

Moreover, even transposition in CFSP matters is necessary to ensure coherent external action. If economic operators face different rules in different member states, foreign policy actions easily become inconsistent across time and space. For instance, while restrictive measures suggest that certain forms of trade should not take place, some transactions will still occur via particular member states if EU measures are not transposed evenly across the board. This can undermine the effectiveness of EU foreign policy action.

The next section describes the policymaking process in the area of sanctions, and illustrates how the behaviour of member states can have a significant impact on the effectiveness of EU foreign policy decisions.

3. EU Sanctions: When Council Regulations Are Used As If They Were Directives

The EU resorts to sanctions via three different avenues. First, it transposes Security Council Resolutions imposing sanctions according to Chapter VII of the United Nations Charter (de Vries & Hazelzet, 2005). Second, it can suspend preferential agreements as per Article 96 of the Cotonou Agreement when a signatory party has been found to be in violation of human rights (Portela, 2007). Finally, it has been able to use sanctions as one of its CFSP instruments since the entry into force of the Treaty of Maastricht in 1993 (Giumelli et al., 2021). Certainly, cooperative efforts had taken place also before then, such as in the cases of the Soviet Union in 1981 and Argentina in 1982 as well as Myanmar in 1988 and China in 1989 (Kreutz, 2005), but it was only with the end of the Cold War and the transformation of the European Community into a political union that the authority to impose sanctions (in EU jargon: "restrictive measures") would be attributed to the EU (Eriksson, 2011; Portela, 2010). This article will focus exclusively on the latter.

The legal basis for a common foreign policy is Article 29 of Chapter Two of Title V of the Treaty of the European Union (TEU) on "Specific Provisions on the Common Foreign and Security Policy." While Chapter One indicates the general provisions on the Union's External Action, Article 29 allows the EU to "adopt decisions which shall define the approach of the Union to a particular matter of a geographical or thematic nature." Among these decisions are also those imposing restrictive measures, such as arms embargoes, travel bans, financial and trade restrictions.

CFSP decisions normally assume that member states comply with them, but the implementation of restrictive measures requires further steps to be taken. It comes with no surprise that the same Article 29 states that "Member States shall ensure that their national policies conform to the Union positions." The need for coordination is recognized by the EU-led efforts to set Basic Principles (European Union, 2004), Guidelines (European Union, 2018a), and Best Practices (European Union, 2018b). These three documents attempt to address the challenge of reducing the divergent practices that characterize the implementation of sanctions, but there still exists significant potential for uneven transposition.

Travel bans are the only measures that do not require additional EU legislation because their implementation falls under the responsibilities of individual member states. Travel bans restrict access to the territories of the member states and therefore to the EU. Decisions taken under Article 29 of the TEU create the legal basis for EU member states to deny entry and/or passage to their

own territories, but the latter ultimately have the final say on entry and on granting exemptions.

Arms embargoes show how sanctions have contributed to blurring the separation between the CFSP and other EU policy areas. Arms embargoes prohibit the sale of weapons and related technology or services to individuals, non-state entities, and to states per se. On the one hand, arms embargoes are established with EU Council Decisions; the final decision on an arms sale is to be taken by the member state in question based on a national-security clause added to the Treaty of Rome in 1957. However, the EU has adopted two documents that "guide" member states in making their considerations/final assessments on arms exports. First, the EU adopted a "Common Military List" that indicates what equipment and technologies are to be covered by arms embargoes (Council Common Position of 8 December 2008, 2008). Second, since it was soon evident that several items produced for civilian use could also be utilized for military objectives, a list of dual-use items was adopted in a 2009 Regulation (Council Regulation of 5 May 2009, 2009). Consequently, member states must authorize the export of items that can be used for both civilian and military purposes (Council Regulation of 5 May 2009, 2009). Both lists are regularly updated. This Regulation is directly applicable to all EU entities, so exporters who think that certain goods might fall under such a listing must apply for an export licence from the competent national authorities, such as the Ministries for Economics and Foreign Affairs in their own member state.

The implementation of trade and financial restrictions require both EU and member-state actions. Financial sanctions include the freezing of assets and the prohibition of providing loans and making payments to individuals and entities. Trade restrictions entail the prohibition on selling specific products or services to a targeted country, region, company, and/or individual. As such, CFSP decisions adopting economic measures also require a Council Regulation, as per Article 215 of the Treaty on the Functioning of the European Union (TFEU), which is directly applicable across the Union. However, Council Regulations regarding CFSP retain qualities proper to Directives, such as the request to member states to take steps towards full implementation of the Council Regulation, de facto asking them to move towards completion in the spirit of the Regulation. For instance, member states have to establish penalties in their national laws for violations of sanctions regulations. They also carry the responsibility to grant exemptions and exceptions on humanitarian grounds. Similarly to the arms-control regime, each member state is to indicate a national competent authority to be contacted with questions regarding sanctions and export control. These implementation duties of the member states can easily lead to institutional diversity and divergent punishment across member states, and thus contribute to uneven implementation.

In sum, the EU has delegated different kinds of decision-making powers to member states on the implementation of these four types of restrictive measures. For travel bans, member states receive specific guidelines with regards to listed individuals and generic guidelines regarding general categories of non-listed individuals and of exemptions. On arms embargoes and dual-use goods, member states receive more specific guidelines regarding the granting of export licences, but the qualitative assessment of each request is mainly left in the hands of national competent authorities. When it comes to financial and trade restrictions, all actors are bound by Council Regulations—as with any other Regulation adopted in policy areas falling under the exclusive and shared competences of the EU, with member states being asked to take further action. This is where uneven transposition can occur.

The fact that CFSP measures are implemented by Council Regulations using a legal basis relating to the internal market has allowed the Court of Justice of the European Union (CJEU) to extend its scrutiny to these CFSP measures. Since restrictive measures are defined in Council Decisions, they should not be subject to CJEU scrutiny. However, as seen above, their implementation takes place through Council Regulations, which fall under the competences of the Court. Initially, individuals appealed against restrictive measures insofar as their fundamental rights were herewith violated, but the Court often rejected these claims on the basis that sanctions were CFSP decisions and, therefore, beyond their control. The Kadi judgement in 2008 changed this paradigm; it recognized that Council Regulations implementing Council Decisions were adopted under the internal-market competence. Therefore, individuals can take legal action and require the intervention of the Court (Eckes, 2008). The CJEU's review of CFSP Decisions occurs via the Council Regulations necessary for implementation, which further confirms the link between sanctions and EU legislation.

4. Theoretical Notes

The focus of this research is on variance in implementation across EU member states. We rely, as noted, on a threefold conceptualization of "implementation" consisting of transposition, application, and enforcement (Duina, 1997). Transposition refers to the adaptation of the domestic legal system to meeting the needs of a legislative instrument adopted at the EU level, normally a Directive. Application refers to using the relevant policy provisions in processes and procedures on the domestic level, mostly by government authorities. Finally, enforcement refers to actions undertaken by national authorities to maintain compliance with the policy in question and to impose penalties in case of violations. In this investigation, we will focus exclusively on transposition and application.

Normally, transposition of EU law is a key activity for member states so as to comply with a Directive; this activity would be unnecessary in case of Regulations

due to their direct applicability. However, sometimes member states have to make legislative changes to fully acknowledge the requirements of a given Regulation. This is the case with restrictive measures since, as noted above, Council Regulations in these matters delegate specific tasks to member states. One of the common provisions, which can be found in most Regulations, is to "lay down the rules on penalties applicable to infringements," which contains the obligation that "penalties provided for must be effective, proportionate and dissuasive." In order to evaluate variance in implementation, we look at administrative and criminal law penalties for sanctions violations. We acknowledge that comparing penalties provisions in national legal systems could provide a partial picture of the reality on the ground. However, examining maximum sentences provides an idea of the type of criminal penalties that can be applied in case of infringements, and it is a proxy variable to make observations on how non-state actors assess the risk of trade transactions that can fall under a sanctions regulation.

Application, in this context, refers to the institutional framework that member states create to administer restrictive measures. Member states are expected to set up an institutional framework that is able to guide economic operators, namely firms and companies, to a clear understanding of the processes and regulations regarding exports to non-EU countries. This is relevant because opaque institutional environments constitute an obstacle to the correct functioning of the internal market and undermine the effectiveness of sanctions. In general, member states have chosen different institutional solutions regarding the implementation of EU law. In presenting these, we will use Heidbreder's (2017) typology of centralization, "agencification," convergence, and networking to compare the different institutional settings established by member states to administer sanctions decisions. This typology allows us to go beyond the dichotomy between compliance and non-compliance. Instead, we can identify patterns in implementation and compare different EU member states' practices.

5. Methodological Notes

In order to empirically analyse the two issues outlined above, we carried out preliminary desk research and contacted the national competent authorities of respective EU member states with two sets of questions. These related to (a) the applicable criminal and/or administrative law on violations of EU sanctions, and to (b) the institutional architecture of restrictive measures. Our desk research covered 12 member states, all in Western and Southern Europe (see Table 1 in the Supplementary File). We selected these member states based on our command of their national languages and our knowledge of their legal systems.

The empirical research complements our desk work. In this, we researched the same questions that we posed to the competent authorities of the various member states. National competent authorities were contacted using the available information on the websites of the authorities mentioned in the Annexes to the sanctions Regulations (Commission Implementing Regulation of 5 July 2019, 2019). We also compiled a list of secondary competent authorities in the relevant member states in case a contacted authority was not willing to participate. Each national competent authority was contacted up to five times either via e-mail, telephone, or both. In total, 21 member states responded and we received questionnaires from 15 national competent authorities. We received a completed questionnaire from six of the 12 member states included in the desk research, and we did not find any conflicts between the desk research and the questionnaires. For the other six member states, we base our findings solely on the desk research. Of the 12 who decided not to complete the questionnaire, four notified us that they did not intend to do so, two expressed interest but did not complete the task, and six never responded at all (see Table 1 in the Supplementary File for a full list). The answers provided by the competent authorities complemented the preliminary findings, allowing us to formulate an exhaustive overview of the different legal and institutional frameworks for most EU member states.

6. Transposition: Penalties

Without directly assessing whether penalties are effective, proportionate, and dissuasive, we observe considerable differences across member states in terms of minimum and maximum penalties set for sanctions violations. Most member states only have criminal penalties for sanctions violations. Some member states, namely Belgium, Germany, Italy, Lithuania, and Romania, have both administrative and criminal penalties, whereas Poland and Spain only have administrative penalties. Note that Germany and Italy have administrative and criminal penalties for natural persons, but only administrative penalties for legal persons, as corporate criminal liability does not exist in these member states. Obviously, a downside of only prescribing administrative penalties is that the offender cannot be imprisoned, since being sent to jail is a criminal penalty. The absence of imprisonment as a penalty in Poland and Spain is unique, given that almost all other member states' criminal laws provide for lengthy jail sentences. In general, the maximum prison sentence for sanctions violations in member states' criminal laws is about three to six years. The lowest maximum prison sentences are four months in Denmark, which is increased to four years under particularly aggravating circumstances, and two years in Cyprus. The highest maximum prison sentences are 12 years in Malta and 15 years in Germany, under certain aggravating circumstances. The maximum prison sentences in Croatia and the Czech Republic depend on the type of sanction violated, with violations of trade/export

restrictions being punished more severely. Surprisingly, Romanian criminal law only prescribes prison sentences for violations of sanctions related to dual-use goods and technologies; all other sanction violations cannot be punished with jail time.

The maximum fines under administrative and criminal law vary widely across member states. This variation is even larger because some member states calculate fines based on daily rates, which are country-specific, and on the income (turnover) of the offender. Maximum fines are generally higher for legal persons than for natural persons. The maximum fines permitted by member states' laws range from approximately a few hundred thousand euros to millions of euros to unlimited amounts. There are some notable exceptions with relatively low maximum fines, however. In Lithuania, the maximum administrative fine is only 6,000 EUR, whilst the maximum criminal fine is 200,000 EUR. In France, the maximum fine is based on the monetary amount involved in the offence, in relation to sanctions usually the value of the assets: For natural persons, the fine can be up to twice the monetary amount of the offence; for legal persons, this is 10 times the monetary amount of the offence. In case the latter is low, then only a relatively modest fine can be imposed. In the Netherlands, the standard maximum fine is only 87,000 EUR, although this can be increased to 870,000 EUR under aggravating circumstances and can be increased even further for legal persons to 10 percent of their annual turnover if this is deemed fitting to the crime. The most notable exception of all, however, is Romania, where the maximum fine for sanction violations is 30,000 RON (≈ 6,000 EUR) for both natural and legal persons. This is notable because, under Romanian criminal law, imprisonment is only possible for violations of sanctions related to dual-use goods and technologies, meaning that in all other cases of sanction violations the most severe penalty is only an extremely low fine. Thus, Romania's maximum penalties are exceptionally low compared to the rest of the EU. Table 3 in the Supplementary File shows the maximum prison sentences and fines for natural persons, and the maximum fines for legal persons for the 21 member states considered in the research.

7. Application: The Institutional Framework

In order to apply sanctions and, occasionally, to impose penalties, member states rely on their institutional frameworks. Contrary to the principles of an internal market, we observe that there are a plethora of different institutions that can be involved across the respective member states. This increases, therefore, the transaction costs for actors working in multiple countries and provides different incentives according to the main country of operation for any actor, be it a firm or a non-governmental organization.

The starting point for our empirical investigation was the list of competent authorities provided by the member states themselves to the EU. The list of competent authorities is meant to provide a contact point in each member state that serves in support of both institutional and commercial actors. In the majority of cases, we were able to communicate efficiently with national authorities. However, we were surprised that not all contacts were working and/or accurate, as in the cases of Greece, Hungary, Italy, and Spain. It was possible to recognize a certain degree of complexity within domestic public administrations, as on several occasions we were invited to contact other offices or, less frequently, we received no further support.

Many member states have organized their procedures such that there is a need for cooperation among the multiple institutions responsible for specific activities. Competent authorities include the Ministry of Defence (MD), Ministry of Economy (ME), Ministry of Finance (MF), Ministry of Foreign Affairs (MFA), Customs authorities, and central banks (CB). The main functions covered by the competent authorities are the authorization and enforcement of sanctions. Specifically, the ME and MFA are often responsible for granting authorizations, whereas member states rely on the MF, Customs authorities, and national CB for monitoring violations and enforcing sanctions. Our findings show divergent approaches as to the number of institutions involved in the implementation process, which oscillates from complex networks to single entities. Examples of these dimensions can be found respectively in the case of Malta and Spain. In the latter, there are two main competent authorities: First, the Secretary of State for Commerce under the Ministry of Industry, Tourism and Commerce, which is the supervisor of trading sanctions, the dual-use regime, export, and investment authorizations, and, second, the Ministry of Economic Affairs and Digital Transformation, which oversees the freezing of funds and money transfers through the Sub-Directorate General of Inspection and Control of Capital Movements. By contrast, in Malta the set of functions for the implementation of sanctions is attributed to a single authority: the Sanctions Monitoring Board.

There are certain ministries that are very often involved. For instance, the responsibility for granting authorizations in respect of funds, financial assistance, financing, as well as the freezing of funds is often attributed to the ME. This is the case for countries such as Germany, Luxembourg, and Romania. However, there are cases where authorizations are issued by the MF, for example in Poland, or, in the specific case of dual-use and military products, the MFA and MD. With respect to enforcement, the MF, Customs authorities, and national CB play a central role in the vast majority of cases. Interestingly, the roles of institutions such as the CB or the MFA can vary significantly. These institutions focus either on coordination and supervision or on decision-making and granting authorizations, depending on the regime in force. Moreover, independently of their roles, in most member states national CBs are responsible

for supervising compliance with EU law by other financial institutions.

8. Discussion

Empirical analysis of the implementation of Council Regulations on restrictive measures by EU member states confirms that the CFSP is an interesting and, as of yet, under-investigated area for studying how EU decisions are transposed and applied.

Overall, restrictive measures are implemented very differently across the EU. The degree of variation is fairly sizeable. The data-collection process revealed that uneven application is an issue even in the mere attempt to contact national competent authorities. We found that some member states employ extensive websites that are easy to navigate, and that some competent authorities are reachable without any problems. However, there are also incorrect contact details listed for competent authorities in Council Regulations and one can encounter cases of unresponsiveness via e-mail and phone when trying to contact national competent authorities. The 12 countries that did not return our requests are representative of the whole population of EU member states, as they include large and founding members (France), Nordic countries (Sweden), small countries located in Southern Europe (Cyprus, Greece, Malta, and Portugal), member states in Eastern Europe (Hungary, Latvia, Slovakia, and Slovenia), as well as wealthy Union members (Austria and Luxembourg).

Penalty levels vary significantly across EU member states. Indeed, prison sentences vary from a maximum of 15 years (although only for specific and graver violations) in Germany to being completely unavailable in Poland and Spain, which have opted for administrative penalties only. The same can be said for fines, which can also range from a few thousand euros, such as in the case of Romania, to penalties of many million euros, such as in the case of Estonia, to unlimited penalties, such as in the case of Croatia. The risk assessment changes substantially if even only the administrative penalties are substantially higher in one member state compared to another.

Uneven application is also the norm regarding the variety of institutional settings and the clarity of information available to economic operators. The aforementioned typology suggested by Heidbreder (2017)—centralization, agencification, convergence, and networking—provides some guidance in seeking to understand the various institutional structures in the respective member states. In general, we observe that top-down approaches (i.e., centralization and agencification) are quite frequent. We found instances of rather centralized and coordinated offices that do provide full information and specific guidelines on how sanctions ought to be implemented. All member states appear to have centralized the decision-making process on sanctions, with the exception of Belgium. The centrality of the ME and the MFA is widely acknowledged.

However, this is a rather superficial understanding of who makes the decisions in the various member states: Those involved include interministerial commissions, subgroups, and technical agencies. These, among others, enjoy various degrees of influence in the sanctions decision-making cycle. Examples can be found, inter alia, in Italy with the Financial Security Committee, set up at Italy's Ministry of Economy and Finance according to Legislative Decree 109/2007; in Malta, as mentioned above, where Article 7 of the National Interest (Enabling Powers) Act states that the functions outlined earlier are attributed to the Sanctions Monitoring Board, a separate, independent government body; and in Bulgaria, where such competences are granted to the chairperson of the National Security State Agency and the director of the Customs Agency, among other institutions, according to Article 67 of the Defence-related products and dual-use items and technologies export control Act. We found little evidence of bottom-up approaches (i.e., convergence and networking), since member states appear to favour a more centralized approach. This means that, in practice, the degree of transposition and application variance occurring across EU member states might jeopardize the optimal functioning of the internal market, potentially having a direct impact on the effectiveness of sanctions as a foreign policy instrument per se.

Council Regulations on sanctions matters affect the internal market primarily because they allow member states to offer less stringent rules for export than other EU peers. If penalties are substantially lower in one country compared to others, then companies will have an incentive to set up branches and subsidiaries in certain member states in order to carry out trade that would be too risky elsewhere in the EU. While uneven transposition does not necessarily affect internal trade, it creates a structure of incentives favouring some states over others. Similarly, the institutional architecture that supports the implementation phase of the sanctions cycle also creates incentives for firms, companies, but also NGOs to opt for operating out of certain EU member states over others. For instance, in a situation where the capacity of a certain administration remains undeveloped, the chances of receiving an export licence or complete information are lower. A study on the internal redistributive impact of EU sanctions on Russia shows that while these restrictive measures were supposed to reduce trade therewith across the board, related exports in some sectors by certain member states actually increased (Giumelli, 2017). Uneven transposition and uneven application might help explain this phenomenon.

If the EU sanctions regime can be easily circumvented or legally avoided, the result is that trade which should never happen in fact regularly occurs, undermining the ultimate effectiveness of sanctions. The most common indicator for the impact of sanctions is either the overall effect on the economy or a reduction in trade within the specific sector targeted by these restrictive measures. If economic operators find ways to carry out trade in

prohibited sectors, whether they do it from within the EU or not, then sanctions' impact is affected. Frequently, restrictive measures seek to deny access to certain products/technology. Therefore, it is not the quantity of trade that matters, but whether one specific good arrives at its destination. If all it takes for companies to reduce their risks is carrying out their exports from a member state presenting them with virtually no danger of being caught, then the chances of success for a sanction regime are slim. There will always be "the transaction" that is not supposed to take place. Moreover, in such cases there is a reputational cost for the EU too, to be added to the low effectiveness of EU external action caused by unevenly transposed restrictive measures.

