University Doctoral (PhD) Dissertation Abstract

THE FRAMEWORK FOR COLLECTIVE DECISION-MAKING IN EU FOREIGN POLICY: THE CASE OF THE SANCTIONS IMPOSED AGAINST RUSSIA

Viktor Szép

Supervisor: Dr. habil. Varju Márton

University of Debrecen
Marton Géza Doctoral School of Legal Studies

Debrecen, 2020

1. The aims and scope of the research

A new era has started in the history of sanctions since 2010. The European Union (EU) is increasingly adopting measures which go far beyond travel bans and asset freezes. Remarkably, however, the increased use of sanctions by the EU went almost unnoticed for a very long time. The reason behind this ignorance was the large gap between the public perception of sanctions and the types of sanctions imposed by the EU. Indeed, for decades, the EU relied mostly on travel bans and asset freezes combined sometimes with arms embargoes. These 'targeted sanctions' were completely different in their nature compared to the full economic blockades *à la* Cuba or other similar measures known from previous episodes of international sanctions.[1]

Since 2010, the EU has started to apply measures with serious economic repercussions thus raising public awareness about the willingness of EU Member States to use economic coercion as a mean to tackle global conflicts. In particular, the EU has recently imposed oil embargo and financial sanctions against Iran, prohibited the import of Ivorian cocoa and banned the import of Syrian oil and gas. The evolution of the EU's sanctions regime reached its peak during the Ukrainian crisis.[2] Imposing sanctions against Russia was unprecedented in the sense that no state of its size had been subject to major economic and financial sanctions. While the US and the EU sought to involve Russia into the global economy after the collapse of the Soviet Union, they have now deliberately limited their relationship with Russia.[3]

EU leaders, however, are now confronted to navigate more fragmented and polarised EU institutions.[4] The willingness to apply more sanctions has coincided with the rise of populist and anti-European parties across Europe. While they have not reached breakthrough results in elections, neither at Member State nor at European level, anti-establishment parties have had clear impact on how (external) policies are now shaped in Europe. EU decision-making

[1] Clara Portela, 'How the EU Learned to Love Sanctions', *Connectivity Wars: The Geo-economic Battlegrounds of the Future* (European Council on Foreign Relations 2016) 36 <https://ink.library.smu.edu.sg/soss_research/1871>.

[2] ibid 39.

[3] Nigel Gould-Davies, 'Economic Effects and Political Impacts: Assessing Western Sanctions on Russia' (2018) BOFIT Policy Brief 8/2018 5 <https://helda.helsinki.fi/bof/bitstream/handle/123456789/15832/bpb0818.pdf?sequence=1>.

[4] *How to Govern a Fragmented EU: What Europeans Said at the Ballot Box* <https://www.ecfr.eu/publications/summary/how_to_govern_a_fragmented_eu_what_europeans_said_at_the_ballot_box> accessed 11 March 2020.

procedures, renowned for their slowness and complexity, are becoming even more constrained. For the first time in the history of European integration, the two traditional political groups in the European Parliament (the European People's Party and the Socialists and Democrats) lost their absolute majority in the 2019 elections. The European Council and the Council, composed of national representatives, are not exceptions either: they are also affected by the rise of populist regimes making compromises unnecessary complicated at European level.

EU foreign policy is particularly doomed to failure, especially in times when multilateralism and the liberal world order, established after the second World War, are threatened from within and outside of the EU. The unanimity principle clearly prevented the EU to establish an advanced form of cooperation in the area of foreign, security and defence policy. The European Parliament remains excluded from the Common Foreign and Security Policy (CFSP), while the limited role of the Commission is also reaffirmed by the Treaties. The lack of qualified majority voting has allowed Member States to protect their national preferences even if collective decisions would enhance the EU's capabilities to act at the international level. Even if EU Member States reach an agreement on a foreign policy issue, the EU remains unable to prevent them to pursue divergent policies towards a third State, let alone to establish a truly *common* foreign and security policy.[5]

Within this context, it is timely to reconsider whether the EU and its Member States can act together in the imposition of sanctions to tackle external challenges. The doctoral dissertation aims to explore the EU's legal framework for collective decision-making in the area of sanctions policy. It addresses the question of how EU law enables Member States to adopt sanctions collectively and how it constrains them to implement national policies going against EU law. In particular, it examines the primary and secondary EU legislation as well as the case law of the CJEU on the CFSP and sanctions policy. Based on this analysis, this PhD dissertation argues that EU Member States are seriously restricted by EU law to adopt national measures in an area of foreign and security policy. In particular, the adoption of economic sanctions is principally an EU competence. Even if economic sanctions pursue foreign and security policy objectives, they remain principally commercial policy tools which fall within exclusive EU competence. EU Member States are, principally, prevented to adopt

[5] Mitchell A Orenstein and R Daniel Kelemen, 'Trojan Horses in EU Foreign Policy' (2017) 55 JCMS: Journal of Common Market Studies 87.

national legislation in the area of economic sanctions, even if they have retained wide competences in foreign and security policy.