9. Conclusions

The analysis of the implementation of EU restrictive measures across member states has provided empirical confirmation of the uneven transposition and application of a key CFSP policy instrument throughout the Union's territory. By looking at the penalties designed to punish sanctions violators imposed in respective member states, we have identified that, on paper, operators face very different risk scenarios if caught in violation of sanctions depending on the EU member state they are based in. This uneven playing field does not only hold true for risks but also for institutional coherence and consistency across the territory of the EU. This means that economic operators may be either penalized or supported when trading with countries or targets to which restrictive measures apply depending on the member state where they are based.

The findings of this article are twofold. First, we claim that implementation and compliance studies should involve CFSP decisions more systematically in their scholarship. The connection between trade and foreign policy has reached such a degree that the institutional architecture of the EU has also started to adapt to this new scenario. It is not by accident that transposition competences on sanctions matters have been recently moved back to the Directorate-General on Financial Stability, Financial Services and Capital Markets Union (DG-FISMA) of the Commission from the External Action Service. Second, we provide empirical confirmation of how uneven transposition and application occurs across the EU. While uneven transposition had been assumed to be a problem of sanctions per se, this research has brought forth a novel empirical account of how the delegation of tasks to member states can lead to uneven implementation.

This is, necessarily, the first of several studies that should be carried out in this emerging research field. For instance, future analyses need to go beyond the law inscribed on paper and focus on application and enforcement instead. When it comes to application, focus needs to be on the degree of freedom to interpret EU regulations by national competent authorities. Enforcement studies must investigate the extent to which administrative and criminal penalties have actually been imposed over time. Moreover, the findings of this research invite further studies explaining why implementation performance varies across EU member states.

Given the clear link with the internal market, future scholarship should focus on the role of EU institutions regarding the monitoring of how member states implement Council Regulations even when inspired by CFSP decisions adopted under Article 29 of the TEU. As the CJEU appropriated some competences in the Kadi case (Isiksel, 2010), the Commission could start to play a more active role. Finally, if uneven implementation is problematic, potential solutions to this problem should now be investigated. While attention should be paid to the motivations and capabilities of member states, even more besides should be devoted to scrutinizing whether this is the best possible equilibrium between the need for a coherent top-down policy set by EU institutions and the intricacies of an on-the-ground reality that—especially in the CFSP—is characterized by incomplete information.

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Conflict of Interests

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Supplementary Material

Supplementary material for this article is available online in the format provided by the author (unedited).

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Article

The Political Economy of the EU Approach to the Rohingya Crisis in Myanmar

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Abstract
European institutions have repeatedly represented the EU as an actor that can use the attractiveness of its market to promote human rights internationally. From this perspective, EU trade sanctions represent a hard power tool to push the government of states accused of major human rights violations to abide by international law. In its reaction to the Rohingya crisis in 2018, despite the European Parliament's call for the lifting of Myanmar's trade preferences, the Council of the EU stated that it would rather tackle the problem by taking a "constructive approach" based on dialogue. We provide a political-economy explanation of this choice, making a plausible case that the political pressures from European importers and exporters, not to jeopardise trade relations with Myanmar, prevailed over the demands of European protectionist groups and NGOs advocating a tougher position. The firms interested in maintaining preferential trade relations with Myanmar were primarily motivated by a desire to avoid a disruption of trade and investment links within global value chains (GVCs) so that they could continue competing with Chinese enterprises.

Keywords
European Union; generalised system of preferences; human rights; Myanmar; sanctions; trade

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1. Introduction

The EU has actively promoted human rights, labour rights, and democracy in Myanmar since the 1990s. More specifically, in 1996, following the imposition of sanctions in the framework of the Common Foreign and Security Policy, it opted (for the first time in the history of the EU external relations) to suspend the generalised system of preferences (GSP) in relation to the Asian country. Such a suspension was based on the accusation that the military junta supported forced labour. The GSP scheme is an exception to the non-discrimination rule under WTO law which offers developing countries unilateral preferential access to the EU market. It can be temporarily suspended in case of serious and persistent violations of core human and labour rights as defined in the Geneva Conventions and the International Labour Organisation (ILO) Convention. As Portela and Orbie (2014, p. 63) argue, "the stick and carrot conditionality of the EU's GSP system constitutes the 'flagship' of trade initiatives aimed at supporting sustainable development and human rights."

After the escalation of the Rohingya crisis in 2017 and the related accusations of the junta of being responsible for genocide, the idea of implementing such a sanction entered once again the agenda of the European institutions. The coverage of the crisis in the European media and its relevance for public opinion made human rights promotion in Myanmar a priority for European external relations. In this case, though, the EU opted instead for a milder approach than in the mid-1990s. While the Council did consider the possibility of once

again suspending the GSP in support of targeted sanctions against the Burmese military, it finally adopted a softer position and refrained from doing so.

We investigate the factors driving this variation over time in the relations between the EU and Myanmar, taking an original perspective that focuses on the preferences and patterns of political mobilisation of relevant domestic constituencies. More specifically, we contend that this variation can be accounted for by explicitly discussing how the integration of the EU economy within so-called global value chains (GVCs) affects the preferences and patterns of political mobilisation of organised trade-related interests and feeds into the policymaking process relating to economic sanctions.

The integration of the EU economy in GVCs means an increasing number of firms rely on imports of finished products or intermediate inputs produced in developing countries with lower labour costs. These import-dependent firms can be expected to oppose the adoption of trade policy decisions likely to increase their imports' variable costs. When the EU adopts trade policy decisions regarding developing countries with which it is highly integrated into GVCs, these import-dependent firms can be expected to mobilise politically to avoid the adoption of policies that will have negative distributive consequences for them (Eckhardt & Poletti, 2016). Since the decision to suspend the GSP scheme in cases of human or labour rights violations is a policy choice that ultimately affects key domestic trade-related constituencies in the EU, this implies that firms integrated into GVCs could be expected to oppose the suspension of the GSP and increase the political weight of the domestic coalition supporting this policy stance.

We leverage, and show the plausibility of, this line of reasoning in the context of a longitudinal case study of EU–Myanmar relations spanning the period between 1997 and 2017. More specifically, we draw on process-related evidence to make a plausible case that variation in the degree of political mobilisation of import-dependent firms within the EU across the two time periods can account for the observed variation in the EU's use of economic sanctions. In addition, as a further probe, we also briefly consider the case of EU relations with Cambodia.

2. Existing Explanations

The literature on EU sanctions suggests several potential explanations for why the EU changed its approach to economic sanctions towards Myanmar over the course of a decade. Portela and Orbie (2014), for instance, analysed the decision to suspend GSP towards Myanmar in 1996, noting that it was coherent with the Common Foreign and Security Policy sanctions that had existed prior to the decision-making process on GSP sanctions and that it came about after the ILO had set up a commission of inquiry condemning the country. While this analysis sheds important light on the inter-institutional dynamics that underpinned the decision to impose sanctions against Myanmar in 1997, it is unlikely to offer a plausible account for the observed variation over time that we are interested in here. For one, CFSP sanctions have never been completely lifted in Myanmar and were still, at least partly, in place in 2017 when the option of suspending the GSP scheme was being considered. Indeed, in response to the political developments in Myanmar in April 2013, the EU lifted the bulk of CFSP sanctions against Myanmar but retained the arms embargo, which has been extended every year since 2013. In 2018, the EU Council confirmed the relevance of the existing embargo and expanded the restrictive measures on Myanmar with a prohibition on the export of dual-use goods, restrictions on the export of equipment for monitoring communications that might be used for internal repression, and on military training and military cooperation (SIPRI, 2021). In addition, differences in inter-institutional dynamics in the two time periods do not necessarily explain why the EU did impose commercial sanctions in reaction to forced labour accusations, and it did not when arguably greater concerns emerged concerning allegations about the military's involvement in genocide.

Others suggest that observed changes in the EU's strategy towards Myanmar may be related to long-term learning processes about the (in)effectiveness of economic sanctions. For instance, Giumelli and Ivan (2013) argue that the EU has shown a learning curve in sanctions, shifting from comprehensive embargoes to sanctions which target individuals due to the realisation of the ineffectiveness of economic sanctions in bringing about the desired policy changes. This shift also reflects the need to factor in humanitarian consequences and the pressure of domestic public opinion on policy choices. While this argument highlights important general trends in the EU's approach towards economic sanctions, it remains unclear whether it can illuminate the dynamics that underpin the evolution of the EU's approach towards Myanmar. For instance, the impact of EU economic sanctions towards Myanmar imposed from 1996 to 2013 is multifaceted. After all, one may conclude that, despite their impact on workers in the economic sectors which export to the EU, the isolation of the country from the international community might have indirectly contributed to the—albeit weak—transition of the country to a semi-democracy from 2015 to January 2021. Thus, one may wonder whether conditions for a policy learning process were actually in place in the particular context of the EU–Myanmar dyadic relationship.

Similarly focusing on the role of norms, Staunton and Ralph (2020) explain the EU's timid approach to the Rohingya case in 2017 as a result of the fact that the grafting of atrocity prevention onto related yet distinct norms contributed to the threat of genocide being underestimated and a misplaced faith in the ability of democratic transition to prevent atrocities. This article is an important contribution that sheds light on how abstractly aligned norms clashed in practice to produce

a particular trajectory of EU engagement with Myanmar. However, this contribution, too, leaves a number of questions open. More prominently, it remains unclear what the role of key societal stakeholders in the EU might have been in shaping the complex relationship between different norms.

In general, existing explanations overlook the impact of the dynamics of political mobilisation of relevant organised societal interests in shaping the evolving EU's attitude towards Myanmar. This is an important oversight. As Giumelli (2017) clearly shows, the imposition of economic sanctions generates stark distributional consequences not only for the target but also for the sender. This means that the decision-making process underpinning the decision to impose a sanction in the EU, as in any other state, is likely to be affected by the preferences and patterns of political mobilisation of the domestic (potential) winners and (potential) losers of such a policy choice. In turn, this implies that it is a priori plausible that observed changes in the EU's approach towards economic sanctions might be, at least in part, influenced by structural transformations determining changes over time in the domestic politics underlying EU sanctions policy. Therefore, we seek to complement the existing literature by developing an international political economy (IPE) explanation of why the EU imposed commercial sanctions on Myanmar in 1996 and opted not to impose them two decades later.

3. Argument

Traditional models of trade policy tend to conceive of policymakers as transmission belts for the demands of organised domestic societal groups. According to this view, EU policymakers mostly react to the demands of export-oriented sectors wishing to see better access to foreign markets and import-competing sectors wishing to reduce exposure to foreign competition domestically (Poletti et al., 2021). Although the EU's willingness to commit to trade liberalisation ultimately depends on the relative balance of influence of these two groups, this view suggests that the EU should consistently strive to improve access to foreign markets for its exporters while protecting domestic sectors threatened by foreign competition. However, in recent years, diffuse interests such as NGOs have increasingly been able to overcome collective action problems, often joining import-competing groups in opposing trade liberalisation (Poletti & Sicurelli, 2012, 2016, 2018), and play an important role in EU trade politics (Dür et al., 2020).

However, as argued by Poletti et al. (2021), these views overlook the impact on the politics of trade of the growing integration of the EU's economy within so-called GVCs. The globalisation and fragmentation of trade, production, and distribution centred around GVCs represent one of the most important developments in the contemporary international economy. This development was triggered by the growing reliance of producers in developed countries on the outsourcing of labour-intensive, less value-added operations to low(er) income countries (Eckhardt & Poletti, 2018). These producers have either directly created foreign subsidiaries or started to source inputs from independent foreign suppliers (Lanz & Miroudot, 2011). In the former case, production networks are developed and sustained by multinational corporations that feature various types of integration of production facilities located in different jurisdictions into a single corporate structure. Such corporate structures can be "vertically integrated," where firms take ownership of their supply chain partners and internalise the production of parts and components, or "horizontally integrated," where global firms replicate the full production process in different locations (Helpman, 2006). In the latter case, firms systematically rely on foreign products used as components to deliver final products but do not directly establish production facilities abroad, preferring to coordinate buyer–seller interactions through arms-length market relationships (Gereffi et al., 2005). Both groups of firms that rely on the income generated by the import of intermediate products are usually referred to as import-dependent firms (Eckhardt & Poletti, 2016, p. 4). As a result of these processes, the politics of trade in the EU and elsewhere can no longer be described as a case of "exporters vs import-competing industries." Understanding the politics of trade in this changing context requires adding the role of import-dependent firms to the equation (Anderer et al., 2020).

For instance, the trade policy literature has widely noted that import-dependent firms tend to have stronger free-trade preferences than domestic firms operating in the same sector because they are interested in accessing cheap inputs from their affiliates abroad or independent foreign suppliers and are therefore not similarly wary of competition from foreign producers (Anderer et al., 2020; Eckhardt & Poletti, 2016; Jensen et al., 2015; Yildirim, 2018; Yildirim et al., 2018). This means that import-dependent firms can be expected to strongly support trade arrangements that do not disrupt their ties within GVCs, as well as to oppose trade policies that could bring about higher import costs (Bernard et al., 2012). Moreover, import-dependent firms are usually the largest and most productive firms within a given industry, which suggests that they have at their disposal more *resources* for lobbying on trade policy (Baccini et al., 2017; Eckhardt & Poletti, 2018). Import-dependent firms thus not only hold strong free-trade policy preferences, but they are also likely to weigh politically in the EU trade policymaking process. Overall, these arguments suggest that the growing integration of the EU economy in GVCs should make EU trade policy systematically more free-trade oriented due to the growing political role of import-dependent firms and the consequent political weight of pro-trade domestic coalitions (Dür et al., 2020).

The EU has been one of the main drivers of this process of internationalisation of production centred around GVCs (Amador & di Mauro, 2015; Dür et al.,

2020); today, it is one of the most resilient, active, and encompassing economic players in terms of using foreign products for production and exports (di Mauro et al., 2013). As a result, many works have documented that import-dependent firms have indeed played a crucial role in the politics of trade in the EU by (a) facilitating negotiations of free trade agreements (Anderer et al., 2020; Eckhardt & Poletti, 2016; Poletti et al., 2021), (b) reducing support for the imposition of anti-dumping measures (Eckhardt, 2013, 2015), and (c) promoting compliance with adverse panel rulings in the WTO dispute settlement (Yildirim, 2018).

The same logic should also be relevant to the political dynamics underpinning the decision to adopt sanctions against Myanmar. The imposition of sanctions would imply eliminating privileges granted under the GSP scheme, which entails removing import duties from products coming into the EU market from a subset of developing countries. Taking into account the role of GVCs and EU import-dependent firms operating within them can help shed light on temporal variation in the EU propensity to adopt sanctions against developing countries. When the EU faces the choice of adopting sanctions with developing countries with which it is weakly integrated into GVCs we should expect domestic political coalitions to be dominated by groups supporting sanctions. For one, we can expect import-dependent firms, backed by NGOs, to support economic sanctions that could reduce their exposure to imports from labour-abundant countries. At the same time, the opposing coalition of export-oriented firms is not likely to be strong given that these markets are not particularly interesting for exporters of goods produced in high-cost locations. Conversely, when the EU faces the choice of adopting economic sanctions with developing countries with which it is highly integrated into GVCs, import-dependent firms can be expected to play a significant political role, widening the domestic political coalition opposing the imposition of such sanctions and making it less likely that economic sanctions are adopted.

4. A Longitudinal Case Study of EU–Myanmar Relations

In this section, we examine the plausibility of the argument developed so far through a longitudinal analysis of the politics underpinning both the EU's decision to impose economic sanctions against Myanmar by suspending the GSP scheme and the decision to refrain from doing so in the face of the Rohingya crisis in 2018. This longitudinal case study serves our purposes well because it allows us to trace how the EU position evolved in response to changes in the value of our key explanatory factor, i.e., the (absence) presence of import-dependent firms in the domestic politics of the EU. In addition, our empirical research enables us to keep constant and control for important exogenous potential sources of variation such as cultural perceptions, strategic interests, and colonial ties. More specifically, using a combination of congruence testing and process tracing (Dür, 2008; George & Bennett, 2005), we show that import-dependent firms played a limited role in the political discussions preceding the suspension of the GSP scheme before 1997 while they played an active and significant role in the period before 2017. To carry out our analysis, we triangulate three sets of sources: (a) secondary sources such as media, policy-oriented, and scholarly publications; (b) primary sources such as official documentary records from relevant institutions and policy statements by interest groups and NGOs; and (c) interviews with first-hand participants in the processes under investigation. Moreover, to strengthen the plausibility of our argument, we also briefly discuss the case of the decision of the EU to suspend the GSP in relation to Cambodia in 2020.

Following the case of Myanmar in 1996, the EU suspended or downgraded the GSP in three further cases, namely Belarus (2007), Sri Lanka (2010), and Cambodia (2020). The latter case is more comparable to Myanmar in several respects. Both Myanmar and Cambodia are classified as less developed countries by the UN and are therefore eligible for the EU's Everything but Arms (EBA) scheme, an initiative under the Eu's GSP scheme which provides the least developed countries with duty-free and quota-free imports, except for armaments. The two Southeast Asian countries are labour-abundant countries and members of the Association of South-East Asian Nations (ASEAN). Finally, debate on the possibility of imposing GSP suspension on the two countries took place in the EU at almost the same time, which allows us to dismiss the hypothesis that the EU's decision not to impose GSP suspension in the case of Myanmar was due to concern that it would not be effective. Despite their shared features, the EU refrained from imposing commercial sanctions on Myanmar following the 2017 crisis, while it took a more assertive approach in the case of Cambodia in 2020. The brief discussion of the case of Cambodia allows us to show that, in line with our argument, domestic economic interests affected the EU's sanctioning behaviour.

We are aware that our single case-study approach does not allow for generalisations across other instances of EU sanctioning behaviour. At the same time, we would like to stress that plausibility probes demonstrating the empirical relevance of an argument in the context of one significant case in which it can be concretely applied play a crucial role in the process of theory development, particularly when used as preliminary studies on relatively untested theories and hypotheses such as the one presented in this article (Eckstein, 1975; George & Bennett, 2005; Levy, 2008).

5. EU Trade Sanctions on Myanmar's Use of Forced Labour (1997–2013)

The EU firmly reacted to the authoritarian government established by the military junta in Myanmar in 1988,

and it did so with multiple foreign policy instruments that culminated in the decision to impose EBA withdrawal in 1997. At the end of the 1990s, Myanmar was not a major destination for European investors and importers, and the prospect of imposing trade sanctions in the form of a suspension of the GSP scheme (which was strongly sponsored by European trade unions) did not raise substantial opposition from European business organisations.

In 1995, a joint complaint of the European Trade Union Confederation and the International Confederation of Free Trade Unions pushed the European Commission to open an investigation against Myanmar, which demonstrated the existence of forced labour in the country (Portela & Orbie, 2014), and human rights NGOs, led by the International Federation of Human Rights, joined the call for sanctions (European Parliament, 1997a). The investigation involved hearings with NGOs and experts and discovered that forced labour was a widespread practice in infrastructure projects within the country (Portela & Orbie, 2014). The ILO also established a Commission of Inquiry on forced labour in the country in 1996. The Commission's investigation and the ILO Commission of Inquiry pushed the European Parliament and the European Council to take a stance on the matter. As a result, the European Parliament passed a non-binding resolution calling EU members to end all trade, tourism, and investment ties (18 July 1996; see McCarthy, 2000). In October of the same year, the European Council (1996, 1) noted "the absence of progress towards democratisation and at the continuing violation of human rights" and confirmed earlier restrictive measures against Myanmar, such as visa bans and arms embargo.

Pressures from trade unions and human rights NGOs to sanction Myanmar did not face considerable resistance among European exporters or investors. Even though European investments accounted for the majority of foreign direct investments in the country (see Table 1), they still amounted to a limited share of European foreign investments compared to 2017. Furthermore, by the end of 1996, several European firms (including Philips, Carlsberg, Heineken, Interbrew) had left Myanmar, followed by Burton, British High Street, and Ericson in 1997 (Arianayagam & Sidhu, 2013; Than & Than, 1997) due to public pressure in their home markets (Speece & Sann, 1998) and the boycott adopted by US local governments (Guay, 2000; "Heineken to pull out of Burma,2).