2. Methods

EU foreign policy is mostly studied by political scientists and experts of international relations. This is hardly surprising due to the fact that the EC/EU did not produce law in the area of foreign and security policy. Indeed, lawyers have had difficulties to analyse the CFSP, and its predecessor, the European Political Cooperation (EPC), with legal tools: the absence of law and key constitutional principles, such as primacy and direct effect, made the CFSP a hard case for lawyers. EU lawyers considered the CFSP as international law, whereas international lawyers perceived it as European law.[6] With the entry into force of the Lisbon Treaty, however, the CFSP is now more linked to other external actions than before. Even if EU external actions are codified in two Treaties, the CFSP is now an integral part of EU external policies.[7] In the area of sanctions, the EU is also producing laws which are binding in their entirety and directly applicable in all Member States.

This PhD thesis uses multiple methods. First, it recognizes that sanctions are inextricably linked with the foreign and security policy of the EU. It offers, therefore, a legal analysis of both policy areas, including primary and secondary EU law covering the CFSP and sanctions policy. The PhD thesis also explores the case law of the CJEU in both areas. In the area of foreign and security policy, the lack of judicial tools to evaluate CFSP Decisions did not prevent the author of this PhD project to offer an analysis on related case law which shed light on the nature of the CFSP (Chapter 3). It also overviews primary and secondary EU law when conceptualizing the notion of 'sanctions' (Chapter 2). In this part, the PhD thesis goes beyond EU external actions law and examines the whole body of EU law to explore every sanctions mechanism. Even if it explores a whole range of instruments under EU law, it simply defines 'sanctions' as measures adopted within the framework of the CFSP.

[6] Ramses A Wessel, 'The Legal Dimension of European Foreign Policy' in Knud Erik Jørgensen and others (eds), *The SAGE handbook of European foreign policy* (SAGE 2015) 1 <https://www.utwente.nl/en/bms/pa/research/wessel/wessel103.pdf>.

[7] Peter Van Elsuwege, 'EU External Action after the Collapse of the Pillar Structure: In Search of a New Balance between Delimitation and Consistency' (2010) 47 Common Market Law Review 994.

The PhD thesis also explores how national legislations in non-EU countries deal with the implementation of EU sanctions (Chapter 4.3). In this part, it explores the legal background of coordination in sanctions policy between the EU and third countries. Specifically, it closely examines the national law of selected non-EU countries, such as EEA countries (Switzerland and Norway), Eastern Partnership states (Ukraine and Moldova) or candidate or potential candidate countries. It does not only examine national legislations but analyses EU law, especially in cases in which third countries are expected to implement the acquis (e.g. candidate countries).

Second, it also uses traditional methods of social sciences. In particular, the PhD thesis uses data from the interviews made with EU and national officials. Individuals were selected on the basis of competences, such as personal involvement in the negotiations on Russian sanctions. The interviews were recorded between November 2017 and January 2018 in EU institutions or national ministries. I prepared a set of pre-fixed questions but the interviewees were told to kindly express their views also on topics not specifically covered by the questionnaire (semi-structured interviews). The first part of the questionnaire covered general aspects of the topic, such as the dominance of particular Member States in EU foreign and sanctions policy, other questions related specifically on the EU's sanctions regime against Russia.[8]

The main reason why conducting interviews is the most suitable method to collect and analyse data on Member State preferences is that negotiations on foreign policy issues take place behind closed doors. Therefore, I claim that there is not any other way to know the arguments and the preferences of the Member States. One could, of course, oppose this method arguing that the interviews with EU and national officials are not reliable given their affiliation with EU or national administrative institutions. In other words, their positions may be influenced by the fact that they are hired by a certain organization. However, as it will be shown in the last part of the PhD thesis, every interview pointed to one direction regardless if a person was working for the Commission or the Council or for national governments. Another possible option would have been to examine public statements on EU sanctions as

[8]Viktor Szép, 'New Intergovernmentalism Meets EU Sanctions Policy: The European Council Orchestrates the Restrictive Measures Imposed against Russia' (2019) on-line first Journal of European Integration 1.

certain research would suggest.[9] In my view, this is also misleading due to the fact that EU Member States, in some cases, used the case of Russia to promote their own political agenda and gain public support at the domestic level. Moreover, it could have been selective given that there are now 24 different languages in the EU, making it almost impossible for a single researcher to examine every Member State argument.[10]

Altogether, 13 interviews were conducted with EU and national officials in the following order: 6 individuals from the RELEX (Working Party of Foreign Relations Counsellors) which was responsible for the technical preparations of the Russian sanctions; 1 individual from the COEST (Working Party on Eastern Europe and Central Asia); 3 individuals from the Service for Foreign Policy Instruments (FPI, which used to operate under the auspices of the EEAS but was moved to DG FISMA in 2019); 1 individual from the Commission Legal Service; and, finally, 2 individual from national foreign ministries. Although interview data remained the main source for analysing the preferences of the Member States in the process of formulation of the sanctions, triangulation – involving other data, mostly on trade preferences – has helped the research to further affirm the arguments made by the interviewees.[11]

Finally, it should be noted that this PhD dissertation is not a normative work but rather based on a legal analysis complemented with an empirical study. In other words, it does not think in terms of what the EU should have or sould not have done, whether the measures adopted against Russia were right or wrong, etc. Even if the author of this PhD dissertation has its own opinion on the EU's sanctions regime, the focus will be on analysis, including from legal and political science perspective, of EU foreign and sanctions policy. It tries to draw conclusions from these and to contribute to the scientific discourse on EU foreign and sanctions policy. One of the main findings of the empirical part is that there is now evidence that two different mechanisms prevailed in the Council and the European Council in the midst of the debate on sanctions and that the latter EU institution has become a dominant actor in today's EU sanctions policy (see further info in the next chapter).

[9] Helene Sjursen and Guri Rosén, 'Arguing Sanctions. On the EU's Response to the Crisis in Ukraine' (2017) 55 JCMS: Journal of Common Market Studies 20.
[10] Szép, 'New Intergovernmentalism Meets EU Sanctions Policy' (n 1) 9.
[11] ibid 10.

3. Results

Due to the interdisciplinary nature of the dissertation, the results are related to both EU law and European studies.

Summary table: the three main findings of this PhD dissertation
1. Despite that economic and financial sanctions pursue broader foreign and security policy objectives, EU Member States are seriously restricted by EU law to enact national legislations in a field directly related to foreign and security policy.
2. The Conclusions adopted after European Council meetings have increased importance in day-to-day EU sanctions policy.
3. In the case of Russian sanctions, the European Council was influenced by norms whereas the members of the Council bargained with each other and accepted only measures which do not affect fundamental national interests

From a legal perspective, one of the main conclusions of the PhD dissertation is that EU law discourages the adoption of national legislation in the field of sanctions policy, especially in cases when the application of restrictive measures does have economic or financial consequences. In fact, EU Member States are seriously constrained by EU law to adopt economic and financial sanctions unilaterally. In this way, an EU Member State promoting its interests unilaterally may be brought before the CJEU for failing to comply with EU law in the field of trade and sanctions policy.

In some respects, the prohibition of adopting unilateral measures in the field of foreign and security policy may seem striking. After all, sanctions are nearly always used to achieve foreign or security policy objectives where EU Member States have always sought to retain (most of) their competences to pursue policy objectives based on national preferences. Indeed, EU external relations law provides the Member States with the flexibility to formulate a foreign and security policy unilaterally. In particular, the Treaty provisions on CFSP are clearly less restrictive with regard to the implementation of national foreign policies compared to other external policies defined by the TFEU. The Treaty drafters' intentions are

clear: they sought to retain (most of) the competences at the Member State level in order to be able to act unilaterally if the adoption of collective decisions, for whatever reasons, fail in the Council. The intergovernmental nature of the CFSP still allows EU Member States to take individual actions in world politics although this flexibility has already been limited due to the introduction of new legal obligations into the Treaties and the process of foreign policy institutionalization at the EU level.

However, the CFSP has clearly moved away from traditional intergovernmentalism. EU foreign relations law has developed considerably since the publication of the Davignon report on the future of EC foreign policy. Compared to the initial attempts of the Member States to establish a cooperation in foreign policy issues within the framework of the EPC in the early 1970s, the CFSP has clearly undergone major reforms, institutionalization and even a legalisation process thereby producing law and legal processes.[12] EU Member States must respect the legal obligations defined by the TEU in foreign and security policy. In particular, they are now bound by the (CFSP) Decisions adopted within the framework of the CFSP and are under legal obligation to avoid the adoption of national policies going against EU-level actions.

Undoubtedly, however, the (legal) enforcement of CFSP Decisions still brings uncertainties in legal scholarship. Except for some limited areas, the CJEU is principally excluded from CFSP matters. There are simply no judicial tools to evaluate the Decisions adopted by the Member States within the framework of the CFSP. In fact, EU Member States are prevented to adopt legislative acts in CFSP which make judicial scrutiny impossible. Furthermore, the specific loyalty obligation inserted in Article 24(3) TEU also reinforces the general view on CFSP that mutual solidarity cannot be enforced in foreign and security policy. The lack of legal tools does not mean, however, that enforcement would be totally missing: EU Member States disrespecting CFSP Decisions might experience (political) disadvantages in other negotiations where consequences for non-compliance appear in the form of exclusion from benefits in any other EU policy area. In other words, the Commission is not entitled to launch infringement proceedings against EU Member States disrespecting CFSP Decisions ("no legal route"). However, if an EU Member State clearly implements national measures contradicting CFSP decisions may face negative *political* consequences, e.g. if other EU Member States decide to

[12] Paul James Cardwell: The Legalisation of European Union Foreign Policy and the Use of Sanctions. Cambridge Yearbook of European Legal Studies.

refuse demands for benefits in other policy areas. To put it more simple: EU Member States that violate CFSP Decisions may face decreasing influence in the EU and may not receive advantages which would have been given to them if they had complied with their obligations under TEU provisions.