The French oil company Total (present in the country since 1992; see Dhooge, 1998) was the main European oil company operating in the country. Nevertheless, Total was not proactive in calling for the EU to take a softer approach on Myanmar because both its operations would not be directly affected by the suspension of the GSP scheme (European Parliament, 1997a), and Total itself had attracted criticism for being involved in forced labour in Myanmar (European Parliament, 1997b). The company denied such allegations and claimed that the country's military junta should rather be held responsible for those crimes (Dhooge, 1998). On the insistence of the so-called like-minded countries (especially Scandinavian countries; see Forster, 2000), the European Council (1998) ultimately approved the EU regulation on GSP withdrawal "on account of the use of forced labour" in 1997, with little dissent among the governments of the 15 EU member states (Speece & Sann, 1998). For the first time, the EU decided to withdraw GSP privileges to a country due to concerns about labour rights violations, which resulted in many European companies deciding to stop operating in Myanmar (Heiduk, 2020).

In the early 2000s, with the increasing integration of South-East Asian countries in the GVCs, the EU started looking at the region as a strategic trade and investment partner. In this framework, the hypothesis of lifting trade sanctions on Myanmar entered the agenda of European institutions. In 2006, the Global Europe Communication of the European Commission called for a greater investment of European companies in ASEAN to respond to growing competitors in the region, including the US and China. Myanmar became more attractive for EU investors, especially after the reform process launched by President Thein Sein and after the formation

Table 1. FDI in Myanmar by main EU partners (US million $).

	1996 (before GSP withdrawal)	2017–2018 early average (when EU decided not to impose GSP withdrawal)
United Kingdom	1,004	/ (not EU member)
France	465	5,199
Netherlands	237	266,961
v Austria	71	932
Germany	15	126,491
v Denmark	13	3,670
v Norway	/	3,000
Ireland	/	551
TOTAL	1,805	406,804

Source: our elaboration from Directorate of Investment and Company Administration (n.d.).

of a partially civilian government. In February 2012, the umbrella association of European business, Business Europe, met several EU officials and lobbied for the lifting of sanctions. A representative of Business Europe's international relations committee, Winand Quaedvlieg, expressed the new interest in the country, claiming that "there is a lot of potential in the country….There is a low level of development and high potential, both in raw materials and in human resources" (Baker, 2012). Human rights groups in Europe warned about the implications of any hasty removal of sanctions ("Europe rushes to lift sanctions," 2012), but, despite there being resistance, the EU opted to phase out sanctions in April 2012 and lifted them all together one year later, with the only exception of the arms embargo (Bünte & Portela, 2012). The Council declared it was ready to reinstate the GSP to Myanmar, and the European Parliament quickly supported this decision.

Following this decision, Myanmar became an increasingly attractive source of imports into the EU and a destination for European investors (see Figure 1). The EU also promoted parallel diplomatic cooperation with the country and support for the democratic transition. In 2012–2013 the EU increased its development support to Myanmar and opened a delegation to the country (European Commission, 2016). Such cooperation faced a major challenge in 2017 when the Rohingya crisis raised major international attention. As the next section shows, though, the growing economic stakes the EU had developed there reduced the incentive for the EU to opt for commercial sanctions as an instrument for human rights promotion.

6. EU Softer Reaction to Myanmar's Rohingya Crisis (2017–Present)

In 2017–2018, when the EU started considering imposing a new GSP withdrawal on Myanmar, it had larger economic interests than in the late 1990s. Despite the international mobilisation against the involvement of the Burmese military in the Rohingya crisis, the EU opted for a softer approach than it had in the late 1990s.

After the return of trade privileges with the EU in July 2013, EU FDI to the country and trade flows increased considerably. From 2014 to 2016, European retailers sourcing apparel from Myanmar became major importers from the country ("EU considers textile trade sanctions," 2018; "EU to boost garment industry," 2019). Germany became Myanmar's fifth trading partner in 2014 (Renwick, 2014). Besides, European companies heavily invested in Myanmar in the oil, gas, and tourism sectors. In 2017–2018 Myanmar's exports to the EU amounted to 1.56 billion euros ($1.81 billion), approximately ten times the value of its exports in 2012 (Emmott & Blenkinsop, 2018). In 2018, the EU was a major source of FDI in Myanmar and the sixth trading partner of the country (Emmott & Blenkinsop, 2018). Table 1 shows that in 2017–2018 FDI to Myanmar from the major European trade partners amounted to an average of US $406.804 million per year, in contrast to US $1.805 million in 1996.

Following the mass violence involving the Burmese military against the Rohingya minority in 2017, a debate originated within the EU on the option of once again imposing EBA withdrawal on Myanmar. In contrast to

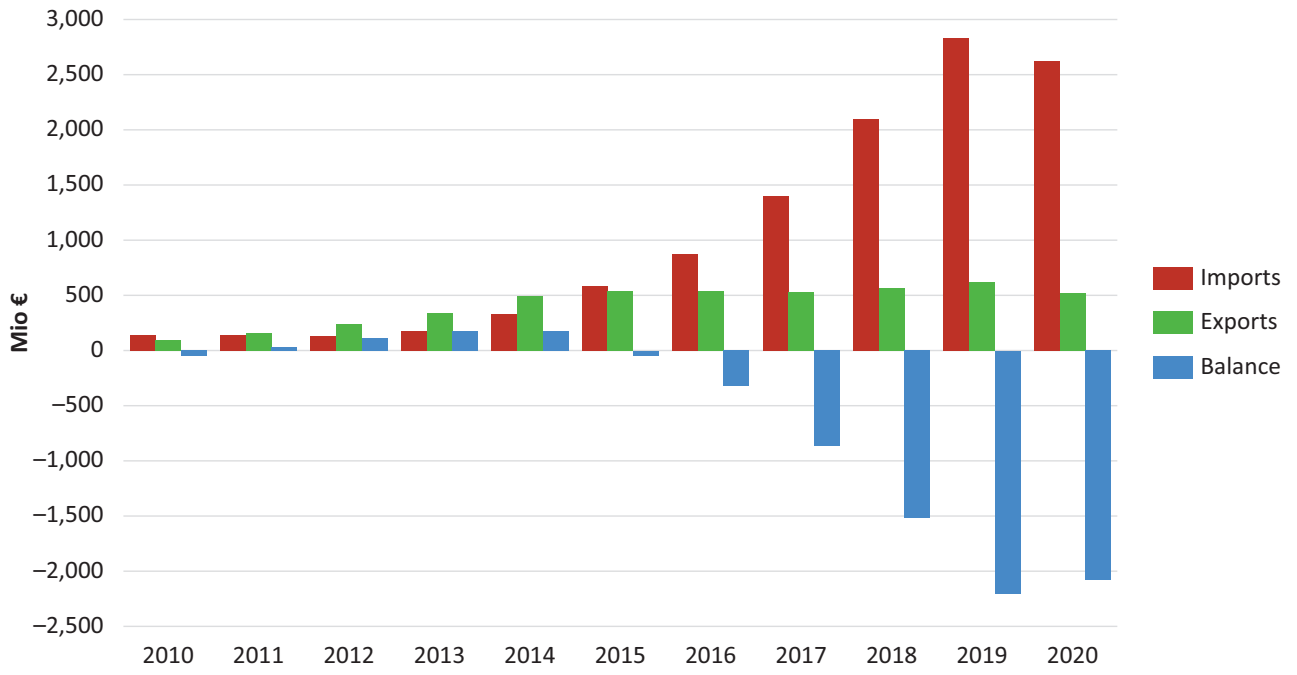

Figure 1. EU trade flows with Myanmar (imports to the EU, exports from the EU, and balance), annual data 2010–2020. Source: European Commission (2021).

the previous stage, in 2017 and 2018, echoing the growing international scepticism regarding the effectiveness of comprehensive sanctions, NGOs adopted more cautious positions than in the 1990s on the prospect of imposing such a measure (Amnesty International, 2017; European Burma Network, 2018; Human Rights Watch, 2017), while at the same time recognising the lack of success of targeted EU sanctions in putting an end to the use of violence by the Burmese military ("EU considers textile trade sanctions," 2018). More explicit positions in favour of GSP withdrawal came from protectionist groups in the EU member states especially hit by the economic consequences of importing cheap products from Myanmar. The Italian agricultural organisation Coldiretti (2018), for instance, firmly pushed the European Commission to impose trade sanctions on Myanmar due to its concerns regarding human rights violations.

The European Parliament was the most vocal European institution calling for a firm reaction to the Rohingya crisis. Besides NGOs' concerns about the lack of targeted sanctions and protectionist pressures, the European Parliament considered imposing new trade sanctions due to the salience of the Rohingya crisis for the European public and the recognition of the limited effect of development cooperation efforts in the country (Meissner, 2021). Thus, in 2018 the European Parliament asked for a new investigation on Myanmar, followed by a call for GSP withdrawal ("EU considers textile trade sanctions," 2018).

At this stage, this proposal was met with strong resistance by the European business sector. European retailers such as AVE trade association of German Retailers ("EU to Cambodia," 2018), H&M ("Brands mull Myanmar sourcing," 2019), the C&A foundation (Reed, 2018), argued against GSP withdrawal, claiming that such a sanction would not harm the military and would have a negative impact upon Burmese workers. The latter mainly include young women, 20% of whom come from the Rakhine state, where the crackdown of the Rohingya crisis occurred. Moreover, in contrast to what happened in the 1990s, the European retailer association did not respond to consumers' concerns over human rights violations in Myanmar. European companies (including H&M, Benetton, and Primark) waited until the military coup in 2021 before freezing imports. Similarly, the executive director of the European Chamber of Commerce in Myanmar, Filip Lauwerysen, commented that "a withdrawal will not only risk a slowdown, or even a stop of current capacity building activities [in the garment industry], but most likely close the potential for new interventions" (Heijmans, 2019). Business Europe (interviewed May 2021) further elaborated on this position. The increasing attractiveness of the ASEAN region for European retailers has represented an incentive for the mobilisation of stakeholders against GSP withdrawal. More specifically, according to Business Europe, GSP withdrawal should be a last resort measure; it should be based on uncontroversial empirical evidence of the human rights violations perpetrated by the target government and supported by clear information of the EU's evaluation criteria and the steps required to reinstate the GSP.

As a response to these pressures, the European Commission discussed the option of imposing sector-specific EBA withdrawal and considered the option of exempting textiles from EU trade sanctions. According to an EU official, though, given the size of the lucrative sector in Myanmar (which makes up more than 75% of Myanmar's exports to the EU), that would have clearly reduced the impact of EU sanctions ("EU considers textile trade sanctions," 2018). In October 2018, the EU delegation met with representatives of Burmese stakeholders in Yangon to discuss the implications of the preferential trade agreement. The mission findings would also help the EU to determine the implications of a possible EBA withdrawal (Centro de Información sobre Empresas y Derechos Humanos, 2018).

EU institutions also endorsed European foreign investors' requests, opting not to impose the GSP based on similar arguments to those proposed by European retailers (as per informal conversation with EU staff). More explicitly, they declared their concern for the fact that "the formal threat of losing tariff-free access would quickly hit foreign investment in the apparel industry, where European manufacturers take advantage of relatively low labour costs in Myanmar" ("EU considers textile trade sanctions," 2018). According to an EU official, imposing trade sanctions would strengthen Chinese trade relations with Myanmar ("EU considers textile trade sanctions," 2018). Finally, the EU opted not to impose EBA withdrawal, considering that they "are concerned about the impact on the population from our potential measures" ("EU considers textile trade sanctions," 2018).

In 2019 the EU became the third largest trade partner of Myanmar (China and Thailand being the first and second, respectively), accounting for 11% of total Burmese trade. The EU imported goods worth €2.8 billion from Myanmar, mainly including textiles, footwear, and agricultural products (European Commission, 2020). A representative of the EU delegation in Myanmar also commented on the greater interests of European importers and investors in the country compared to the 1996–1997 period.

7. A Further Probe: EU Relations With Cambodia

The evolution of EU relations with Cambodia further supports our argument. Indeed, a parallel debate on EBA withdrawal took place in the EU in relation to Cambodia due to concerns about violations of labour rights in the country. In this case, the EU ultimately opted to partially withdraw EBA in August 2020, which raised doubts of lack of consistency in EU trade and human rights relations with different countries.

Although the Myanmar ethnic cleansing raised more serious concern in Europe than Cambodia's violations

of labour rights, the High Representative of the Union for Foreign Affairs and Security Policy (2020) ultimately claimed that "the EU will continue its active engagement with the Government of Myanmar including within the EBA enhanced engagement." In line with our argument, the country director of the Konrad-Adenauer-Stiftung Cambodia, Daniel Schmücking, explained this apparent inconsistency in European external relations by claiming that the EU had opted for EBA withdrawal in Cambodia as the result of limited European interests concerning trade relations (Schmücking, 2020). As a matter of fact, in contrast to Myanmar, it appeared clear that Cambodia has chosen to bandwagon with China with respect to its trade relations (Po & Primiano, 2020). In 2019, Cambodia and China launched negotiations for a free trade agreement and reached a deal in October 2020. Myanmar, on the other hand, has developed a more cooperative relationship with the EU since 2013, epitomised by the launch of negotiations towards a free trade deal with the EU in that year. Such an openness to trade negotiations with the EU has contributed to European institutions becoming more sensitive to pressure from stakeholders who wish to preserve trade relations.

8. Conclusion

The comparison between the EU's decisions to impose GSP suspension in its relations with Myanmar in 1996 and the reluctance of the EU to reinstate such a sanction following the 2017 Rohingya crisis show that IPE motivations have contributed to the softening of the European approach to their human rights violations. The increasing integration of ASEAN in the GVC in the last two decades has altered the interests of European investors and retailers who have begun to consider the region an attractive partner. Data concerning the volume of investments of European companies in Myanmar and the launch of trade negotiations with the country in 2013 confirm the increasing interest in the region. While in 1996, European retailers and investors withdrew from the country following accusations that the military junta were ignoring the use of forced labour, two decades later, they actively mobilised to promote a softer approach toward the military there being involved in the Rohingya genocide. As interviews and press sources confirm, despite the context of global attention on the human rights violations in Myanmar, European institutions proved themselves to be responsive to pressure from European investors and retailers when they opted not to withdraw the GSP.

The *coup d'état* in February 2021 and the mass protest in Myanmar brought the country to the edge of what seems to be an enduring low-intensity civil war. The instability that followed has made once again the country less attractive for European investors and retailers who are now considering leaving the country. This change will probably affect the positions of European stakeholders on Myanmar in the near future and, therefore, of the EU concerning the suspension of the GSP. Following the coup, a joint resolution of European Parliament's members (European Parliament, 2021) re-opened the debate on whether to impose GSP withdrawal on Myanmar and urged the Commission to launch an investigation to suspend trade preferences toward Myanmar, especially in those sectors benefiting companies owned by members of the military.

Conflict of Interests

The authors declare no conflict of interest.

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Article

Sanctioning Capacity in Trade and Sustainability Chapters in EU Trade Agreements: The EU–Korea Case

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Abstract
Although sanctions targeting political regimes receive the most media attention, the EU can also sanction states for labour rights violations through its trade policy. Although in practice such sanctions are applied only in extreme cases, the possibility of suspending trade preferences increases the EU's leverage. In modern trade agreements, the EU incorporates Trade and Sustainable Development (TSD) chapters for labour and environmental matters. However, trade sanctions for non-compliance with this chapter are absent. Instead, a dedicated dispute settlement arrangement exists, leading to recommendations by a panel of experts. In 2019 the EU launched proceedings against South Korea for failing to uphold commitments to ratify and implement International Labour Organisation core conventions regarding trade unions under the 2011 EU–Korea Trade Agreement. In 2021, the panel of experts sided with the EU's interpretation of commitments under the TSD chapter. This initial case represents the EU's intention to focus on the implementation of TSD chapters. Using data from official documents, this article process-traces the dispute with Korea. It argues that the outcome of the case, and Korea's ratification of fundamental International Labour Organisation conventions in 2021, demonstrate the potential of the TSD chapter, when forcefully enforced, to partially redress the weak sanctioning capacity in TSD chapters. It also uncovers important caveats regarding state capacity and alignment with government objectives as conditioning the effectiveness of TSD chapters' non-legally binding sanctioning mechanisms.

Keywords
dispute mechanism; EU; FTA; Korea; labour standards; panel of experts; sanctions; trade and sustainability

Issue
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1. Introduction

In late 2019, after insufficient progress in bilateral consultations, the European Union formally launched dispute proceedings against South Korea under the Trade and Sustainable Development (TSD) chapter of the EU–Korea free trade agreement (FTA) of 2011. This marked the first time that the dispute mechanism under a TSD chapter was triggered. The issue at stake related to concerns over delays in South Korea's ratification of outstanding fundamental conventions of the International Labour Organisation (ILO) and constraints on trade unions. The EU–Korea FTA was the first of a new generation of EU FTAs that for the first time included a TSD chapter devoted to labour and environmental standards. In line with the implementation of the FTA and the TSD chapter, it was expected that Korea would ratify all ILO fundamental conventions. After triggering proceedings, in January 2021 the panel of experts, set up in accordance with the sui generis dispute settlement mechanism established in the FTA for the TSD chapter, presented its report of findings. In the report, the experts agreed with the EU's interpretation of the TSD chapter as obliging the parties to ratify the International ILO's fundamental conventions on labour rights (Murray et al., 2021). This is the first, and thus far, only case brought under a TSD chapter, and represents a clear statement of intent on the part of the EU to enforce the proper

implementation of what has been agreed in FTAs. It is also interesting because Korea represents a democratic state that shares EU values, has entered into legally binding labour and environmental chapters in trade agreements with the USA, and would be a most-likely case for the gradual and appropriate implementation of the chapter, and the rest of the FTA, to succeed. Therefore, the fact that the implementation was so disputed that it resulted in the establishment of a panel of experts under the dispute mechanism warrants closer scrutiny, as it allows us to shed light on the intervening conditions that determined the decision to invoke TSD chapters dispute settlement proceedings, and the potential weakness in the TSD chapters that led to the inadequate implementation in the first place. Given the similarities between TSD chapters, understanding this case can help us to ascertain when there is a higher or lower likelihood that disputes may arise in other cases. Moreover, the EU's resolve in this case to convene a panel of experts, and the outcome of the recommendations, could enhance the credibility of the EU's commitment to its TSD chapters, and sway other FTA partners to engage more diligently with the expectations of these chapters. Despite the limitations inherent in single case studies in terms of generalisability, the case allows us to delve into debates surrounding the merits and demerits of approaches to TSD chapters that refrain from the imposition of trade sanctions in cases of non-compliance and to shine a light into the potential of promotional approaches. It also facilitates an analysis of the possibilities for monitoring, naming, and shaming to be deployed as tools for eliciting behavioural changes in international relations without the recourse to more traditional trade sanctions. This is especially relevant as the evolving practice and literature on sanctions, in general, have highlighted the indiscriminate effects that trade and economic sanctions can have on sections of societies that bear no responsibility for the breaches of norms or standards that triggered the sanctions (Portela, 2018), and the fact that such sanctions have often failed to achieve their desired objectives (inter alia, Galtung, 1967; Hovi et al., 2005; Pape, 1997).

This article uses the example of the TSD dispute case under the EU–Korea FTA to address the questions of whether the soft law and promotional approach of the TSD chapters, which is not linked to the overall FTA dispute settlement whereby non-compliance can lead to economic sanctioning in the form of withdrawal of trade preferences agreed under the FTA, can achieve its aims, and whether the way this case has been interpreted by the panel of experts enhances the enforceability of TSD chapters in the absence of hard economic sanctions. A thematic analysis of EU policy documents, and documents and reports related to the EU–Korea TSD case, complemented by relevant secondary sources is deployed to process-trace the evolution of the case, and to compare aims of the TSD chapter with the dispute outcomes to assess if and how the promotional approach can achieve its aims. A detailed textual analysis of the panel of experts' report is conducted to consider if the outcome of this case has the potential to enhance TSD chapters, that have often been considered as too soft in the literature to be effective (Harrison et al., 2019b; Lowe, 2019; Orbie et al., 2005; Van Roozendaal, 2017). In so doing, the article adds nuance to assumptions in the trade agreements and labour standards literature and research on TSD that suggests that without strong legal enforceability and recourse to economic and trade sanctions the transformational capacity of TSD chapters is far too limited. It also contributes to the literatures on FTAs and labour standards, and on sanctions, by considering the potential for non-legally binding dispute settlement mechanisms like that in the TSD chapter and monitoring to function in the absence of recourse to traditional economic sanctioning mechanisms.

The rest of the article is organized as follows. Section 2 provides a background to how the EU has approached the issue of linking labour standards to its trade policy. Section 3 provides an overview of TSD chapters and their sui generis dispute mechanism in FTAs. Section 4 traces the evolution of the implementation of the TSD chapter in the EU–Korea FTA highlighting the origins of the dispute. Section 5 details the actual dispute and analyses the panel of experts' report and outcomes of the dispute. A final conclusion considers the potential implications of this dispute.

2. EU Trade Policy and Labour Standards

Attempts in the 1990s to incorporate labour standards into World Trade Organisation (WTO) provisions failed. On the one hand, labour in developed states highlighted the potential for industry to relocate to jurisdictions with lower costs due to weaker labour rights; on the other, developing states argued this could present a disguised form of protectionism against their competitive advantages (see Bhagwati, 1995). Increased international concern with this issue, as encapsulated in the "free trade versus fair trade debates" (Van Roozendaal, 2002, p. 67) coincided in time with a series of social-democratic governments in Europe more sympathetic to these issues, and who were also faced with increased civil activism in favour of fair trade and concerns over rising European unemployment and the social dumping effects of trade, translating into the incorporation of these matters into EU trade policy (Orbie et al., 2005).

To assuage concerns over the impact of globalization and human rights, labour standards found their way into EU trade policy since the late 1990s. Initially, the EU made unilateral trade preferences granted to developing states conditional on respect for basic human and labour rights. Subsequently, through the Generalised System of Preferences (GSP) Plus, it granted additional market access to the EU to developing states willing to accede to, and implement, core ILO conventions and various multilateral environmental agreements. The strong conditionality, and sanctioning capacity of the GSP Plus, namely

the withdrawal of trading privileges, has been applied in very few cases, often linked to other political rights violations, as the EU has preferred to monitor, discuss problems, and focus on capacity building (see Portela, 2018; Portela & Orbie, 2014). This approach has also been criticised for the inconsistency in target selection, ineffectiveness, and the fact that limiting trade preferences can affect workers generally (causing more damage) and is indiscriminate, unlike the more targeted Common Foreign and Security Policy sanctions aimed at the elites infringing political and human rights (Portela, 2018).

The inclusion of labour standards in bilateral trade agreements, has, however, taken a different approach. Unlike the conditionality of the GSP system, and the US approach to labour and environmental chapters in FTAs, where trade preferences can be suspended in the case of violation of labour and environmental chapters via the general dispute settlement mechanism of the FTA, the approach to TSD chapters in modern EU trade agreements excludes the possibility of trade preference cancellation over breach of these chapters, as these are excluded from the dispute settlement of the FTA. This is both a way of accommodating trading partners that object to the linkage of labour standards and trade preferences, as well as reconciling different positions within the EU, where some member states feared facing trade preference withdrawal over other member states' laxer approaches to labour rights (anonymised interview with an EU official), given the reciprocal nature of FTA provisions.

The EU's promotional approach to labour standards in FTAs has been criticized by trade unions, the European Economic and Social Committee, and the European Parliament. The latter, since being granted an increased role in trade policy and trade agreement ratification in the Treaty of Lisbon, has raised the level of ambition around the trade–labour rights linkage (Van den Putte & Orbie, 2015). Beyond insisting on the need for TSD chapters, in resolutions on specific FTA negotiations (with India, Vietnam, Colombia, Peru; European Parliament, 2011, 2012, 2014) and in general resolutions on human rights, environment, and trade (European Parliament, 2010), the European Parliament has called for the EU to include legally binding TSD chapters in FTAs and make these subject to preference withdrawal. In response to criticism against the lack of enforceability, absence of focus on specific labour issues in partner countries, and lack of capacity in partner countries to engage in TSD processes (see Harrison et al., 2019a), the Commission instigated an internal debate within the EU in 2017–2018 to consider the future of TSD chapters (European Commission, 2017b). Submissions to the European Commission (2017a) reveal diverse views amongst stakeholders, with business groups expressing concerns over sanctions that could cause other partners to limit access to their markets (BusinessEurope, 2017), and environmental groups and trade unions supporting more stringent sanctions. After extensive consultations, the Commission decided to eschew following the US approach of subjecting labour and environmental chapters in trade agreements to the possibility of trade preference suspension, given the unconvincing evidence with regards to its effectiveness (European Commission, 2018). Instead, the Commission proposed working more closely with the European Parliament and civil society to enhance the monitoring of the implementation of TSD chapters (European Commission, 2018). It also proposed a series of improvements such as pushing for early ratification of ILO conventions (unlike what happened in the Korean case), agreeing with partners on specific localized labour issues to address within the TSD monitoring dialogues, improving transparency, and facilitating civil society's participation in the monitoring and implementation of TSD chapters in FTAs with €3 million of funds (European Commission, 2018). In essence, the approach to TSD chapters remains the same in broad lines, but with greater emphasis on faster implementation, stricter monitoring, and ensuring greater clarity of commitment prior to finalizing a trade agreement.

3. Trade and Sustainable Development Chapters in EU Free Trade Agreements

The EU–Korea FTA was the first to include a specific TSD chapter. This has since become a feature of subsequent EU FTAs, which follow inclusion of the same substantive rights and approach (Harrison et al., 2019a). These chapters reaffirm the parties' commitments to the ILO, ILO fundamental conventions, and decent work agenda. In the case of Korea, as Korea had not yet ratified all eight fundamental ILO conventions, Article 13.4 commits the parties to make sustained efforts to ratify these. The chapter commits the parties:

> To respecting, promoting and realising, in their laws and practices, the principles concerning the fundamental rights, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation. (Free Trade Agreement, 2011, p. 63)

Thus, the TSD chapter establishes a requirement to abide by core ILO standards, even if some fundamental conventions remain unratified. Article 13.2.2 stresses that labour standards will not be used in protectionist ways nor to bring into question comparative advantage (Free Trade Agreement, 2011, p. 63), incorporating concerns raised by non-Western states. Article 13.3 reiterates the right of each party to establish its own levels of labour and environmental protection, although the parties "should strive to improve" these (Free Trade Agreement, 2011, p. 63). In terms of substantive commitments, the TSD in the EU–Korea FTA requires efforts

to ratify fundamental ILO conventions, and implementation of domestic laws which should guarantee the principles of the ILO that the parties have agreed to abide by through membership of the ILO, as well as enforcing their own labour (and environmental) laws. Subsequent agreements have deviated slightly in the wording on the ILO in cases (like Canada) where the party has already ratified the relevant ILO conventions. In the case of Japan, the language used is more forceful than in the Korean case, as Japan "shall make efforts" (Van't Wout, 2021, p. 3) to ratify the core ILO conventions, perhaps reflecting lessons from Korea's case. However, the qualification of this with "on its own initiative" has been interpreted as again reinstating some ambiguity into the commitment (Van't Wout, 2021, p. 3). Newer TSD chapters have also broadened the scope to themes such as labour inspection, occupational health and safety, and working conditions (Van't Wout, 2021), although these can range from mentioning inspections (Article 18.13 in the Japan Agreement) to commitments to maintain a system of labour inspections with enforcement powers (Canada Agreement, Article 23.5.1).

The TSD chapter sets up dedicated institutions to monitor rights and the implementation of the chapter. Firstly, the TSD Committee, made up of official-level representatives, is tasked with meeting annually to discuss the implementation of the chapter and report to the FTA's Joint Committee. A Civil Society Forum (CSF), that feeds into the TSD Committee, meets annually, and brings together non-governmental representatives from the EU and Korea. These non-governmental representatives are the members of the Domestic Advisor Groups (DAGs), which comprise independent representative organisations of civil society in a balanced representation of environment, labour, and business organisations as well as other relevant stakeholders (Art. 13.12, European Commission, 2011, p. 64). Research on DAGs has revealed lack of independence in some cases, insufficient resources (Orbie et al., 2017), or, as in the case of Korea, lack of knowledge and understanding of the purposes of DAGs (Van't Wout, 2021). These shortcomings have hindered the potential for DAGs to support expedient and efficient implementation of TSD chapters.

Finally, the TSD chapter creates a specific mechanism for the resolution of disputes under the agreement. Article 13.14 establishes that a party can call another into formal consultations to attempt to resolve issues arising from the chapter. Article 13.15 gives the parties recourse to an independent panel of experts if consultations do not bring about the desired effects. The parties agree to establish a list of 15 potential panel of expert members. In the case of referral to a panel of experts, "the implementation of the recommendations of the Panel of Experts shall be monitored by the Committee on Trade and Sustainable Development" (Free Trade Agreement, 2011, p. 65). The dispute resolution mechanism is based on the promotional and monitoring methods that are prevalent in the ILO. Whilst this is more palatable from a political perspective, not least to EU partners, the literature examining TSD chapters and their implementation has suggested that without recourse to trade sanctions (withdrawal of preferences) these are unlikely to be effective (Lowe, 2019; Marx et al., 2017; Van Roozendaal, 2017). Turning to the EU–Korea TSD dispute in subsequent sections allows for an exploration of these claims.

4. Implementation of the EU–Korea Free Trade Agreement's Trade and Sustainable Development Chapter

Research on TSD chapters and their effects on labour rights in practice in specific case studies indicates that these have not, to date, resulted in improved labour rights on the ground (Harrison et al., 2019b; Marx & Brando, 2016; Marx et al., 2017; Orbie et al., 2017; Van Roozendaal, 2017). Insufficient resources and bureaucratic capabilities have been identified as key impediments to improvements (Harrison et al., 2019b; Marx & Brando, 2016; Orbie et al., 2017). Governments' reluctance to regulate and ensure improvements for workers or in rights of association have also contributed to unimpressive impacts (Van Roozendaal, 2017). In a study based on interviews with officials and trade unionists, Harrison et al. (2019b, p. 266) uncovered that often civil servants thought that "labour standards were not a legislative or procedural priority in terms of the operationalization of the agreement." The specific EU–Korea case fits this pattern. Indeed, it was the inadequate implementation of the chapter that eventually led to the dispute under the TSD chapter, and during the dispute proceedings the Korean representatives argued that they understood the obligations in the chapter differently to the EU. However, as Van Roozendaal (2017, p. 19) points out, given the democratic regime and level of development in Korea and bureaucratic capabilities, compliance would have been expected. The particularities of Korean trade union laws, corporate practices, and governmental reluctance (especially under President Park's administration) have meant, however, that implementation of the TSD chapter has been far from smooth and efficient, eventually leading to the dispute.

South Korea's laws on trade union registration and certain labour practices have been subjected to long-standing domestic and international trade union criticism. Specifically, limitations on the right to strike and assembly (requiring permission; and the criminalisation of obstruction to business), the use of migrant workers while restricting their rights (non-registration of Migrants' Trade Union), excessive police force against organized labour, have been highlighted (Lee, 2009). Certain categories of workers like public servants, defence industry workers, teachers, and others in essential public services are severely limited in terms of right to strike. The hostile environment for unions allows heavy fines through the criminal act against unionists engaged in activities that disrupt business even if these

are non-violent (Van Roozendaal, 2017, p. 25). Korean and international trade unions have raised 16 complaints on these matters with the ILO since 1992.

Whilst the ILO plays a role in the monitoring of labour standards, especially of conventions that members have ratified, the organization lacks sanctioning capacity. Its recommendations can enhance the legitimacy of complainants' (or governments') positions, but it is up to governments to decide whether to abide by the recommendations. The ILO has upheld trade unions' concerns over restrictions to freedom of association and right to assembly in Korea's Trade Union and Labour Relations Adjustment Act (TULRAA) in a number of cases (ILO, 2021a). For instance, in response to a complaint raised by the Korean Federation of Trade Unions and the Korean Professors Trade Union in 2010, given that some categories of teachers were unable to unionise under Korean law as they were a category of public servant deemed essential, the ILO's Committee on Freedom of Association recommended a revision of the law, which by 2017 had not yet occurred (Van Roozendaal, 2017, p. 25).

It is within this context that the negotiation and implementation of the FTA, and TSD chapter, have taken place. During negotiations, the parties, at the EU's insistence, agreed to reference the ILO's eight core fundamental conventions in the FTA, and to commit to make "continued and sustained efforts towards ratifying the fundamental ILO conventions, as well as other conventions that are classified as 'up-to-date' by the ILO." (Art. 13.4 EU–Korea FTA; Free Trade Agreement, 2011). At the time, Korea had only ratified four of the eight fundamental ILO conventions, namely C100 on equal remuneration, C111 against discrimination in employment and occupation, C138 on minimum age (which Korea established at 15 years of age), and C182 against the worst forms of child labour (ILO, 2021b). During FTA negotiations, Korea managed to reduce the references to ILO conventions, and, crucially, to remove mentions to any immediate obligation to ratify fundamental ILO conventions (Campling et al., 2021). Since the start of the implementation of the FTA, the EU has been demanding that Korea ratify and implement the remaining four fundamental ILO conventions: C098 on the right to organize and to collective bargaining, C029 on forced labour, C087 on freedom of association and protection of the right to organize, and C105 on the abolition of forced labour. This is a constant theme that appears in all TSD Committee minutes and joint DAG statements (Civil Society Forum, 2018; TSD Committee, 2015, 2017, 2018). Korea has consistently justified its slow pace towards this due to alleged "legal incompatibilities" (Van Roozendaal, 2017, p. 21).

This lingering matter of ratification and implementation of fundamental ILO conventions on freedom of association is, also, related to other specific issues and cases that the DAGs have brought to the attention of the TSD Committee since 2012. DAGs raised the same concerns trade unions had forwarded to the ILO relating to inability for civil servants, teachers, or train drivers to unionise within the TULRAA (Campling et al., 2016, p. 371), as well as raising concerns over the imprisonment of union leaders and demanding their release (Civil Society Forum, 2018).

EU DAG representatives asked the European Commission to initiate formal consultations with Korea under the TSD chapter back in 2014, but the Commission opted to avoid this and discuss concerns more informally within the bilateral political dialogue with the Korean government (Bronckers & Gruni, 2019, p. 8). This is in line both with the FTA and TSD chapter, which requires that initial attempts to resolve disagreements via amicable discussions should be the initial approach. The FTA with Korea represented the EU's first with an Asian economy and with a major developed economy. Its implementation dovetailed in time with the climax of the eurocrisis. Politically, and economically, for the Commission and member states, maintaining a positive relation with Korea and demonstrating the value of the FTA was important, hence the preference for a less charged dialogue rather than a full dispute. A commentator close to the DAG criticised this decision and the "EU [for] taking a very mechanical reading of the arrangements" in the TSD chapter (Campling et al., 2016, p. 371), whereby as long as Korea could demonstrate that it was making some efforts, researching how to make its laws compatible with ILO conventions, it could be construed to not be in flagrant violation of the TSD chapter. Trade unions also considered that these dialogues would not succeed, given insufficient EU influence over the Korean government, the EU not taking a strong stance on labour standards, and antagonistic society–state relations in Korea, characterised by the political influence of large family corporate conglomerates know as *chaebols* (Harrison et al., 2019b, p. 271).

Indeed, throughout President Park's tenure, EU–Korea discussions on these labour matters and the ILO conventions ratifications did not produce any breakthroughs. Her government insisted it was undertaking research on how to adapt its laws, in response to EU dialogues. There is, therefore, no evidence of positive EU influence, as the labour unions had suspected. However, the situation appeared to change with President Park's impeachment on corruption charges in March 2017 and President Moon's election in May. President Moon, and the Democratic Party, had committed to a society that values workers as part of their election campaign. Upon entering office, they abandoned some of the repressive labour reforms of Park's party, and started preparing legislation to increase minimum wages, cap working weeks at 52 hours, and release union presidents from prison (Campling et al., 2021). Exogenous factors to the FTA, the domestic politics and party dynamics in Korea itself, had finally provided the window of opportunity for labour law changes to be enacted in Korea.

By mid-2018, however, President Moon's commitments to labour reform were being increasingly

challenged by the powerful *chaebols* and a more vocal opposition in the National Assembly amidst an economic downturn, leading to a slowdown of reforms, and a mass strike in November 2018 led by the Korean Federation of Trade Unions against rollbacks to reforms of *chaebols* and working hours (Campling et al., 2021, p. 154). It was at this moment that the European Commission decided to follow through with the implementation of the TSD chapter and pursue dispute settlement. In essence, the Commission was reacting to the backtracking in policies in Moon's government once pro-labour reforms had started to be set in motion. Commission officials have suggested that coming up to the tenth anniversary of the FTA, it was deemed that Korea had had sufficient time to make the necessary adaptations (anonymised interview with an EU official). It may well be the case that the Commission had given Korea plenty of time to adapt, but the timing, proceeding not under Park's hostile government, but rather Moon's pro-labour government, seems more than coincidental. Given Park's government's lack of engagement in TSD dialogues, it seems unlikely that the dispute settlement procedure would have resulted in any different behaviour, least of all when Park's government was safe in the knowledge that a panel would be unable to recommend a suspension of trade preferences or financial penalty. Indeed, numerous ILO reports against Korea's policies, as outlined above, had failed to shame Park's government into any reforms.

DAGs had been requesting that the EU escalate the matter of compliance with the labour provisions of the TSD and invoke the formal dispute procedure for TSD in Article 13.4 since 2014, and the European Parliament called for the Commission to initiate consultations with Korea in 2016 (European Parliament, 2016). However, it was only once a new more pro-labour government came to power, and in line with the EU's decision to emphasise the implementation of TSD chapters (European Commission, 2018), that the Commission finally decided to take the step of formally triggering the dispute settlement mechanism of the TSD chapter.

5. EU–Korea Dispute Under the Trade and Sustainable Development Chapter

In December 2018, the European Commission sent a letter to the Korean government requesting the start of formal consultations under the TSD chapter of the FTA. These took place on 21 January 2019, and although they helped to provide clarification, they also "strengthened [the EU's] view that further urgent steps [were] required for Korea to meet the FTA commitments" (Malmström, 2019). In her letter to the Korean Ministers Yoo and Lee, after the consultations, EU Commissioner Malmström reminded the Korean government of their campaign pledges including a society that values workers. The letter warned that unless immediate actions were taken by the Korean government to remedy the issues raised in the consultations, the EU would proceed to the next phase of the dispute process, referring the matter to a panel of experts.

In July 2019, the European Commission formally requested a panel of experts. The EU's complaints related to two matters: (a) insufficient progress towards ratification of the outstanding fundamental ILO conventions; and (b) inadequacy of TULRAA to guarantee labour rights.

The specific concerns with regards to the Korean Trade Union Act, as summarized in the Report of the Panel of Experts, related to:

- Art. 2 paragraph 1 defining workers too narrowly as someone who lives on wages, salary, and other remuneration, excluding certain categories of self-employed, unemployed, and dismissed workers from participating in trade unions.
- Art. 2 paragraph 4 (d) stating that a trade union cannot be recognized if it includes people not under the official narrow definition of worker.
- Art. 23 paragraph 1 whereby trade union officials may only be elected from among members of the trade union.
- Art. 12 paragraphs 1–3 (in conjunction with Art. 2, paragraph 4 and 10) that provides for a discretionary certification procedure for the establishment of trade union (Murray et al., 2021, p. 28).

The panel of experts commenced its work in December 2019. Given the Covid-19 outbreak, hearings were held virtually in October 2020, having been postponed from August 2020 due to Korean officials' lack of availability. The Report's findings and recommendations were published on 20 January 2021.

During the proceedings, Korea objected to the EU's position on various grounds. Korea claimed that the EU was raising aspects related to labour without connection to EU–Korea trade, and argued that they "did not intend, by agreeing to Chapter 13 [in the FTA] to subject their labour laws and policies to obligations that bear no connection to trade (or investment)" (Murray et al., 2021, p. 16). The Korean government was privileging Article 13.7 in the TSD chapter, which stressed that the parties "will not fail to apply" their labour and environmental laws so as to affect trade, and "will not weaken" protections to attract trade and investment or in a way that affects trade (Free Trade Agreement, 2011). A similar obligation to not waive protections in a manner affecting trade also appears in Korea's FTA with the US in Article 19.2 paragraph 2 (United States Trade Representative, 2019), and Korea was interpreting both chapters as equivalent. Moreover, in the only other case to date where international arbitration has occurred on a labour matter under a trade agreement (US vs. Guatemala under the US–Dominican Republic/Central America Free Trade Agreement), the panel dismissed the case, even though it determined that labour rights infringements had indeed occurred. The reason for the

dismissal was that a clear impact of the infringement on trade advantages could not be established (International Centre for Trade and Sustainable Development, 2017). The Korean government was, thus, making a connection to this case and this narrower interpretation of TSD commitments.