Nevertheless, scholars have argued that the distinct features of the CFSP should not be overemphasized. The idea that CFSP acts do not affect the ability of the Member States to pursue a foreign policy based on national preferences originates in the intergovernmental nature of the EPC. However, the CFSP has increasingly come closer to the Community legal order and has interacted with the EC within a unitary EU legal order.[13] Although Declarations 13 and 14 annexed to the Lisbon Treaty still confirm that the TEU provisions on CFSP, including the creation of the HR and the establishment of the EEAS will not affect the responsibilities and powers of the Member States, EU Member States might be bound by the constitutional principles, such as the principle of loyalty, as well as by the acts adopted within the framework of the CFSP. In fact, the CFSP is not an à la carte and ad-hoc form of cooperation. It could be argued that the loyalty principle under Article 4(3) TEU apply to both Treaties and "there is nothing to indicate that it would not apply to all Union policy fields, including CFSP".[14] In this sense, Article 24(3) TEU, a specific CFSP loyalty obligation, does not deviate from Article 4(3) TEU but could be seen as a "counterbalance [that] the Commission does not have enforcement powers in relation to the CFSP".[15]

Furthermore, there are four more important reasons why the specific features of the CFSP should not be overestimated after the entry into force of the Lisbon Treaty: (1) the EU's action in international affairs is steered by a single set of objectives and institutional framework, (2) Member States' sovereignty has been limited given that Article 28(2) TEU declares that once a CFSP decision is adopted, it will commit them in the positions they adopt and in the conduct of their activity, (3) Article 24(3) TEU and related case law suggest that there is an obligation to act in good faith which is reflected in the straightforward wording – "shall support", "shall comply" and "shall refrain" – of current Article 24(3) TEU and, finally,

[13] Christophe Hillion and Wessel A Ramses, 'Restraining External Competences of EU Member States under CFSP' in Marise Cremona and Bruno De Witte (eds), *EU Foreign Relations Law: Constitutional Fundamentals* (Hart Publishing 2008) 79–80.
[14] Cremon Marise Cremona, 'The Two (or Three) Treaty Solution: The New Treaty Structure of the EU' in Andrea Biondi, Piet Eeckhout and Stefanie Ripley (eds), *EU law after Lisbon* (Oxford University Press 2012) 53.
[15] ibid 53.

(4) the the Court's holistic approach – in Pupino and Segi cases – to apply the general EU principles suggests also that the importance of the distinction between Article 4(3) TEU and Article 24(3) TEU should not be overestimated.[16]

While the use of sanctions is inextricably linked with CFSP, it also shows considerable differences with regard to the ability of the Member States to pursue policy objectives based on national preferences. In fact, even in the area of foreign and security policy, EU Member States are expected to respect their EU law obligations and are constrained to formulate a foreign policy which complies with EU law. According to settled case-law of the CJEU, measures whose effect is to prevent or restrict the export of certain products cannot be treated as falling outside of scope of the common commercial policy simply for the reason that they also pursued foreign and security policy objectives. In other words, even if (economic) sanctions are used to achieve foreign and security policy objectives, they remain principally commercial policy tools. In this way, EU Member States cannot disregard the fact that the EU has exclusive competence in the area of trade policy and are thus constrained in their abilities to formulate a foreign policy based on national preferences.

The transformation of EU external relations, especially EPC, was now evident in the 1980s due to new case law by the Court of Justice. Since the 1980s and especially since the early 1990s, measures of commercial policy with foreign or security policy do not, in principle, fall within Member State competence. In *Werner*[17] and *Leifer*,[18] two cases dealing with the export of dual-use goods, the judgments of the Court were almost identical. In both cases, requests for preliminary rulings were referred to the Court of Justice on the interpretation of (current) Article 207 TFEU. In *Werner*, the German authorities refused to issue a licence to export vacuum-induction smelting, cast oven and inductions spools to Libya on the ground that those goods jeopardized the foreign and security policy interests of the country. In *Leifer*, the German authorities brought criminal proceedings against three persons after having violated the Regulation on Foreign Trade. They delivered plant, plant parts and chemical products to Iraq between 1984 and 1988 without the necessary export licences. The Court, in both cases,

[16] Peter Van Elsuwege, 'EU External Action after the Collapse of the Pillar Structure: In Search of a New Balance between Delimitation and Consistency' (2010) 47 Common Market Law Review 990-991.
[17] Judgment of 17 October 1995, *Fritz Werner Industrie-Ausrüstungen GmbH v Federal Republic of Germany,* Case C-70/94, ECLI:EU:C:1995:328.
[18] Judgment of 17 October 1995, *Criminal proceedings against Peter Leifer, Reinhold Otto Krauskopf and Otto Holzer*, Case C-83/94, ECLI:EU:C:1995:329.

concluded that measures whose effect was to prevent or restrict the export of certain products could not be treated as falling outside the scope of the common commercial policy on the ground that they had foreign policy and security objectives. The Member States were not allowed, on the basis of their foreign and security policy interests, to take steps towards freely deciding on the scope of the common commercial policy. It argued that given that full responsibility was transferred to the Community in the area of commercial policy, the adoption of unilateral Member State measures, regardless their purported objectives, was excluded.

This argument was further strengthened in other cases as well. In fact, EU case law suggests that the Member States failing to comply with EU common rules on trade are brought before the European Court of Justice (ECJ) for reasons of advancing their particular (foreign or security policy) interests at the expense of their European obligations. Greece, for example, imposed unilateral trade sanctions against the former Republic of Macedonia in the 1990s because of the perceived threats that a unified Macedonia and its use of symbols questioned its territorial integrity. The European Commission immediately brought an action against Greece on the ground that it had failed to fulfil its obligations under (current) Article 207 TFEU and under secondary law regulating imports to and export from the Union. Advocate General Jacobs, in his opinion, seriously criticized – but did not disapprove – the action taken by Greece on the ground that the Member States had surrendered their powers to adopt unilateral trade measures even if those measures had foreign or security policy objectives.[19] The uneasy relationship between foreign and commercial policy and the scope of (current) Article 207 TFEU was raised again in Centro-Com where the Court articulated a more general principle between the two policy areas. It declared that '[…] while it is for Member States to adopt measures of foreign and security policy in the exercise of their national competence, those measures must nevertheless respect the provisions adopted by the Community in the field of the CCP'.[20]

The wide competences of the EU in the field of sanctions policy does not mean that unilateral Member State actions would be entirely prohibited by EU law. Under Article 347 TFEU, a

[19] AG Jacobs Opinion of 6 April 1995, Commission of the European Communities v Hellenic Republic, Case C-120/94, EU:C:1995:109.
[20] Judgment of 14 January 1997, The Queen, ex parte Centro-Com Srl v HM Treasury and Bank of England, Case C-124/95, EU:C:1997:8, paragraphs 23–30.

provision mostly used in the 1960s,[21] EU Member States are still allowed to impose unilateral trade sanctions if certain conditions are met. This provision is designed to maintain a 'reserve of sovereignty' for states – the sovereign subjects of international law – in order to protect their interests in exceptional cases.[22] Article 347 TFEU is a recognition that the Member States retained their competences in the formulation of national foreign policy.[23] The Court, however, confirmed the 'wholly exceptional character' of (current) Article 347 TFEU holding that it can only be invoked in extremely serious situations going beyond existing exceptional clauses defined by the Treaties.[24] Furthermore, recourse to Article 347 TFEU in order to impose trade sanctions is, in principle, tantamount of misusing the powers of the EU because it would bypass the procedure provided for by Article 215 TFEU. The latter can only be invoked if a prior political decision has been made based on Article 29 TEU in the framework of the Common Foreign and Security Policy. Additionally, the compliance with international law obligations, specifically the implementation of UN (trade) sanctions, cannot be justified by relying on Article 347 TFEU.[25]

Nevertheless, in the field of arms exports, Member States enjoy a relative freedom to enact measures at domestic level. The export of arms to third countries or the refusal to trade with armaments, despite having serious commercial implications, are principally Member State competence falling outside the scope of the CCP. The intention of maintaining control over arms export is indicated, among others, in Article 346(1)(b) TFEU. This Treaty-based derogation provides more freedom to EU Member States to take unilateral actions in the field of arms export but the possibility to resort to Article 346(1)(b) TFEU is certainly not unlimited. It can only be invoked, among others, if a product in case is included in the list adopted by the Council on 15 April 1958 and actions are taken in order to protect national

[21] Kuyper, P.J. (1975). Sanctions against Rhodesia: The EEC and the implementation of general international legal rules. Common Market Law Review, 12(2), 231–244; Kuyper, P.J. (1982). Community sanctions against Argentina: lawfulness under Community and international law. In D. O'Keefee and H.G. Schermers (Eds.), Essays in European law and integration (pp. 141–166). Deventer: Kluwer.

[22] Koutrakos, P. (2000). Is Article 297 EC a "reserve of sovereignty"?. Common Market Law Review, 37(6), 1339–1362.

[23] AG Jacobs Opinion of 6 April 1995, Commission of the European Communities v Hellenic Republic, Case C-120/94, EU:C:1995:109.