The panel of experts, however, dismissed these objections. It interpreted the language of fundamental rights in the context of the ILO Constitution and 1998 Declaration as expressing the universality of these standards, rather than any qualification relating to "trade-relatedness" (Murray et al., 2021, p. 18). The panel further emphasised that it is not possible to ratify ILO conventions only for workers in trade-related sectors, not least as the ILO does not permit ratification subject to reservations (Murray et al., 2021, p. 19). Here, the difference between the EU and US chapters comes to the forefront. The US agreement refers to "adopting and maintaining in statutes and regulations the rights" based on references to the ILO principles of freedom of association, the effective recognition of the right to collective bargaining, the elimination of all forms of compulsory or forced labour, a prohibition on the worst forms of child labour, and the elimination of discrimination in respect of employment and occupation (United States Trade Representative, 2019, Article 19.2, para. 1). By contrast, in the EU agreement, in Article 13.4 paragraph 3 the parties commit to "make continued and sustained efforts towards ratifying the fundamental ILO Conventions." In the US agreement Korea had made no such commitment. However, it was that commitment and the indivisibility of ILO conventions that led the panel to disregard the curtailment of labour standards only to instances where impacts on the trading relationship can be established.

As a result, the panel concluded that Korea's TURLAA Art. 2(1), Art. 2(4)(d), and Art. 23(1) are not consistent with the fundamental right of freedom of association that is referenced in Art. 13.4 of the EU–Korea FTA. It also concluded that TURLAA Art. 21(1)(3) is contrary to the obligations under the TSD chapter with the EU (Art. 13.4.3; Murray et al., 2021, p. 79). In the latter, the parties had:

> Commit[ted] to respecting, promoting and realising, in their laws and practices, the principles concerning the fundamental rights, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation. (Free Trade Agreement, 2011, p. 63)

The panel recommended a reform of TURLAA to bring it into compliance with these commitments. Of special note is the panel's determination that the TSD chapter has implications and commitments that bond beyond the narrow interpretation of labour matters that impact trade and investment or can be construed as creating a trade or investment advantage. Indeed, the TSD chapter refers to principles and obligations derived from membership of the ILO and to maintaining laws that ensure that in practice there is freedom of association, no forced labour, and so on.

On the matter of Korea's delays in ratifying the outstanding fundamental ILO conventions, the panel dismissed the EU's suggestion that making "sustained efforts" (as specified in the last line of Art. 13.4.3 of the EU–Korea FTA) meant that efforts need to be "uninterrupted" (Murray et al., 2021, p. 73). The panel determined that with respect to this, Korea had not acted inconsistently with the TSD chapter (Murray et al., 2021, p. 79).

On 20 April 2021, South Korea finally ratified three out of four of its outstanding fundamental ILO conventions: C098 on the right to organize and collective bargaining; C029 against forced labour; and C087 on freedom of association and protection of the right to organise. These will enter into force in South Korea on 20 April 2022 (ILO, 2011). At the 7th meeting of the EU–Korea TSD Committee of 2021, meeting for the first time since 2018, Korea was congratulated for ratifying these conventions and for amendments to TURLAA to ratify and implement the ILO conventions and was again urged to take make "continuous and sustained efforts towards ratification of ILO C105" (TSD Committee, 2021). The Korean side indicated that it would initiate a research project to identify what changes they would need in their legal frameworks to avoid incompliance with ILO C105 (TSD Committee, 2021).

This initial case shows the possibility for naming and shaming, and for international pressure to encourage changes, even in the absence of trade sanctions and penalties. Prior to the dispute case, Korea had claimed to be undertaking preparatory work to ratify the outstanding fundamental ILO conventions, working with researchers to identify changes to domestic laws required to do this, even under Park's Presidency (TSD Committee, 2015, p. 2), but had not actually completed the ratifications. Under President Moon, more concrete steps were taken as explained above, including proposals submitted to the National Assembly in March 2018 to recognize the basic labour rights of public officials, and the recognition of the Korean Government Employees' Union (TSD Committee, 2018), but facing opposition at home, further labour reforms and steps towards ILO ratification slowed down. External pressure from the EU and the panel of experts provided additional support and encouragement for the government to face down domestic opposition and proceed with the legislative reforms that it wanted to undertake. These reforms of TURLAA would ensure the appropriate implementation of the EU–Korea FTA TSD chapter as stated by the panel of experts, enabling Korea to ratify three more of the fundamental ILO conventions. Considering that Korea, as

a developed state and OECD member, has the capabilities to implement its own domestic laws, the changes to TURLAA should result in improvements of workers' rights of association on the ground. In this way, the case can substantiate some of the claims in the literature that complaints in TSD chapters could help to make violations more visible and raise their status as a political concern (Oehri, 2017). Critically, however, it is also the partner government that needs to be interested in those violations. Moon's government instigated the reforms, and the outcome of the panel helped it to use that international pressure to confront domestic opposition. Given Park's government's prior behaviour over nearly a decade, it seems unlikely that her government would have responded to the panel's recommendations as quickly. A more likely hypothetical response from her government would have been a continuation of research and work on paper towards ratification for an indefinite period of time, without actually implementing the recommended reforms in practice.

6. Conclusion

This article has examined the first, and thus far only, case that has resulted in the launching of the sui generis dispute settlement mechanism created in an EU FTA TSD chapter. Seven years after the entry into force of the EU–Korea FTA, and despite repeated requests to start consultations stemming from civil society representatives in the DAGs created in the TSD chapter, the European Commission launched official consultations with President Moon's government in December 2018. Dissatisfied with the discussions regarding Korea's delays in ratifying its four outstanding fundamental ILO conventions, the EU proceeded to request that a panel of experts be set up under Article 13.14 of the FTA, to consider the issue. On 20 January 2021, the panel released its report and recommendations. The panel rejected Korea's objections that the TSD relates only to provisions that have a bearing on trade or investment. Instead, the panel suggested that labour rights and ILO conventions apply to the whole economy and not just trade-related sectors. This is an important interpretation. By eschewing the need for that clear linkage, the panel granted TSD chapters a broader applicability than that typically found in trade agreements that include the possibility of trade sanctions for breach of labour and environmental chapters. The panel determined that TULRAA, with its restricted definition of workers, restrictions on certain civil servants' rights to association and strike, and arbitrary processes for trade union certification, ran counter to commitments in the TSD to ensure freedom of association rights. Although Moon's government, and his Democratic Party, insisted on making labour reforms since their election in 2017, and started a programme of reforms in 2018, as well as discussions to ratify the final fundamental ILO conventions, the pace slowed with an emboldened opposition in the National Assembly and resistance from the corporate sector (Campling et al., 2021).

By launching the dispute, the EU pacified both internal European Parliament and DAG concerns, demonstrated its intention to pursue effective implementation of its FTAs, including TSD chapters to all partners, and afforded a Korean government, that, unlike Park's government, was committed to labour reforms, additional support to counter domestic opposition to the reforms. Three months after the panel of experts published its recommendations, the government of Korea had achieved relevant reforms of TULRAA enabling it to ratify three of the four outstanding fundamental ILO conventions and was working towards the ratification of the final one on the abolition of forced labour. The case hints at the possibility of non-legally binding sanctions (naming and shaming) achieving desired outcomes, without the arbitrary punishment that trade sanctions and trade restrictions can inflict (Hovi et al., 2005; Pape, 1997; Portela, 2018), provided, importantly, that the receiving government is interested in making changes. It signals to partners the EU's commitment to improved implementation of TSD chapters. Even though the TSD dispute mechanism does not lead to financial penalties, in responding to a dispute, states must invest time and resources to provide documentation, and governments are exposed to domestic pressure from stakeholders and possibly negative media coverage. The perceived "cost" of this will vary from government to government and will be greater for elected governments. Nonetheless, in the shadow of a dispute, governments may be more responsive in future to issues raised in TSD Committees, dialogues, and consultations so as to avert a full dispute and panel. The Korean dispute symbolizes a renewed commitment from the EU to TSD chapters. Negotiating partners already knew inclusion of such a chapter represented a sine qua non condition for concluding a FTA with the EU, and this case reinforces that. However, states have, like Korea, signed FTAs with the EU including TSD chapters under the expectation that the lack of recourse to trade sanctions would spare them from having to undertake dramatic domestic reforms. They interpreted the commitments as akin to those in other agreements where existing regulations must not be diluted to gain trade advantages. The panel's ruling in this instance clarifies that is not the case. It remains to be seen whether current and future negotiating partners will, therefore, insist on language that curtails the possibility of future TSD chapters reforming their existing labour laws, and whether the economic interests in completing agreements will trump a renewed commitment to TSD.

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Conflict of Interests

The author declares no conflict of interests.

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Article

A Post-Development Perspective on the EU's Generalized Scheme of Preferences

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Abstract
Trade policy is generally considered to be a key leverage in the pursuit of labor norms, environmental standards, and human rights. This is even more so for the European Union (EU), which exerts an extensive market power and exclusive competences in trade while lacking a full-fledged foreign policy. In recent years, there has been a growing demand for making sustainable development provisions "enforceable" and for more frequently applying trade sanctions. Taking a post-development perspective, we interrogate the EU's enforceability discourse around the trade–sustainability nexus. We focus specifically on the conditionality behind the Generalized Scheme of Preferences (GSP). The EU GSP regime bears the "carrot" (reduced tariffs), the "stick" (preferential tariff withdrawals), and increasingly intrusive "monitoring" mechanisms. Drawing on the post-development literature, we problematize the discourses that fundamentally enframe the EU GSP conditionality regime: development through trade, performance of power, and epistemic violence. Empirically, we analyze these frames by looking at public-facing texts produced by policy elites in the EU as well as in Cambodia and the Philippines during the two most recent GSP reform cycles since 2014. We argue that the dominant discursive acts of policy elites in the EU and the two target countries congeal into a global presupposition that there is no alternative to the EU GSP regime, thereby effacing counterhegemonic perspectives and stripping emancipatory notions such as "dialogue" and "partnership" of their radical potential. This formulation demands a genuine commitment to researching with the very people the EU is intent on regulating, reforming, and rescuing to unsettle taken-for-granted views about EU trade sanctions.

Keywords
Cambodia; conditionality; development; European Union; Generalized Scheme of Preferences; Philippines; post-development; sanctions; trade

Issue
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1. Introduction

The use of trade policy for the pursuit of sustainable development, human rights, democracy, and wider foreign policy goals has become the subject of heated debates within the European Union (EU). In recent years, there has been a growing demand for making sustainable development provisions "enforceable" (Orbie, 2021a). A Dutch-French non-paper argued that gradual withdrawal of preferential tariffs should be considered towards trading partners that do not respect commitments made under the Trade and Sustainable Development chapters of trade agreements (Netherlands & France, 2020, p. 1). Meanwhile, the European Commission has announced that it will review "the possibility of sanctions for noncompliance" (European Commission, 2021, p. 13). Calls for more "assertiveness" and "enforceability" in trade relations align with the goal of becoming a "geopolitical'' Commission.

While policy and scholarly debates mostly focus on bilateral trade agreements (Garcia & Masselot, 2015; Harrison et al., 2019; Hoang & Sicurelli, 2017; Martens et al., 2018; Oehri, 2017; Van Roozendaal, 2017), the unilateral Generalized Scheme of Preferences (GSP) has received only "modest" attention (Portela, 2021, p. 264). This "void" in the literature (Meissner, 2021, p. 91) is remarkable because, already since the mid-1990s, the EU's GSP has included a "sanctions" mechanism. Although the number of applications has been limited, the Commission's decision to more closely scrutinize Myanmar/Burma, Bangladesh, and Cambodia (EC1; see our online supplementary material for the list of coded texts corresponding to each of these unique alphanumeric identifiers) and its partial withdrawal of Cambodia's trade preferences (EC2) exemplify an ambition to be more "assertive" (EC3). The European Parliament (EP) and civil society groups also advocate a more muscular EU approach (EP1; CS1).

A key concern within the political and academic debates has been whether the EU should prioritize incentives over sanctions, or how a middle ground could be found. However, the underlying goal that the EU *should* use its trade power as a leverage to influence third countries and their societies remains unquestioned. In this article, we aim to critically think through such assumptions by taking a post-development perspective. Post-development as an emerging school of thought and action problematizes the "development project" and explores alternatives "beyond development." Specifically, we ask: How does the EU's GSP conditionality regime sustain the peripheralization of those it seeks to empower through developmentalist thinking?

To this end, our article attempts to contribute to a small but growing literature that problematizes Eurocentric and neocolonial tendencies in EU foreign policy (e.g., Haastrup, 2020; Keukeleire & Lecocq, 2018; Kinnvall, 2016; Langan, 2020; Murray-Evans, 2018; Musliu, 2021; Onar & Nicolaïdis, 2013; Orbie, 2021b; Rutazibwa, 2010; Sebhatu, 2020; Staeger, 2016). However, these writings have not yet engaged with the EU GSP regime. More broadly, post-development perspectives have to the best of our knowledge not been used to study the external action of the EU (for partial exceptions, see Bossuyt & Davletova, 2021; Delputte & Orbie, 2020; Horký-Hlucháň & Szent-Iványi, 2015). Post-development has the advantage that it pays explicit attention to the development agenda of western powers towards the Global South. While the notion of the "Global South" is not an unproblematic one, we use the term here doubly as an alternative to the categories of "developing" and "least developed" countries and as a way to subvert the use of these categories in EU trade policy language.

Methodologically, we are invested in scrutinizing the dominant discourses surrounding the EU GSP conditionality regime through a frame analysis of 241 public-facing texts produced by the European Commission (57), EP (25), civil society organizations (26), media (87), as well as policy elites in Cambodia (18) and the Philippines (28). We caution that this article deliberately does not subscribe to the language of "cases" or "case selection." Our analysis of Cambodian and Filipino discourses on EU GSP conditionality is better read as "snapshots" (Merlingen, 2007), rather than as positivist case studies with pretensions of testing hypotheses, building theory or arriving at generalizable findings. Our snapshots point to the representation of Cambodia and the Philippines as "othered" places that are rendered open to EU development narratives and policy solutions. More specifically, we are interested in the discursive salience of GSP on and in these two countries; Cambodia has been a rare and recent object of EU trade sanctions whereas the Philippines has increasingly drawn criticisms from EU NGOs and MEPs.

We propose a post-development reading of three mutually reinforcing "frames" that are inscribed into and enacted by the EU GSP regime: development through trade, performance of power, and epistemic violence. We understand frames as ways of interpretation that help us to "select and organize raw experiential data, thereby making them meaningful. Frames are sets of taken-for-granted assumptions. These sets of assumptions shape understandings of reality" (Brandwein, 2014, p. 287). We selected relevant texts based on their salience, i.e., if their discursive orientation directly or partially addresses the EU GSP regime. We delimited the selection of these texts to the period 2014–2021 as this coincides with the latest two iterations of EU GSP reform processes. Following an emergent approach to coding, we organized these texts on the NVivo software with an emphasis on, and a close reading of, passages that are about conditionality. Our use of NVivo was not systematically aimed at quantifying and analyzing large-N data; rather, meaning-making laid at the core of our coding process to categorize and make textual data meaningful. To this end, the epistemology of our research design aligns with a coding process that is emergent (Elliott, 2018). Instead of using pre-configured coding protocols, we worked with a tentative set of codes and themes that we would rework throughout the research process and ultimately distill into a framework of analysis a posteriori.

In what follows, we discuss the key characteristics of the EU's GSP conditionality regime and the analytical merits of post-development. In the empirical sections, we analyze discourses by policy elites in the EU and two target countries in Southeast Asia: Cambodia and the Philippines. We conclude with our main insights and suggestions for further research.

2. The EU's Generalized Scheme of Preferences and Its Conditionality

Since 1971, the EU has instituted a GSP regime that lowers tariffs for imports from target countries on a non-reciprocal basis (Gstöhl & De Bièvre, 2017, pp. 153–162).

This regime covers three levels of market access. First, the "standard" GSP (partly) removes custom duties for a number of products from low and lower-middle income countries. Second, the GSP+, the so-called "special incentive arrangement for sustainable development and good governance," allows duty-free access for these products from "vulnerable" countries that pledge to implement 27 international conventions related to human rights, labor rights, protection of the environment, and good governance. Third, the "Everything but Arms" (EBA) initiative implies duty-free, quota-free access for all products, except weaponry, from "least developed countries'' (LDCs).

On top of this three-tiered incentive regime, two types of sanctions exist according to Regulation (EU) No. 978/2012 (2012). First, Article 15 provides that the GSP+ tariffs can be withdrawn when a country does not ratify or implement the relevant conventions or when it fails to cooperate on reporting and monitoring processes. Sanctioned countries temporarily, for all or certain products, fall back on standard GSP. It was applied to Sri Lanka (2010–2017) and Venezuela (2009–2014). Second, Article 19 foresees temporary withdrawal of preferential tariffs for all or certain products when the principles laid down in the conventions are "seriously and systematically violated" or when goods involve prison labor. Importantly, this applies to the countries that fall under the standard GSP, GSP+, and EBA schemes. This type of sanctions was applied to Burma/Myanmar (1997–2013), Belarus (2006–present), and Cambodia (2020–present).

Although EU policy language emphasizes the "withdrawal" of preferential tariffs, we interpret the abovementioned procedures as "sanctions," in line with scholarly consensus (Meissner, 2021; Portela, 2010, p. 148). Furthermore, we contend that the "granting" of trade preferences cannot be disentangled from their possible withdrawal. The "carrot" and the "stick" constitute two sides of the same coin, and it is this coin that we want to research, namely the GSP conditionality regime.

Interrogating GSP conditionality through a post-development lens is relevant because it is considered the "centerpiece" (Siles-Brügge, 2014, p. 49) of the EU's trade relations towards countries in the Global South. Compared to political conditionality in other areas of EU external relations, GSP conditionality has achieved its "most perfected" form (Portela, 2021, p. 264), or as stated by a former Trade Commissioner, "it demonstrates the 'European model' of trying to dialogue, influence and push" (EC4). While extant studies have pointed to several contradictions and inconsistencies in the design and use of GSP conditionality (e.g., Meissner, 2021; Portela, 2010), few authors have questioned its underlying rationale. Extant scholarship largely follows the logic that the EU should use its power to "grant" preferences to "developing countries," often routinely referred to as "beneficiaries," who should in return comply with international standards. Studies even seem to go further than EU language in describing the conditionality as a "carrot and stick" mechanism (e.g., Koch, 2015; Orbie & Tortell, 2009; Wardhaugh, 2013) that "rewards good behavior" and "punishes bad behavior" (e.g., Borchert et al., 2020); and one otherwise critical study at some point talks about "a really backward country" as opposed to more "advanced" countries (Kishore, 2017, p. 26). It is this kind of discursive patterns that we aim to unmask and problematize.

3. Post-Development

Post-development is neither a theory nor a research program. There are diverse interpretations of the concept (e.g., Matthews, 2004; Pieterse, 2010; Ziai, 2007). Post-development may rather be seen as "a set of anarchist strategies for direct action" (Schöneberg, 2021, pp. 52–53). Nonetheless, after three decades of post-development thinking (e.g., Escobar, 1997; Rahnema & Bawtree, 1997; Sachs, 1992), an emerging post-development "school" might be discerned (Ziai, 2017). In this regard, the *Post-Development Dictionary*, which includes more than 100 entries on "transformative initiatives and alternatives to the currently dominant processes of globalized development" (Kothari et al., 2019) has been a milestone. Post-development is closely linked to postcolonial theories. While the latter theorizes the continuing material, ideological, and epistemological power structures of inequality between the Global North and the Global South, post-development perspectives engage more specifically with the questions of why this makes "development cooperation" problematic and what would be better alternatives. As such, post-development can also be read as "practiced decolonization" (Schöneberg, 2016, p. 43).

Despite the pitfalls that come with such an exercise, we think that there is some merit in trying to structure key features of post-development thinking into a pragmatic framework for analysis. While such a framework inevitably sins against the diversity that is so much cherished by post-development thinkers, by reducing a rich literature into a simplified framework, it has the advantage that it allows for a concrete analysis of specific subject matters, including the international policies of actors such as the EU. Essentially, we distinguish between the problematization of the mainstream "development project" on the one hand and the exploration of transformative "alternatives beyond development" on the other. While this arguably constitutes the key interest of post-development views, the distinction often gets blurred. Rather modest initiatives might pave the ground for more transformative activities, although the former may also jeopardize the latter by legitimizing the development project. For instance, notions such as "partnership" and "sustainability" have been stripped of their radical potential and become part of reformist development discourse. Even the *buen vivir* concept, which is often seen as a key example of development

alternatives (Escobar, 2015), has been coopted by the governments of Bolivia and Ecuador, which introduced *buen vivir* in their respective constitutions while continuing extractivism in mining and agriculture with devastating consequences for nature and (indigenous) people. Hence, the grey area between the "development" and "post-development" fields and the dynamics of tension, co-optation (tokenism) or coalitions between them constitutes an important field of research. This ambivalent space is also where many civil society groups and activists find themselves in their day-to-day struggles and dilemmas.

Furthermore, we identify three mutually reinforcing frames that together constitute our post-development framework: vision on development, power relations, and the epistemic dimension. In the remainder of this section, we outline what each of these frames implies for the problematization of the development project and the exploration of alternatives.

First, in terms of "vision," the development project is Eurocentric by implicitly or explicitly assuming that other countries and societies should follow the Global North's (linear) path towards modernization. Other countries are not yet high on the ladder, but western actors know the way. This legitimizes (even authorizes) a paternalistic approach wherein governments in the Global North have to intervene and help lesser developed societies. "Problems" are located at the level of third countries and their leaders, while the market and growth logic are part of the solution. Failures of the development project are frequently recognized, but the typical reaction is to refine (not revisit) the development project. This is when potentially transformative idea(l)s get suffocated into mainstream discourse. Hence, there is a continuous invention and reinvention of "development alternatives" (e.g., "sustainable development," "aid effectiveness") which prevent any exploration into systemic issues. Mirroring this vision, post-development alternatives celebrate the "tapestry" of (potential) alternatives on the "good life." The *Post-Development Dictionary* starts with an often-quoted sentence in a Zapatista declaration: "The world we want is a world in which many worlds fit." Within the "Pluriverse," typically western dualist notions such as developed versus underdeveloped, masculine versus feminine, human versus nature, or economics versus politics, should be transcended and transformed into more relational logics. They stress the importance of local autonomy and self-reliance in harmony with the ecosystem. There is particular attention to the (potential) agency of grassroots groups and marginalized people and subaltern communities. Alternatives to capitalist modes of production (e.g., "simple living," "autonomy," "conviviality," "degrowth" or "postgrowth") are highlighted.

Second, post-development perspectives point to power relations that are historically grown and are often rooted in colonial times. Asymmetric power relations impinge not only upon material (e.g., unfair trade rules, tax avoidance) but also ideological patterns whereby the "other" (non-western) are framed as inferior because they are less developed, less civilized. The development project is also constitutionalized in the rules of multilateral organizations such as the World Trade Organizaton and the United Nations. The other is seen as the source of problems, whereas solutions should come from the west; thereby conveniently omitting the role of western elites and systemic flaws in the exploitation of humans and nature. This above-mentioned vision legitimizes development aid for, and other forms of intervention in, non-western societies. Such interventions also come with "disciplinary power" through technologies that might appear emancipatory ("dialogue," "participation," "civil society inclusion") but effectively constrain possibilities for action and thinking. In contrast, postcolonial perspectives highlight the need of what could be called "radical democracy": a rebalancing of power relations (e.g., different trade rules) and the fight against white privilege and inherently racist, sexist, speciesist, anthropocentric worldviews. The key responsibility for current problems is assigned to elites in the Global North (as well as groups and states within so-called developing countries) and systemic faults. In this sense, priority should be to change ("develop") our own societies.

Third, the epistemic dimension encompasses the universalistic vision of development. It analyzes how western interference is substantiated through knowledges (e.g., economic orthodoxies) that are considered to be neutral, technical, and objective. Post-development thinkers castigate the "epistemic violence" of research that legitimizes and de-politicizes power imbalances and defines what are (in)valid research questions, theories, and methodologies. For instance, many studies are produced on how trade serves development in terms of GDP growth and perhaps also employment, but the lived experiences of people (e.g., workers, women) and wider ecological impacts are barely considered. Existing studies thereby sustain the development industry with its specialist agencies and networks. Conversely, post-development proposes "epistemic diversity" and "epistemic decolonization," with particular emphasis on local ("indigenous") knowledges. They tend to rely on interpretivist and humanistic epistemologies, with the aim of "re-politicizing'' debates on the good life and an "ecologically wise and socially just world" (Kothari et al., 2019, p. xxi).

4. EU Discourse

4.1. Development Through Freer Trade

EU policymakers often stress that in 1971 the European Communities acted first among the rich world in implementing a GSP in response to a recommendation by the United Nations Conference on Trade and Development (UNCTAD). The EU GSP is feted as "the most generous scheme of its kind in the world" (EC5; also EC6; EC7) and

the "crown jewel of European trade policy" (EP2). GSP+ conditionality is "the flagship" of EU trade policy supporting sustainable development and good governance in developing countries (EC8; EP3; EP4), demonstrating the "European model" of trying to "dialogue, influence and push" (EC4).

The main logic behind the GSP is indeed that more export opportunities should be applauded because they bring economic growth and integration in global value chains, and therefore development. In EU discourse, economic growth is often equated with "sustainable development"; the latter is sometimes further defined in terms of "poverty reduction" (EP1) or (more rarely) "employment" (EC9).

This embracement of the export-led development rationale obscures the fact that free trade entails winners in Europe and losers in so-called beneficiary countries. European importers and retailers typically lobby for lower GSP tariffs, as they are indeed "beneficiaries" of the regime. As argued by Poletti and Sicurelli (forthcoming), pressures of European importer and exporter interest groups not to jeopardize free trade partly explain the EU's cautious approach to sanctions. It would also go against the free trade logic that reigns in the Directorate-General for Trade of the European Commission (DG Trade; see also Bossuyt et al., 2020). Furthermore, an "expert" study for the Commission's mid-term review points to negative impacts of the EU's GSP on the environment, on human rights, and on land grabbing in third countries (EC10, pp. 247, 257). These flaws are backgrounded or even entirely omitted in Commission discourse. When MEPs mention them, this is mostly framed as a secondary concern that does not undermine the overall objective of trade liberalization. Nonetheless, a report for the EP admits that no direct link can be found between trade liberalization, economic growth, and poverty reduction (EP5).

In this context, ubiquitous references to the GSP's origins in UNCTAD demands must be reconsidered. EU policymakers consistently fail to emphasize that the GSP was only one relatively small element in a wider New International Economic Order (NIEO). The NIEO agenda was strongly embedded in *dependencia* thinking and proposed radical reforms against and beyond liberalization. Moreover, as argued by Kishore (2017, pp. 17–20), the NIEO architects objected any conditionality attached to the GSP.

To be sure, EU policymakers recognize that the impact of the GSP and its conditionality system is difficult to measure. However, this leads only to efforts to modify and refine the system by relaxing rules of origin, promoting awareness, adjusting graduation rules, fostering diversification, and, as explained below, more sophisticated "monitoring" and "engagement." Its fundamentals are not questioned.

An important implication of the export-led development logic is that it keeps the EU in a donor role and reinforces donor-recipient patterns. Since more exports are beneficial, the EU becomes the benefactor that "grants" trade preferences or "privileges" to third countries. Indeed, policymakers systematically and uncritically talk about the "granting" of "preferences" to "beneficiaries." By "offering" tariff reductions, the GSP "helps," "assists" and "supports" developing countries. As a Commission pamphlet states, "Trade has great potential to help them grow….That's why we're committed to helping them do so" (EC11). In the GSP+ context, this paternalistic pattern is reinforced through EU aid in the form of "capacity building" and "technical assistance." Development assistance will be needed to guarantee that beneficiary countries can comply with international conventions (EP1; EC12; EC13; EC14).

4.2. A Performance of Power

These donor-recipient discursive patterns have implications for the ways in which the EU enacts power. As the EU is granting market access to beneficiaries, it is in a position to ask something in return. GSP conditionality is indeed often framed in terms of "giving and taking": Europe offers trade privileges, and in return developing countries comply with international conventions. Otherwise, the EU can legitimately withdraw this favor.

This "power" dimension constitutes the most distinctive feature of the EU's GSP discourse. Policymakers never fail to stress the EU's formidable influence over third countries through GSP. The terms "tool" and "leverage'' are frequently used. Commission officials and some MEPs hail the EU's effective power, whereas other MEPs criticize limited effectiveness. However, both seemingly opposing sides take the assumption that the EU *should* use market access as a leverage to influence reforms in third countries.

In terms of ideological power, the "developed" versus "developing" country distinction is obviously a core binary. The category of developing countries is further refined into LDCs (EBA), "vulnerable" countries (GSP+), and other "low and low-middle-income" ("standard" GSP). Since the mid-2000s, there has also been an understanding that economically stronger countries would negotiate a bilateral trade agreement with the EU and therefore "graduate" from GSP. This was further stimulated through the 2012 reform that removed "upper-middle-income" countries from the GSP (Siles-Brügge, 2014). The picture that emerges from all this is a neatly quantified hierarchy of stages of development.

On the surface, these power performances seem to contradict the EU's increasing emphasis on "dialogue" with beneficiary countries and its longstanding argument that withdrawal is only a "last resort" measure. However, this so-called distinctively European approach does not undo the highly asymmetric power relations between the EU and its "beneficiaries" and may even further legitimate European intervention in third countries.

First, dialoguing is enacted within the context of a unilateral regulation under EU law and highly asymmetric

power relations. GSP countries' political agency is even more limited than under bilateral trade agreements, where third party governments can negotiate market access and where monitoring is the responsibility of each signatory country. Specifically, GSP+ dialogues are organized in the framework of increasingly intensive monitoring exercises. Monitoring subjects GSP+ countries' compliance with international conventions under surveillance and may entail the continuation of trade preferences or the invocation of the withdrawal procedure. As indicated by the Commission, GSP+ beneficiaries "must sign a binding undertaking to…fully cooperate with the Commission in GSP+ monitoring." This is based on two "tools": a "scorecard" on the "shortcomings" to which countries "must respond," and a dialogue which also focuses on the "beneficiary's shortcomings'' (EC15).

In the same vein, the Commission has started a process of "enhanced engagement" with three EBA "beneficiaries," namely Myanmar/Burma, Bangladesh, and Cambodia. This resulted from mounting pressure from the EP and civil society groups on violations of human rights and democratic principles in these countries. As with the GSP+ dialogue, this "engagement" takes place under asymmetric power relations and against the realistic threat of implementing sanctions. MEPs and civil society organizations have asked to extend these monitoring experiences to other GSP countries.

Second, statements about withdrawal being a "last resort" option "if all engagement fails" (EC16) and a "very strong nuclear weapon" (EC4, p. 18) further sustain the EU's power performance. Moreover, the burden of proof increasingly lies with GSP countries themselves. In relation to GSP+ conditionality, the 2012 reform reversed the responsibility (EC8, Art.15.2). Equally, under "enhanced engagement," EBA countries must prove adherence to their commitments. In this context, the Commission states that beneficiaries should take more "ownership" and be "more proactive" in addressing issues in the scorecards (EC17, p. 13). This exemplifies not only the co-optation of concepts such as "ownership" but also blame-shifting whereby problems are located at the level of countries in the Global South and their villain governments, whereas systemic injustices (e.g., global trade rules) and western responsibilities (e.g., regulation of multinationals) remain unaddressed in the GSP discourse. Similarly, biannual GSP+ monitoring reports focus at the national level of third countries.

4.3. Epistemic Violence

Epistemically, the EU has entrenched a technocratic reading of the GSP regime that uniformly gazes at many places in the Global South as "most in need" or "vulnerable" (EC18), thereby reinforcing law-like positivistic knowledge claims *for* their undisputed socio-economic beneficence in target countries. This epistemic violence works in a number of ways. First, as mentioned above, EU technospeak lumps together all countries under the GSP scheme as "beneficiaries." Naming countries as such already presupposes a necessarily positive outcome and deemphasizes how the receiving end of EU largesse understands the political (in)significance of trade preferences. Relatedly, the policy design of the EU GSP regime hinges on a categorization of low-income countries as "developing" and "least developed" on the basis of World Bank indicators. DG Trade is on record confirming that this "robust" classification seeks "to depoliticise the admittance to GSP and ensure [its] objectivity and non-discrimination" (EC19). However, this naming convention de-historicizes the dark legacies of European colonialism and redraws new geopolitical boundaries, as in the case of African LDCs versus non-LDCs in the sugar trade under EBA (Lincoln, 2008). Some organizations claiming to represent voices in the Global South do critique the EU's nominal practice of *othering* countries, yet fail to question its underlying logic and instead succumb, for example, to "suggestions to consider Sub-Saharan Africa as a region eligible for EBA" (CS2). Furthermore, GSP+ eligibility revolves around the idea of "vulnerability," which the EU conceptualizes as a phenomenon "due to a low level of economic diversification, and a low level of integration within the international economy" (EC20). The latter is measured through a sui generis EU definition of "less than the threshold of 2% in value of total imports'' (EC21) destined to the EU marketspace. Put crudely, this means that developing countries must be "vulnerable" in part because they are not trading *enough* with the EU, thereby effacing global power hierarchies as well as the domestic political economy constellations behind socio-economic inequalities in target countries.

Such a Eurocentric understanding of political and social realities in the Global South points to the ways in which the EU insists on the causal power of its GSP regime to explain away non-trade transformations in the unruly places it seeks to reform. Again, studies made by the EU and its external consultants caution against the methodological difficulty of distilling the effects of trade preferences due to the presence of other plausible explanatory variables (EP6; EX1; EC12; EX2). Nevertheless, this limitation has not detracted the EU's epistemic desire to document not only the economic significance but also the social, environmental, and human rights impacts presumably arising from the GSP regime (EP6; EX2). To this end, econometric studies flanked by qualitative case study research are often used. However, these "in-depth" studies rely on indicators (EX1), advocate an "evidence-based" approach to impact assessment (EC22), or borrow heavily from secondary literature even when claiming to understand, for instance, how GSP affects female workers and entrepreneurs (EX2). What binds these positivist technologies together is their scholarly neglect of the lived experiences of the very people the EU claims to champion.

5. Cambodian and Filipino Discourses

5.1. Cambodia and Everything but Arms

In their performance of power, EU policymakers insist that Cambodia has "severely and systematically allowed human rights violations to take place and flouted international conventions" (EC5), and at the same time claim that "we do not—and never have—envisaged trade sanctions against Cambodia" (EC23). The European Commission has emphasized that they "will provide Cambodia with every opportunity to cooperate, and will gather all necessary information" before deciding whether or not to withdraw trade preferences (EC24). Following fact-finding and monitoring missions in 2018 and 2019, the EU withdrew Cambodia's trade preferences under the EBA scheme in 2020, albeit partially so as to exempt the Cambodian garment economy. The Commission asserts that this first-ever partial GSP withdrawal "addresses the human rights violations that triggered the procedure, while at the same time preserving the development objective of the EU trade scheme'' (EC25).

Prior to this eventual political decision, the dominant discourse in Cambodia in relation to the threat of EU preferential trade withdrawal clearly replicated the EU's developmentalist framing of GSP. The Cambodian business community stood united in articulating the counterproductive outcome of GSP withdrawal against poverty alleviation (KH1), the need to further diversity Cambodia's export profile (KH2), and a "near collapse" of the country's feminized garment economy already suffering under the wrath of Covid-19 (KH3; KH1). Nevertheless, foreign and local business associations viewed the EU's move to instigate the EBA withdrawal procedure "as an opportunity to initiate further structural reforms that strengthen legal compliance and reduce unfair competition, which will help to accelerate the diversification of Cambodia's economy, export markets and sources of investment" (KH2).

For its part, the Cambodian state explicitly made references to the "positive" influence of EU trade policy on Cambodia's development efforts:

> By implementing these withdrawal measures, the European Commission takes the risk of negating twenty year's [sic] worth of development efforts which the Government had persevered to pull millions of women and men out of poverty and as a result such decision would nullify the enormous positive impact of the European policy from which Cambodia has benefited so far. (KH4)

Whereas the EU asserts an intransigent worldview of its GSP regime as a depoliticized development device, Cambodian elites tend to question the epistemic violence underpinning this worldview. As a mechanism for promoting international commerce, EBA "should not be used as a weapon to kill Cambodian people" according to the Cambodian interior minister (KH5). State discourse also stresses that Cambodia "is not under the trusteeship of foreign institutions" (KH6) and sees the negative conditionality attached to the EBA scheme as a pretext to justify interference in Cambodia's internal politics (KH7, KH8). A government spokesman put it even more strongly: "The EU is not our boss, nor is Cambodia its colony" (KH9).

Yet, despite criticizing the neocolonialism lurking behind the EU GSP regime, the economic "benefits" arising from EBA remain foregrounded (KH7), thwarting any serious political discussion around alternatives to development and instead stressing the language of "partnerships'':

> We are partners so we will continue our dialogue as such. In this manner, we talk and make joint assessments….In this partnership, the EU cannot dictate us to do this or that. They express their concerns and we tell them what we have done [to address them]. (KH9)

Enfolded into this dialogic approach to EBA-related issues are the positions of business groups and trade unions. For the Cambodian business community, engagement and dialogue are the preferred avenues or "effective tools" through which EU concerns on human rights and democratization should be addressed (KH2; KH1). Business groups also reminded the EU that it has been the mechanisms of engagement and dialogue with Europe that catalyzed the "immense progress" Cambodia has witnessed over the last two decades (KH10). Stakeholders argued that EBA withdrawal could undermine the partnership model between Cambodia and the International Labour Organization on improving labor rights and working conditions and "unintentionally erase" years of progress on these areas, including a high unionization rate of 80% in the garment industry (KH1). For their part, the Trade Union Negotiation Council maintained that "engagement between employers and trade unions on a collective agreement would be a positive signal to the EU of the commitment of the parties involved in practicing dialogue" (KH11). At any rate, the overarching emphasis on *dialoguing* has as its ultimate end the maintenance of the status quo around GSP.

5.2. The Philippines and GSP+

Since 2014, the Philippines has been subjected to the EU's performance of power through the GSP+ regime. The "plus" in GSP+, of course, signifies that an eligible "vulnerable" country agrees to implement 27 international conventions in exchange for better market access to the EU. Under the Duterte government, the Philippines has been on the cusp of losing GSP+ concessions for its "continuing violations of civil and political rights" (EC26), which allude to the government's "war on drugs," imprisonment of political opponents, attacks against the press, and calls to reinstate capital

punishment. Furthermore, the Filipino fisheries economy has particularly garnered prominent attention from EU actors who complain about the sector's lax labor conditions (CS4) and misfit with the "good fisheries governance in the EU" (EP7). Some European civil society groups opposed the Philippines' accession to the GSP+ regime, fearing this "would distort the GSP essence" and "destabilise the community preserved tuna market" in the EU (CS5).

Amid threats of GSP+ withdrawal, Filipino business and political elites have used a developmentalist framing of GSP+ in a bid to preserve their preferential access to EU markets. For industry groups, losing GSP+ would dampen the country's export competitiveness (PH1) and sound a death knell for Europe-facing producers "as the coronavirus pandemic is bleeding any remaining capital from exporters" (PH2). The European business community in Manila warned that workers in the agriculture and manufacturing sectors would ultimately be the ones shouldering the brunt of the EU's decision to lift trade incentives (PH2). Opposition politicians relied partly on the GSP+ to lambast the Duterte government's thrust to bring back the death penalty, arguing that losing preferential market access to the EU would be damaging to the country's economic growth story (PH3). Meanwhile, the Filipino government defended "the Philippines' fitness to keep trade privileges" (PH4) by further expanding GSP+ utilization across the archipelago and intensifying bilateral dialogue with a view to signing a free trade agreement (FTA) with Brussels (PH5). Relatedly, in the congressional deliberations on the proposed Philippine–EU Cooperation Agreement, the chair of the Senate Foreign Affairs Committee expressed that this partnership "will bolster our status as a [GSP+] beneficiary country" and propel ongoing FTA negotiations (PH6).