[24] Judgment of 15 May 1986, Johnston, Case 222/84, EU:C:1986:206, paragraph 27.

[25] Koutrakos, P. (2000). Is Article 297 EC a "reserve of sovereignty"?. Common Market Law Review, 37(6), 1339–1362.

security interests [26] In addition, EU Member States adopted Common Position 2008/944/CFSP[27] defining common rules governing control of exports of military technology and equipment, an evolution of the EU Code of Conduct on arms exports,[28] with the aim to reinforce cooperation and promote convergence in arms exports. The Common Position contains eight criteria against which export licensing applications are assessed in each Member State.

Under the current Treaty provisions, EU restrictive measures are adopted on the basis of two different provisions combining Member State and EU competences.[29] Arms embargoes and travel bans are unanimously adopted in the form of a CFSP Council Decision on the basis of Article 29 TEU. Additional legislation is required if this decision provides for the imposition of economic and financial sanctions as well. Accordingly, restrictive measures falling within EU competences (e.g. export bans) are adopted by qualified majority in the form of a Council Regulation on the basis of Article 215 TFEU which is preconditioned on a unanimously adopted CFSP Council Decision. While the Council remains the only EU institution being empowered to impose sanctions principally by unanimity, proposals might be submitted by the European External Action Service (EEAS), the High Representative of the Union for Foreign Affairs and Security Policy (HR) as well as the European Commission. The latter is mainly responsible for making recommendations on sanctions falling within EU competences. CFSP Council Decisions providing for arms embargoes and travel bans are directly implemented by the Member States, whereas Council Regulations imposing economic or financial sanctions are binding in their entirety and directly applicable in all Member States.

Due to their foreign and security policy implications, the restrictive measures imposed by the EU have undeniable links with the CFSP. Specifically, the requirement of unanimity and the dominance of the Member States are key features of EU sanctions policy as well. The Treaty provisions make it clear that the European Parliament is excluded from EU sanctions policy

[26] Randazzo, V. (2014). Article 346 and the qualified application of EU law to defence. European Union Institute for Security Studies Brief Issue 22. https://www.iss.europa.eu/sites/default/files/EUISSFiles/Brief_22_Article_346.pdf

[27] Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment

[28] EU Code of Conduct on arms exports http://www.seesac.org/f/img/File/Res/EU-Documents/EU-Code-of-Conduct-on-Arms-Exports-512.pdf

[29] Eeckhout, P. (2011). EU external relations law. Oxford: Oxford University Press. ; Kuijper, P.J., Wouters, J., Hoffmeister, F., De Baere, G., Ramopoulos, T. (2013). The law of EU external relations. Oxford: Oxford University Press; Portela, C. (2011). European Union sanctions and foreign policy: when and why do they work?. London: Routledge.

while the Council still controls the policy-making procedure leading to the adoption of different sanctions. Indeed, EU sanctions policy was mainly driven by the interests of the Member States: measures affecting their political and trade relations can only be taken by the Council. Their primary role was reaffirmed by the Lisbon Treaty. It is not a coincidence, therefore, that the dominant part of the literature refers only to the Council when discussing the decision-making processes on EU sanctions.[30] Undoubtedly, the Council remains most of the time the only institution which conducts negotiations on EU sanctions.

This PhD dissertation, however, challenges the traditional understanding of EU sanctions policy whereby the Council is regarded as the dominant actor in the imposition of restrictive measures. It stresses the increased prominence of EU soft law,[31] in particular the Conclusions issued after European Council meetings. Indeed, the European Council, through its Conclusions, became a central actor in EU sanctions policy. Since the entry into force of the Lisbon Treaty, these European Council Conclusions contain specific – instead of general – policy guidelines and formulate detailed policy proposals to other EU institutions. Indeed, the case of Russian sanctions was one of the first episodes in EU sanctions policy in which the European Council *explicitly* called on other EU institutions, notably the Council and the Commission, to adopt the necessary legal acts for the establishment of a new sanctions regime.

One of the main arguments of the doctoral dissertation is that the European Council has now a prominent role in EU sanctions policy. It shows that the European Council played a leading role in the Ukrainian crisis through the example of sanctions introduced against Russia. Sanctions were imposed in three phases all of which had been preceded by a European

[30] Panos Koutrakos, *EU International Relations Law* (Hart 2015) 495–497, 504–508; Clara Portela, *European Union Sanctions and Foreign Policy: When and Why Do They Work?.* (Taylor and Francis 2012).