In the wake of the EP resolution calling for the immediate initiation of the GSP+ withdrawal procedure against Manila, Malacañang officialdom accused the EU as "the biggest contributor to the violation of the right to life in the Philippines" and slammed the move by "former colonial masters" (PH7) should they revoke trade concessions at the height of a global health pandemic. The Speaker of the House of Representatives denounced the EP for its "outright interference…in the purely domestic matters of the Philippines" (PH8). The Philippine Exporters' Confederation decried the politicization of trade matters based on perception (PH9).

Yet, beyond these diatribes, the idea that the EU GSP regime, as a site of epistemic violence, points to new topographies of neocolonial intervention remains undisputed in practice. This insight seems lost even on "radical" civil society organizations that fully support the EU's policy of withdrawing trade incentives from countries flouting their human rights obligations (PH10; PH11). Regarding EU concerns about the Filipino fisheries industry, legislators admit in the open that the Philippine Congress has strengthened its governance framework in response to the EU and to comply with international standards against unsustainable fishing (PH12). Reflecting this acquiescence to the philosophy behind the EU GSP conditionality, a congressional bill has been introduced to ensure the Philippines' compliance with international conventions "as a condition precedent to enjoy our trade preferences" (PH13). Indeed, this proposal feeds into ongoing monitoring missions to the Philippines as well as high-level dialogues on good governance, rule of law, and human rights. Here, the addressee of political (in)action appears to be orientated around the EU as a trade power, not towards or with the Philippine public. In other words, it is the EU that impels ideas for change, disregarding the epistemic role of Filipinos who have clamored for social transformation long before "scorecard issues" concerning the Philippines have been made subject to GSP+ monitoring.

6. Conclusion

The concepts of "development" and "developing countries" are increasingly contested. This awareness is reflected in the Von der Leyen Commission, with Jutta Urpilainen being the "Commissioner of International Partnerships" and the Directorate-General for International Cooperation and Development (DG DEVCO) being renamed into the Directorate-General for International Partnerships (DG INTPA). Surprisingly, however, the goal of the EU's GSP regime is still quite frankly the "development of developing countries" (ECO1). As a global trade power, the EU exploits its GSP conditionality system to govern economic, political, and social transformations in the so-called "developing" world. From a post-development lens, the given nature of the thinking and technologies that sustain the EU's policy scripts of granting and withdrawing trade preferences from "beneficiaries" needs to be provincialized for this worldview "circumscribes our understanding of what is politically possible" (Sabaratnam, 2013, p. 5). Although it is beyond the scope of this article to discuss at length the contours of other politically possible worldviews, we believe that the intellectual currents of post-development and/or degrowth propel credible alternatives to the prevailing developmentalist imaginaries of the EU GSP regime. For instance, ideas that explicitly link post-development and degrowth question the doctrine of growth and economism, acknowledge the coexistence of plural worlds based on ecological integrity and social justice, and mitigate the cooptation of those with little or no political agency by the more powerful (Escobar, 2015). In the context of the climate crisis, degrowth becomes more and more relevant as it puts emphasis on:

> Reducing the material energy throughput of the economy to bring it back into balance with the living world, while distributing income and resources more fairly, liberating people from needless work, and investing in the public goods that people need to thrive. (Hickel, 2021, p. 206)

EU discourse on GSP conditionality clearly replicates traditional developmentalist thinking. First, the vision behind GSP sanctions and incentives shows that the EU aims to help developing countries through market-based solutions and incremental changes within the GSP regime. Second, the GSP is presented as a key tool for influencing third countries based not only on carrot-and-stick conditionality but also on ideological and disciplinary power mechanisms. Third, this project is underpinned by seemingly technical and objective knowledge in the form of depoliticized language and scientific studies, sidelining other ways of understanding the social and political world. Overall, historically grown power asymmetries and alternatives to development are silenced.

In Cambodia and the Philippines, political actors deploy anti-colonial sentiments when faced with threats of EU trade sanctions. However, this is not embedded in a decolonial or post-development discourse. Politicians, businesspeople, and civil society organizations in both target countries undeniably embrace developmentalist scripts as performed by the EU trade policy establishment itself. Cambodian and Filipino policy elites narrate their economic growth stories in relation to the "benefits" their countries get under the GSP regime. The notion of GSP withdrawals is either seen by various actors as injurious to the interests of poor workers or as nonetheless necessary in order to toe the line of unruly governments. Otherwise, the continuity of dialoguing and monitoring is the preferred modality of meeting EU "scorecard" concerns. The dominant discursive acts around EU GSP conditionality all congeal into a global presupposition that there is no alternative to the EU GSP, thereby asphyxiating possible counterhegemonic perspectives. Notions such as "partnership" and "sustainability" have been stripped of their radical potential and become part of a reformist development discourse. It is crucial to emphasize that, in this contribution, there is an absence of "grassroots" views on the EU GSP conditionality, mainly because of the impossibility to commit to a genuinely enthographic field research at the time of writing. More importantly, we fear that such groups lack the necessary means to participate in, or may be methodologically neglected by, the GSP reform process. This lacuna, finally, leads us to stress a possible avenue of further research into the lifeworlds of the very people the EU GSP regime is intent on regulating, reforming, rescuing. Staying true to the spirit of post-development thought, learning from and with the targets of EU trade preferences with an ethnographic sensibility to their thoughts and experiences would be another pragmatic, more humanistic way to unsettle taken-for-granted elitist views about EU trade sanctions.

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Conflict of Interests

The authors declare no conflict of interests.

Supplementary Material

Supplementary material for this article is available online in the format provided by the authors (unedited).

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Article

Understanding the EU's Response to LGBTI Rights Violations: Inter-Institutional Differences and Social Sanctions

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Abstract
This article aims to enrich the literature on EU sanctions in two ways. First, it argues that the absence of material sanctions does not imply a non-response. When faced with human rights violations, policymakers enjoy a third option besides exerting material pressure or refraining from intervening. They may instead employ what constructivist scholars call social sanctions. This option consists of verbally calling out the violators, either publicly, through a naming-and-shaming strategy, or diplomatically via political dialogue and demarches. Social sanctions can be a credible alternative or complement to material sanctions. Second, we argue for the importance of disaggregating the EU as a sender of sanctions. A non-response by executive institutions does not mean that the EU as a whole is standing idly by. Looking at social sanctions alongside material ones more accurately describes the choices policymakers face when designing their response to human rights violations. We demonstrate the value of our arguments by examining the EU's various responses to LGBTI rights violations in Lithuania and Uganda.

Keywords
EU; LGBTI; Lithuania; norm violations; sanctions; sexuality; Uganda

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1. Introduction

How do states or international organisations respond to violations of fundamental human rights? This question can be answered dichotomously: They either exert pressure to try to change the wrongdoers' behaviour or refrain from intervening. Sanctions are a popularly used instrument to exert pressure on norm violators. Analyses of external pressure tend to focus exclusively on the imposition of material sanctions. The lack of such sanctions is then automatically seen as a non-response.

However, decisionmakers have a wider array of options than only exerting pressure through material means. For example, when asked if the EU would impose economic sanctions against Russia over its support for the Assad government in Syria, the High Representative for Foreign Affairs and Security Policy of the EU emphasized that "the European Union doesn't only have sanctions in its toolbox, we have many other instruments we can use….We have the instruments for pressure, we also have leverages for good" (Herszenhorn, 2016). These words illustrate that the choice between imposing material sanctions and doing nothing is a false dilemma. When faced with a norm violation, policymakers also enjoy the option of verbally calling out violators, either publicly via the use of a shaming strategy or diplomatically via political dialogue or demarches. Such measures may be either a credible alternative or complement to material sanctions.

What is more, the sanctions literature is preoccupied with the use of material sanctions by *executive* actors. These typically are national governments. When it comes

to the sanctions approach of the EU, however, the focus lies with the European Commission whenever human rights violations occur within an EU member state and on the European External Action Service (EEAS) when they take place in a third country. Yet, non-executive actors, such as the European Parliament (EP), also react to human rights violations. Political considerations and distinct competences may mean that their responses differ from those of the executive actor.

Our objective is modest: We wish to introduce greater complexity and accuracy into the analysis of sanctions. A comprehensive understanding of empirical cases requires, we argue, two conceptual moves. First, following the central claim of the thematic issue that the design of sanctions matters, we argue that the sanctions literature has insufficiently explored the possibility of *social* sanctions as a viable alternative or complement to material sanctions. Any description of how policymakers design their responses to both internal and external norm violations is incomplete without the inclusion of this social side of sanctioning. Second, with specific reference to the EU as a sender of sanctions, we need to take heed of inter-institutional differences. We propose that scholars study the EP and EU delegations in third states in addition to the current focus on executive actors.

To respond to the weaknesses in the literature, we propose to view social sanctions alongside material ones to obtain a more accurate description of the options policymakers have at their disposal. While the choice to apply material pressure or not is well researched, the options to combine material and social pressure, or "only" make use of social pressure are understudied. Scholars do not often consider these options, but states and international organizations in fact commonly consider and employ them.

To illustrate the added value of our argument, we examine how the EU responded to violations of LGBTI rights in Lithuania and Uganda. The EU's executive actors did not impose material sanctions on either Lithuania or Uganda for encroaching upon the rights of sexual minorities. This absence of material punishment might suggest a non-response. We demonstrate, however, that the EU bodies differed in their reaction. Some in fact sought to shame the violators into mending their ways. We thus illustrate how scholars can arrive at a more nuanced and complete description of their empirical cases by taking social sanctions and inter-institutional differences seriously instead of focusing exclusively on material sanctions.

Two caveats are in order. First, the modesty of our article lies in its concern with the scholarly ability to accurately *describe* empirical reality. We do not seek to explain why and when policymakers respond in a particular way to human rights violations. The objective is instead to convince readers that they should integrate social sanctions and inter-institutional differences into their analysis of material sanctions. If this message is well received, we invite our colleagues to take this line of research further by *explaining* variation in how policymakers react to human rights violators. The conclusion discusses our initial ideas on how to transition from description to explanation. Second, our main message should not be mistaken for a normative endorsement of sanctions. Not only is the general effectiveness of sanctions as a policy instrument widely debated (Drezner, 1999; Pape, 1997), but external involvement might be especially problematic for LGBTI citizens whose plight may only worsen as they are denounced as foreign agents and the handmaidens of Western colonialism (Dunne, 2012; Thiel, 2021). We study the potential use of sanctions as an empirical phenomenon and not as a normative ideal.

The article proceeds as follows. The next section uses the dual possibility of material and social sanctions. We subsequently explain why scholars should include the possibility of inter-institutional differences when studying the EU's response to norm violations. We then present our two cases. The conclusion summarizes our main findings, relates them to the other contributions of the thematic issue, and provides some suggestions for future research.

2. Social Sanctions

Our starting point is the observation that the literature on sanctions is unduly preoccupied with the actual use of material sanctions. Yet, seeing as this thematic issue understands sanctions as "a temporary abrogation" of normal relations between a sender and a target with the intention to pressure the target "into changing specified policies or modifying behaviour in suggested directions" (Tostensen & Bull, 2002, p. 374), this preoccupation with the material proves unduly restrictive. We recommend instead that scholars should incorporate negative cases into their analyses and take seriously the possibility of social sanctions. Compared to the literature's focus on positive cases of material sanctions, our conceptualisation better captures the choices that decision-makers face when they are confronted with actions that they perceive as illegal or illegitimate.

The dominant approach in the study of sanctions becomes apparent when looking at the quantitative datasets that underpin much of the literature. For instance, Hufbauer et al. (2007, p. 48) speak of sanctions episodes that commence with the imposition of economic sanctions and end "when the sender or the target country changes its policies in a significant way or when the campaign simply withers away." Their dual focus on positive cases and material sanctions is thus apparent. Subsequent research departed from the work of Hufbauer et al. (2007) in important ways, for example by incorporating the threat of sanctions and by including non-economic sanctions (Biersteker et al., 2018; Hovi et al., 2005; Weber & Schneider, 2022). They retained, however, the focus on positive cases and material sanctions: The only relevant events are those where the

outcome of interest, be that the actual or threatened use of sanctions, in fact occurred and where the sanctions were verbal in nature. Whether implicitly or explicitly, these scholars rely on a rationalist logic according to which the sender only imposes material sanctions when the benefits outweigh the costs.

The emphasis on positive cases is also evident in case-study research (Eriksson, 2011; Giumelli, 2013; Portela, 2010). While this literature has provided important insights into the effectiveness of sanctions, senders' motivating factors, and implications and effects on target states and their population, it has paid scant attention to negative cases. When authors do look at instances of non-sanctioning, they have underscored the economic and strategic interests that influence senders' choices (for an overview see Saltnes, 2021). This focus on cost–benefit considerations obscures the possibility that sanctions also have a more social dimension.

For the literature to more accurately reflect the decisions that policymakers make when faced with a human rights violation, we suggest that scholars should widen their lenses in two ways. First, they should pay more attention to negative cases where, following Mahoney and Goertz (2004, p. 654), the outcome of interest "has a real possibility of occurring." Recalling Sartori's (1970) call for the systematic investigation of like cases, we hold that it is equally important to investigate those cases where sanctions of some sort were considered but decided against, to avoid a selection bias.

Second, the focus on material sanctions entails the neglect of another type of pressure that constructivist scholars of International Relations have long taken seriously: social sanctions (Friman, 2015; Johnston, 2001). Social sanctions concern "punishments that rely on social or moral leverage, the removal of social status, and targets' embarrassment and concern for social standing to provoke behavioural change" (Erickson, 2020, p. 100). The most prominent type of social sanction is shaming: the public identification by one actor of another actor's norm violations in the hope that this will sufficiently embarrass the target into desisting "such widely condemned actions" (Franklin, 2015, p. 44). Yet, social sanctions may also take other forms, including shunning or even positive reinforcement through backpatting (Johnston, 2001).

Contrary to the rationalist weighing of costs and benefits, an intersubjective logic undergirds social sanctions. Social sanctions require a certain level of "normative consensus about what 'good' behaviour looks like" (Johnston, 2001, p. 501). If such consensus exists, social sanctions are expected to motivate norm-violating actors to change their behaviour in a way that is consistent with their in-group identity. Social sanctions thus work through peer pressure, social exclusion, or persuasion.

The neglect of social sanctions in the general literature on sanctions is problematic for two reasons. First, it risks confusing the non-imposition of *material* sanctions with inaction. When an actor refrains from taking economic measure in response to an alleged norm violation, this does not mean that she stands idly by. Social sanctions can be a credible alternative to material sanctions. Second, there is a danger of overstating the importance of material sanctions. When an actor issues both social and material sanctions, most studies only register the latter (e.g., Barber, 1979; Eriksson, 2011; Hovi et al., 2005). Any effect of social pressure is then falsely attributed to material influence. Scholars should therefore take care to keep these interpersonal and coercive dimensions of sanctioning separate. This requires them to incorporate social sanctions into their analyses.

When both negative cases and social sanctions are factored in, the outcome of interest is no longer merely the actual use of material influence. Instead, we see four possible responses to norm violations. Table 1 displays how the range of possible outcomes increases when we analyse social sanctions alongside material ones.

First, an actor may exert *combined pressure*. This means that she will verbally reprimand another actor for violating international standards while also taking decisive action. Material and social sanctions thus work in conjunction. Most positive cases are in fact cases of combined social and material sanctions. Second, occasionally material sanctions are used in isolation. The sender communicates the punitive measures that they have taken without any intention to shame. For example, following the coup that took place in Mali in 2012, the European Commissioner for Development drily announced that he had "decided to suspend temporarily [sic] European Commission's development operations in the country until the situation clarifies" (European Commission, 2012). Third, under the inverse scenario an actor only exerts *social pressure* without following through with material sanctions. This, as our cases illustrate, happens quite often. Finally, the ultimate negative case is one in which an actor exerts *no pressure,* but instead allows a norm violation to go unpunished.

We make a two-part suggestion. First, the sanctions literature should take seriously cases where no material

Table 1. Possible responses to norm violations.

		Social response	
		Used	Not used
Material response	Used	Combined material and social sanctions	Material sanctions
	Not used	Social sanctions	No sanctions

sanctions followed a perceived norm violation. Second, however, this absence of coercive measures should not be mistaken for non-action. Actors may have preferred social over material sanctions.

We demonstrate the value of our propositions in two case studies of how the EU responds to LGBTI rights violations. The EU treats the promotion and protection of LGBTI rights as a core part of its identity (Eigenmann, 2021). This requires it to respond whenever a state encroaches upon the rights of LGBTI people. Since such rights violations may occur not only outside of the EU's borders but also in one of the member states, we examine the use of sanctions at home and abroad (see Hellquist, 2019). Internally, where material pressure is uncommon, we explore the EU institutions' reactions to the Lithuanian Law on Minors. In external relations, where material pressure is frequently applied, we explore EU institutions' choice to apply social pressure to Uganda's Anti-Homosexuality Act. These case studies are illustrative of the broader dimensions that we suggest are missing from the literature on sanctions, namely social sanctions and inter-institutional differences. The method applied is a systematic collection and interpretation of justifications provided by policymakers for their choice of approach (Abulof & Kornprobst, 2017). We engage with two types of justifications: public justifications found in official documents or made by policymakers in a public setting and justifications by policymakers in an interview setting where the interviewees were asked to provide justifications for the EU's choice of actions. Our sources include official EU and member state documents, semi-structured interviews with EU officials and stakeholders, and statements by EU decision-makers in news articles (consult our Supplementary File).

3. Inter-Institutional Differences

Our second conceptual move starts from the recognition that the EU does not always speak with a single voice. A comprehensive understanding of EU sanctions requires us to break the EU down into its composite parts: the executive, intergovernmental, and parliamentary bodies. These bodies can be internally divided, for instance when member states within the Council and political groups within the EP do not see eye to eye. The problem of disunity may, however, also arise when individual organs of the EU do manage to reach an agreement. *Inter*-institutional differences may then come to the fore. These differences matter for our argument because they suggest that the responses of different EU actors to a human rights violation need not align. EU bodies may occupy different cells in Table 1.

Internally, the European Commission functions as the guardian of the treaties. The Commission is empowered to respond to member-state compliance with both EU law and fundamental values. Concerning the former, the Commission monitors compliance and may initiate infringement proceedings. At the same time, because legislative proposals from the Commission will only succeed if they receive support from the Council, strategic considerations discourage the executive body from stepping on member states' toes (Mendrinou, 1996). Börzel (2003) consequently argues that the Commission can choose from multiple "compliance strategies." While sanctioning is one such strategy, less coercive options are also available. Despite its formal powers, the Commission employs a "very cautious strategy in using the penalization potentials" when it suspects that a member state violates EU law (Falkner, 2016, p. 48).

Yet, this compliance apparatus is only relevant when the EU's fundamental values are enshrined in concrete legislation. When this is not the case, the Commission can only put *social* pressure on a wayward member state. It can, as per Article 7 TEU (Treaty on EU), "determine that there is a clear risk of a serious breach" of those fundamental values that are outlined in Article 2 TEU (Consolidated Version of the Treaty on European Union, 2012). Political considerations have, however, made the Commission hesitant to intervene. The Commission prefers to engage rather than to antagonize noncompliant member states, partly out of a concern that coercive action will only shore up domestic support for the offending government and will erode the Commission's own authority (Closa, 2019). The Commission thus only invokes Article 7 TEU in extreme cases.

Externally, however, the executive branch has a larger foreign policy toolbox to choose from. Material measures include Common Foreign and Security Policy (CFSP) and General System of Preferences sanctions as well as the option to suspend aid. Since 2009, the EEAS, the EU's diplomatic branch led by the High Representative, is responsible for implementing the CFSP as well ensuring the coordination of the EU's external action. EU delegations now fall under the EEAS and are the prime interlocutor for exerting social pressure towards partner states. In addition to material sanctions, the EEAS's foreign policy toolbox includes quiet diplomacy, public criticism, formalised statement, and dialogues (Fraczek et al., 2015). Thus, the EEAS can exert material and social pressure on partner states.

The EP has a long history of styling itself as a champion of human rights (Gfeller, 2014). This history covers the EU's internal as well as external relations. Much to its own chagrin, however, the EP finds itself rather powerless. It cannot impose punitive measures on either member states or third countries. Instead, the Parliament is forced to rely on a series of soft instruments (Feliu & Serra, 2015, p. 26). Most prominent among these is the adoption of condemnatory reports and resolutions. Other noncoercive tools include organizing hearings, asking parliamentary questions, and participating in relevant intergroups. Internally, the Parliament shares with the Commission and the Council the right to determine that a member state is at risk of breaching fundamental values. It must furthermore consent to an assessment by

the Council that such a breach has in fact taken place. This, however, exhausts its formal role. The combination of active involvement in human rights and a lack of coercive instruments predisposes the Parliament to the exertion of social sanctions.

Finally, the Council represents the member states. This intergovernmental nature affects its willingness to respond to internal human rights violations. Only the Council can impose sanctions in response to a breach of fundamental values by another member state. Article 7 TEU specifies that a qualified majority within the Council "may decide to suspend certain of the rights deriving from the application of the Treaties to the Member State in question," including voting rights (Consolidated Version of the Treaty on European Union, 2012). This option has never been used. Indeed, there is a real reluctance within the Council to hold individual member states to account (for an analysis, see Closa, 2021). Although individual countries do occasionally speak out against developments elsewhere in the EU and may even bring matters before the European Court of Justice, these occasions are rare.

In external relations, on the other hand, the Council has been more active. Through dispute-settlement mechanisms, it can employ both social and material sanctions. For instance, the EU's agreements with its 79 partner countries in Africa, Caribbean, and the Pacific, outlines a consultation procedure that combines political dialogue with a carrot-and-stick approach. The Council has activated such consultations 24 times since the dispute-settlement procedure was first introduced in 1998 (Saltnes, 2021, p. 114).

There are thus good reasons to expect that the different EU actors will occupy different cells within our table. In the following two sections we explore whether this expectation is met in our cases.

4. The EU's Response to Internal Violations of LGBTI Rights: The Lithuanian Law on Minors

How does the EU act when a member state violates the fundamental rights of LGBTI people? To answer this question, we look at a specific case that did not result in material sanctions: revisions to the Law on the Protection of Minors Against the Detrimental Effects of Public Information (hereafter: Law on Minors) in Lithuania. The original law aimed to protect people under the age of 18 against public information that may detrimentally affect their mental health or well-being (Republic of Lithuania, 2002). The list of types of harmful information included pornography, the promotion of suicide, and substance abuse. In 2007, however, a working group of the Seimas, the Lithuanian Parliament, recommended adding the promotion of homosexual relations to the law (Republic of Lithuania, 2008). In the end, lawmakers classified information that "promotes sexual relations" of any kind and that "expresses contempt for family values and encourages the concept of entry into marriage and creation of a family other than stipulated in the Constitution...and the Civil Code" as harmful. Because both documents define marriage as the union of a man and a woman, the intent behind the amendment is evident: to prevent minors from hearing and learning about same-sex relationships.

Ultimately, the EU did not impose material sanctions on Lithuania for its revision of the Law on Minors. This might suggest that the EU stood idly by. We suggest, however, that this seemingly straightforward assessment proves reductive once we factor in both social pressure and inter-institutional differences.

4.1. European Parliament

The EP put pressure on the Seimas to retract the proposed revision of the Law on Minors. First, through the adoption of two resolutions condemning the developments in Vilnius, the EP tried to shame Lithuanian lawmakers into retracting their initiative (EP, 2009a, 2011). The first resolution came shortly before the new Law on Minors was set to enter into effect. The second condemnation came in 2011, as the Seimas was contemplating changes to the Code of Administrative Offences. These changes would effectively reinforce the Law on Minors by introducing administrative and criminal sanctions.

On both occasions, the EP questioned the compatibility of the Lithuanian developments with EU law, EU principles and international human rights law more generally. It also reminded the Lithuanian authorities to take their obligations as a member state seriously. The second resolution pointed out that the EU was founded on the "respect for human rights, including the rights of all minorities," and that "the EU Institutions and Member States have a duty to ensure that human rights are respected, protected and promoted in the European Union" (EP, 2011). MEPs thus used these resolutions to reproach Lithuania for violating LGBTI rights.

Yet, the response from Vilnius exposed the EP's limited influence. The Seimas responded indignantly to the naming-and-shaming attempt with a resolution of its own. It denounced the EP's interference as illegitimate and illegal (Republic of Lithuania, 2009). With social sanctions proving ineffective, MEPs could only hope to effect change by convincing the Commission, as guardian of the Treaties, to intervene.

Parliamentary pressure on the Commission initially took the form of parliamentary questions and open letters. For instance, MEP Sophie In 't Veld asked if the Commission agreed that the proposed revisions to the Law on Minors would run counter to "the basic European fundamental rights enshrined in the Treaties…and in the European Convention on Human Rights" (EP, 2009b). The Lithuanian initiative would specifically run afoul of provisions concerning discrimination, freedom of information, and freedom of expression. In an open letter, In 't Veld (2009) accused the Commission of being "shamefully absent and passive in cases of blatant homophobia and discrimination."

A similar assessment, albeit worded less polemically, was evident in a letter co-signed by the Executive Director of ILGA-Europe, an umbrella organization that promotes the interests of LGBTI people at the European level, and the President of the EP's Intergroup on LGBTI Rights. It called upon the Commission "to take all necessary measures" to ensure Lithuanian compliance with EU legislation (De Meirleir & Cashman, 2009).

In short, absent the competence to impose material sanctions, the EP resorted to social sanctions. When two resolutions proved unable to shame the Seimas into abandoning their attack on LGBTI rights, MEPs' only option was to put pressure on the European Commission to step in.

4.2. European Commission

The European Commission rejected MEPs' calls for material pressure. It repeatedly indicated that it was only equipped to police compliance with EU law, not with the Union's fundamental rights. That is to say, the Commission is only willing to become involved when fundamental rights have been anchored in concrete directives and regulations.

Illustrative of the Commission's stance is the following response by Commissioner Špidla, to MEP In 't Veld:

> The Commission strongly condemns all forms of homophobia, which represents an attack on human dignity.... The Commission will closely monitor legislative developments in Lithuania and will ensure that Directive 2000/78/EC is enforced in all Member States. To that end it will use all means within its powers, where necessary including infringement procedures, to the extent the draft law to which the Honourable Member refers falls within the scope of this directive....In areas not falling within European Community competence, Lithuanian authorities, including courts, are in charge of ensuring the full respect of fundamental rights in Lithuania. (EP, 2009b)

Two points are worth noting. First, the reply underscores the Commission's commitment to the Union's core values regarding LGBTI rights, including human dignity and non-discrimination. When the EP debated its first resolution condemning Lithuania, Jacques Barrot, the Commissioner for Justice, Freedom and Security, therefore noted that the Commission had communicated its misgivings to the Lithuanian authorities (EP, 2009a).

Second, however, this commitment only goes so far. The Commission is prepared to enforce these values *only* when a concrete piece of EU legislation is at stake. Špidla specifically mentions Directive 2000/78/EC. This Employment Equality Directive prohibits discrimination based on, inter alia, sexual orientation in the realm of employment. This directive's connection to the Law on Minors is tangential at best. Špidla's response should therefore be read as an admission of defeat: Because the Commissioner is unable to relate the situation in Lithuania to relevant EU law, he believes that he cannot act. The Commission thus has a very narrow perception of its competence concerning fundamental rights; when no directive is at stake, it is up to member-state authorities to ensure "the full respect of fundamental rights" (EP, 2009a).

Thus, no action followed when the Seimas finally approved the Law on Minors. Yet, LGBTI activists made a last-ditch effort to spur the Commission on. The Lithuanian Gay League (LGL), Lithuania's main organization for LGBTI rights, and ILGA-Europe submitted a formal complaint to the Commission. They argued that Lithuania violated the Audiovisual Media Services Directive, which specifies that the protection of minors ought "must be balanced with freedom of expression," and several articles in the EU Charter of Fundamental Rights (Kuktoraitė, 2015). LGL recognized the inherent limitations of invoking this specific directive; after all, the law was not designed to protect human rights, but to coordinate national legislation on audiovisual media. Yet, they saw it as "the only entry point" for formally challenging the Law on Minors in Brussels (interview 1).

The Commission soon dashed the activists' hopes. It decided that it was "not planning to pursue infringement proceedings against Lithuania for failure to comply with Union law" because the matter of homosexual propaganda fell outside the directive's scope (European Commission, 2016). The directive only applied to broadcasts originating in another member state, but not "in case a Member State applies restrictive measures in relation to broadcasts originating in that same Member State" (European Commission, 2016). EU law thus remained silent on *internal* affairs; "in such cases, it is for Member States…to ensure that fundamental rights are effectively respected and protected" (European Commission, 2016). Lithuanian activists were forced to turn to Lithuanian authorities, even though they thought these authorities had violated their rights to begin with. After careful consideration, the Commission thus decided that it lacked the necessary competences for putting material and social pressure on the Lithuanian authorities.

4.3. The Council of the EU

Meanwhile, the Council was nowhere to be seen. It did not issue a collective statement on the Law on Minors. Some member states, including the Netherlands and Sweden, did use bilateral channels to convey their concerns over the Law on Minors. Yet, neither these countries nor the Council as a whole cared to play up the issue. For instance, when asked by a Member of Parliament if he would be willing to raise the issue with other European Ministers of Foreign Affairs, the Dutch Minister simply vowed to communicate "the Dutch position on the rights of homosexual, bisexual and transgender

people" to his Lithuanian colleague (Second Chamber, 2009). Not even the most progressive of member states within the Council ever considered harsh condemnations, let alone sanctions, in response to the erosion of LGBTI rights in Lithuania. Instead, they deferred to the Commission. As Cecilia Malmström, Sweden's Minister of EU Affairs, explained, "the Council does not have a formal role here"; the task of judging "whether a Member State is meeting its obligations under the treaties" falls to the Commission instead (EP, 2009a). The Council, in short, issued neither material nor social sanctions.

In sum, this case study demonstrates that incorporating social sanctions and inter-institutional differences promises to enrich analyses of the EU's response to human rights violations. It is true that the EU failed to impose material sanctions. This assessment, however, obscures the EP's persistent attempts to shame Lithuania into abandoning the Law on Minors. It also leaves unexplored the very different responses of the Council and the Commission: While the former ignored the issue altogether, the latter wished to protect LGBTI rights, but saw itself as hamstrung by its limited legal competences.

5. The EU's Response to External Violations of LGBTI Rights: The Ugandan Anti-Homosexuality Act

Social sanctions and inter-institutional differences also matter in the EU's response to human rights violations in third countries. To illustrate this, we tap into the highly controversial anti-LGBTI law that Ugandan lawmakers passed in 2014. The 2014 Anti-Homosexuality Act was first proposed in 2009 by the Ugandan Parliament. Western media referred to it as the "kill-the-gays bill" because it proposed to make same-sex sexual relations a crime punishable by death. Lawmakers ultimately replaced the death penalty with life imprisonment. Although President Museveni signed this reformed proposal into law, the Ugandan Constitutional Court declared it void five months after it was enacted (Jjuuko & Mutesi, 2018). The EU did not respond by imposing material sanctions. This does not, however, mean that it was neither concerned nor involved with the anti-homosexuality law.

5.1. The Council of the EU

The Anti-Homosexuality Act was met by material pressure by many of Uganda's development partners. Several partner states imposed economic sanctions either when the law was first proposed (UK and Sweden) or when the law was passed in 2014 (US, Netherlands, Denmark, and Norway; Saltnes, 2021). Measures by individual member states notwithstanding, the EU Council refrained from placing material pressure on Uganda. Article 96 of the Cotonou agreement allows the Council to act immediately in response to "cases of particularly serious and flagrant violations of human rights" without first attempting to resolve matters through political dialogue (Partnership Agreement, 2000). The Council did not avail itself of this option to impose material sanctions.

5.2. The European External Action Service

Yet, this does not mean that the EU did not exert *any* pressure on Ugandan authorities. The EEAS, which assists the High Representative in executing EU foreign policy, exerted social sanctions both when the bill was first proposed by the parliament, in the period leading up to and after the bill was passed in February 2014. The EU delegation in Uganda used political dialogue to remind the Ugandan authorities of their obligation under international law to ensure non-discrimination (EEAS, 2014a; Interviews 3,4,5): "The political atmosphere then was quite 'toxic' and our strategy was one that focused primarily on 'silent diplomacy'….The discussions were often held behind closed doors not revealing much to the public" (Interview 2).

The EEAS in Brussels also exerted social public pressure through three public censure statements. High Representative for Foreign Affairs and Security Policy Ashton stated: "I am deeply concerned about the news that Uganda will enact draconian legislation to criminalise homosexuality" (EEAS, 2014b) and "I urge the Ugandan authorities to ensure respect of the principle of non-discrimination, guaranteed in the Ugandan Constitution, and to preserve a climate of tolerance for all minorities in Uganda" (EEAS, 2013). When asked about the possibility to use material pressure, the head of the EU delegation in Kampala denied that this was an option that the EU was considering. In an interview on Ugandan national TV, he stated: "We are not threatening, we have not threatened with aid cuts during the process of legislative adoption of the bill. This is not how Europe operates" (NTV Uganda, 2014).

Despite calls from the EP for a punitive response (see below), EU policymakers were concerned about the possible consequences of material sanctions for LGBTI persons in Uganda: "The biggest fear was that if we speak up, if we put too much pressure this could lead to more discrimination more violence or even more laws, anti-gay laws" (Interview 3). The justification for not imposing material sanctions is linked to the concern for not making the situation more difficult for the affected parties on the ground (see Saltnes, 2021). On the one hand, the EU's approach towards Uganda reveals how violations of LGBTI human rights are shielded from material pressure to a larger extent than other violations of human rights and democratic principles, such as coups, grave instances of corruption, or electoral fraud. On the other hand, there is also a noticeable willingness to exert social sanctions on LGBTI human rights violations. This despite Uganda being one of the EU's most important development partners in the region. Yet, as we shall see, inter-institutional differences came to the fore also in Uganda. The lack of using material sanctions was contested by the EP.

5.3. The European Parliament

The EP advocated for a stronger response. In 2014, in response to the Ugandan law and a similarly repressive initiative in Nigeria, the EP (2014a) adopted a declaration in which it suggested different types of material pressure. First, it raised the option of suspending both countries from the Cotonou Agreement "in view of recent legislation further criminalizing homosexuality." Finally, the EP (2014a) urged the Commission and member states "to review their development cooperation aid strategy with Uganda and Nigeria" not by suspending aid, but by redirecting it to civil society. In the debate preceding the EP resolution, MEP Cornelissen stated:

> There can be only one conclusion from our side. Uganda and Nigeria are not living up to their obligations to the Cotonou Agreement, so preparations for their suspension must begin.…If not, then we are obviously only moving air here. (EP, 2014b)

MEP Romeva concorded: "We call on the Commission to immediately launch consultations under Article 96 of the Cotonou Agreement." What is emphasised by MEPs as well as the EP resolution is the viewpoint that the proportionality of the human rights violation in Uganda calls for an immediate and tough reaction such as consultations with the view to suspend Uganda from the Cotonou Agreement, and targeted sanctions such as "travel and visa bans, for the key individuals responsible for drafting and adopting these two laws" (EP, 2014a, p. 256). Hence, we observe that the EP acts as a proponent for a more public and punitive approach that includes the use of combined material and social sanctions.

In sum, the Ugandan case reveals that there is a willingness to intervene towards violations of LGBTI human rights. However, the specific nature of this intervention varies among EU institutions. The Council refrained from using their power to initiate the consultation procedure, yet both the EEAS and the EP exerted social pressure. The EP also called upon the Council to initiate consultations and to adopt visa and travel bans. While there is a lack of material pressure by EU institutions in Uganda, it must not be mistaken as a negative case. Although the Council did not activate Article 96, this does not mean that the EU as a whole "did nothing." EU institutions exerted social pressure on Ugandan authorities. The Ugandan case illustrates that social pressure considered a credible alternative to material pressure and is actively used by EU institutions.

Yet, pressure from Western actors, both material and social, might prove insufficient altogether. What nullified the Ugandan 2014 law was not pressure from the outside, but a coalition of civil society organisations in Uganda's efforts to challenge the law before Uganda's Constitutional Court, which in August 2014 declared it nullified due to its inconsistency with the Ugandan Constitution (Jjuuko & Mutesi, 2018). A new law, the Sexual Offences Bill was tabled in 2019 and passed by the Ugandan Parliament on 4 May 2021, something which again brings to the fore a debate about what type of pressure international actors can exert on countries that violate human rights (EP, 2019).

6. Conclusion

In this article, we have proposed two correctives to conventional studies of EU sanctions. First, when faced with a human rights violation, whether it occurs internally or externally, the EU does not face a binary choice between material sanctions and inaction. It may also consider social sanctions—either as public naming and shaming or as diplomatic pressure through political dialogue—as an alternative or complement to material pressure. Second, the EU is not a single actor that responds to human rights violations. Instead, there may be important differences between how EU institutions react. The Council, Commission, Parliament and EEAS can, and as our case studies demonstrate, often do respond differently. Our main claim is thus that the existing literature has downplayed sanctions of a non-material nature and focused unduly on the response of the EU's executive actors. The case studies demonstrated the merits of our approach: We showed how the absence of material sanctions in response to LGBTI rights violations in Lithuania and Uganda should not be mistaken for inaction on the part of all EU bodies.

We see our conceptual message that sanctions scholars should take *social* sanctions and inter-institutional differences seriously as a starting point for future research. It raises the question of when and why policymakers respond to human rights violations in a specific manner. Why do different EU bodies react differently to the same case? The Lithuanian and Ugandan examples demonstrated such variation.

Yet, EU actors need not be consistent in their approach to rights violations. The Commission's reticence vis-à-vis Lithuania, for instance, stands in stark contrast to its more recent response to similar developments elsewhere. In July 2021, the Commission announced its decision to initiate infringement proceedings against Hungary for violating the fundamental rights of LGBTI people by passing a bill that prohibited the distribution to minors of content promoting or portraying the "divergence from self-identity corresponding to sex at birth, sex change or homosexuality" (European Commission, 2021). This law closely resembles the Lithuanian Law on Minors, yet it elicited a starkly different response. The Commission also threatened to withhold funding from Polish regions and municipalities that created "LGBT-ideology free zones" and sent a letter of formal notice to the Polish government for failing to cooperate on the matter. Such variation can also be observed externally. After an anti-LGBTI crackdown in Tanzania in 2018, the Council of the EU (Mogherini, 2018) recalled its ambassador and conducted "a comprehensive review

of its policies" towards the country. Although Tanzania was not suspended from the Cotonou Agreement, it received a much more forceful response from Brussels than Uganda had. What explains these differences in the EU's approach to rights violations?

Our case studies suggest some factors that might influence how policymakers respond to a human rights violation. Most obviously, not all EU bodies are equally able to impose material sanctions. Limited powers predispose the EP to naming-and-shaming practices. Legal competence is, however, a necessary but insufficient condition for the use of material sanctions. It is therefore paramount to bring in additional variables. Political will is one such factor. The Commission, for example, dismissed the Audiovisual Media Services Directive as inapplicable with respect to the Lithuanian law, but largely staked its case against Hungary on this legislation. Policymakers might also be motivated by the perceived appropriateness of sanctions. It is possible that EU actors avoid imposing material sanctions on African states because they do not want to be accused of neo-colonial practices (Thiel, 2021) or because they are concerned about material sanctions having negative consequences for affected persons (Saltnes, 2021). Similarly, the perceived effectiveness of sanctions may affect the response to LGBTI rights violations. The stipulation that member states may not use the European Regional Development Fund and the Cohesion Fund to "support actions that contribute to any form of segregation or exclusion" made the threat of withdrawing funding to Polish municipalities and voivodeships highly credible, which likely increased the Commission's willingness to intervene (Regulation (EU) 2021/1058 of the European Parliament and of the Council of 24 June 2021, 2021). These are some of the factors that may help to turn our conceptual contribution into an explanatory framework for how policymakers respond to rights violations.

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Conflict of Interests

The authors declare no conflict of interests.

Supplementary Material

Supplementary material for this article is available online in the format provided by the authors (unedited).

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