[31] EU soft law is a wide concept and this PhD dissertation does not argue that EU soft law, in general, now dominates EU foreign policy-making. Instead, it seeks to emphasize that European Council Conclusions (a type of EU soft law) has now prominent role in EU sanctions policy. It recognizes that soft law, after Linda Senden, can be defined in general as *'rules of conduct that are laid down in instruments which have not been attributed legally binding force as such, but nevertheless may have certain (indirect) legal effects, and that are aimed at and may produce practical effects'* (Linda Senden, Soft Law in European Community Law (Portland, Oregon 2004), 112.). One such is the Conclusions issued after the meetings of the European Council (Bart Van Vooren and Ramses Wessel, *EU External Relations Law: Text, Cases and Materials* (Cambridge University Press 2014), 37.) which now have a more prominent role in the imposition of international sanctions. Other soft law instruments should be examined separately and see whether their positions have changed in EU foreign policy-making.

Council meeting in which EU Heads of State and Government decided whether actions should be taken.

In the empirical part, the doctoral dissertation attempts to answer the question of how collective decisions on sanctions were established in the EU. First, from a historical perspective, it clearly shows the reluctance of EU Member States to use coercive measures against Russia. The chapter avoids long and descriptive parts to present EU-Russia relations in general. Instead, it specifically focuses on episodes in which the EU deliberately considered the use of sanctions against Russia during major crisis. It turns out that the EU has nearly always tried to avoid using sanctions and estranging Russia to integrate itself into the new world economy, especially after the collapse of the Soviet Union. The EU refused the ratification of the Partnership and Cooperation Agreement during the first Chechen War but decided not to use CFSP sanctions. Sanctions were later considered during the Georgian crisis but Nicolas Sarkozy, former French President and mediator between the EU and Russia, looked after peaceful means to settle the crisis while objected the introduction of coercive measures. The current Ukrainian crisis represents a new era in the history of EU-Russia relations due to the fact that this is the first case in which the EU considered and later applied serious economic and financial sanctions against Russia.

It also shows how the trade preferences of EU Member States shaped the EU's sanctions regime. It examines the trade areas concerned and shows that EU Member States avoided the adoption of measures which affected their fundamental economic interests. Remarkably, three sectors were avoided to be hit by sanctions. The EU did not target the gas sector due to the exposure of Central and Eastern European states to Russian gas. The EU also decided not to exclude Russia from the SWIFT international banking system. Finally, an agreement was also reached not to target the nuclear sector mainly due to Finnish and Hungarian interests. Instead, the EU chose measures that do not undermine the national interest of each Member State but cause pain to certain Russian individual or sector.

Finally, the PhD dissertation shows how the European Council involved itself in the sanctions imposed against Russia. The Foreign Affairs Council, consisting of the foreign ministers of each Member State, was unable to act without a formal authorization of the European Council. In fact, an extraordinary European Council meeting always preceded the adoption of new measures given the sensitivity of EU-Russia relations. Only EU Heads of State and

Government could make the *political* decision whether to impose sanctions while the *technical* decisions could be taken in the Council as well.

The PhD dissertation also shows how negotiations on sanctions in both the European Council and the Council should be analysed, using the example of restrictive measures imposed against Russia. Interestingly, the results clearly show that two different mechanisms were present during negotiations on Russian sanctions. Based on the empirical results (see chapter 5.3), this PhD dissertation argues that the European Council, when it agreed on the imposition of sanctions against Russia, was influenced by the norms of upholding fundamental principles of international law, in particular the prohibition on the acquisition of territory by force or the sovereignty and the territorial integrity of States. In contrast, the members of the Council bargained with each other and adopted a decision which reflects the red lines of the Member States. This dichotomy does not mean that Member States interests would completely disappear in the European Council. Instead, this PhD dissertation argues that the decision on the imposition of sanctions in the European Council is strategic in its nature: EU Heads of State and Government make a strategic (political) decision whether the EU needs to impose sanctions. If so, the European Council is fully aware that the decisions made by the Council can still be kept under national control: national representatives, especially at the level of Working Groups, are kept under control through a written mandate whose content is determined by domestic political considerations. This is the reason why national interests have more visible countours in the Council: instead of a political decision, national representatives need to take *concrete and tangible* measures affecting (in the case of sanctions imposed against Russia) trade and foreign policy interests.

UNIVERSITY AND NATIONAL LIBRARY
UNIVERSITY OF DEBRECEN
H-4002 Egyetem tér 1, Debrecen
Phone: +3652/410-443, email: publikaciok@lib.unideb.hu

Registry number: DEENK/257/2020.PL
Subject: PhD Publication List

Candidate: Viktor Szép
Doctoral School: Géza Marton Doctoral School of Legal Studies
MTMT ID: 10050965

List of publications related to the dissertation

Articles, studies (12)

1. **Szép, V.**, Van Elsuwege, P.: Brexit után: Az Európai Unió és az Egyesült Királyság együttműködési lehetőségei a nemzetközi szankciók kivetésében.
   Külgazdaság. 64 (5-6), 43-58, 2020. ISSN: 0324-4202.

   Level of HAS Committee on Legal and Political Sciences: D

2. **Szép, V.**, Van Elsuwege, P.: EU sanctions policy and the alignment of third countries: relevant experiences for the UK?
   In: The Routledge Handbook on the International Dimension of Brexit. Ed.: Juan Santos Vara, Ramses A. Wessel, Polly R. Polak, Taylor & Francis Limited, Abingdon, 226-240, 2020.

3. **Szép, V.**: New intergovernmentalism meets EU sanctions policy: the European Council orchestrates the restrictive measures imposed against Russia.
   Journal of European Integration. 42 (6), 855-871, 2020. ISSN: 0703-6337.
   DOI: http://dx.doi.org/10.1080/07036337.2019.1688316

4. **Szép, V.**: Foreign Policy Without Unilateral Alternatives?: EU Member State Interests and the Imposition of Economic Sanctions.
   In: Between compliance and particularism: Member State interests and European Union law. Ed.: Marton Varju, Springer, Cham, 321-338, 2019. ISBN: 9783030057817

5. **Szép, V.**: Korlátozott tagállami mozgástér a Közös Kül- és Biztonságpolitikában?: A (gazdasági) szankciók alkalmazásának jogi feltételei az Európai Unióban.
   Állam-és Jogtudomány. 59 (2), 53-71, 2018. ISSN: 0002-564X.

   Level of HAS Committee on Legal and Political Sciences: A

6. Simon, Z., **Szép, V.**: A Közös Kül- és Biztonságpolitika.
   In: Az Európai Unió a világban : Uniós külkapcsolatok a 21. században. Szerk.: Simon Zoltán, L'Harmattan, Budapest, 115-137, 2017. ISBN: 9789634142966

7. **Szép, V.**, Simon, Z.: Az Európai Szomszédságpolitika.
   In: Az Európai Unió a világban : Uniós külkapcsolatok a 21. században. Szerk.: Simon Zoltán, L'Harmattan, Budapest, 265-294, 2017. ISBN: 9789634142966

8. **Szép, V.**: Az Unió és a világ feltörekvő térségei: Ázsia.
In: Az Európai Unió a világban : Uniós külkapcsolatok a 21. században. Szerk.: Simon Zoltán, L'Harmattan, Budapest, 330-336, 2017. ISBN: 9789634142966

9. **Szép, V.**: Közös hang a világpolitikában: Az EU kül- és biztonságpolitikájának elméleti megközelítései.
Politikatudományi Szemle. 26 (3), 133-149, 2017. ISSN: 1216-1438.

Level of HAS Committee on Legal and Political Sciences: C

10. **Szép, V.**: A gazdasági szankciók politikai hatékonysága.
Politikatudományi Szemle. 24 (4), 117-131, 2015. ISSN: 1216-1438.

Level of HAS Committee on Legal and Political Sciences: C

11. **Szép, V.**: Az Európai Unió által Oroszországgal szemben bevezetett gazdasági szankciók hatékonysága.
Külgazdaság. 59 (11-12), 191-203, 2015. ISSN: 0324-4202.

Level of HAS Committee on Legal and Political Sciences: D

12. **Szép, V.**: Az Európai Szomszédságpolitika szerepe Ukrajna demokratizálódásában.
In: Utak és tévutak : Tanulmányok Közép- és Kelet-Európa közelmúltjából és jelenéből. Szerk.: Simon Zoltán, EFO Kiadó, [Százhalombatta], 219-262, 2014. ISBN: 9789638243492

Conference presentations (1)

13. **Szép, V.**: The role of the Council in EU foreign policy: is it really the only actor?: The case of sanctions imposed against third states.
Profectus in Litteris. 8, 305-312, 2017. ISSN: 2062-1469.

UNIVERSITY AND NATIONAL LIBRARY
UNIVERSITY OF DEBRECEN
H-4002 Egyetem tér 1, Debrecen
Phone: +3652/410-443, email: publikaciok@lib.unideb.hu

List of other publications

Articles, studies (2)

14. **Szép, V.**: Greksza Veronika, Mohay Ágoston: Bevezetés az Európai Unió jogába. *Állam-és Jogtudomány. 57* (1), 107-111, 2016. ISSN: 0002-564X.

    Level of HAS Committee on Legal and Political Sciences: A

15. **Szép, V.**: Navratil Szonja: A jogászi hivatásrendek története Magyarországon. *Állam-és Jogtudomány. 57* (3), 166-171, 2016. ISSN: 0002-564X.

    Level of HAS Committee on Legal and Political Sciences: A

By the directives of HAS Committee on Legal and Political Sciences:
Publications in periodicals level „A": 3, related to the dissertation: 1.
Publications in periodicals level „D": 2, related to the dissertation: 2.
Publications in periodicals level „C": 2, related to the dissertation: 2.

The Candidate's publication data submitted to the iDEa Tudóstér have been validated by DEENK on the basis of the Journal Citation Report (Impact Factor) database.

03 September, 2020

DEBRECENI EGYETEM Egyetemi és Nemzeti Könyvtár