



BETWEEN SUPRANATIONALISM AND INTER- GOVERNMENTALISM IN THE EUROPEAN UNION'S FOREIGN POLICY: A PRINCIPAL-AGENT APPROACH OF THE SANCTION POLICY IN THE CFSP FRAMEWORK

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Abstract:

Integration in the EU Foreign Policy domain has been sporadic, preventing the EU from gaining traction internationally. However, the imposition of international sanctions has generated a great degree of member state cooperation at the EU level. From establishing a common sanctioning practice, to institutionalising the instrument as part of the CFSP toolbox, the EU sanction policy constitutes a fascinating example of delegation of foreign policy powers from the national to the supranational level. This article uses the Principal-Agent model in an attempt to make evident, as a result from the allocation of such powers to the EU, the power struggle between the national and supranational levels for the control of the sanction-making process. The analysis reveals that in spite of EU supranational bodies acquiring greater control over time, the member states have set up control mechanisms in order to limit the room for manoeuvre of the former.

Keywords : EU sanctions, EU Foreign Policy, Intergovernmentalism, Supranationalism, Principal-Agent Model, Delegation of Power.

Titulo en Castellano: Entre el Supranacionalismo y el Intergubernamentalismo en la Política Exterior de la Unión Europea: Una Aproximación "Agente Principal" en la Política de Sanciones en el marco de referencia de la PESC

Resumen:

La integración de la UE en asuntos de política exterior ha resultado ser esporádica, impidiendo así que la UE ganase fuerza internacionalmente. Sin embargo la imposición de sanciones internacionales ha generado un alto grado de cooperación entre los Estados Miembros dentro de la UE. Del establecimiento de una práctica común sancionadora a la institucionalización del instrumento como parte de las herramientas a disposición de la PESC, la política de sanciones de la UE constituye un ejemplo fascinante de delegación de poderes en política exterior desde el nivel nacional al nivel supranacional. Este artículo utiliza el modelo Agente-Principal intentando clarificar y hacer evidente la lucha entre los niveles nacional y supranacional, en el control del proceso de adopción de sanciones, como consecuencia de la delegación de estos poderes en la UE. El análisis revela que, a pesar de que los organismos supranacionales de la UE han adquirido un mayor poder a lo largo del tiempo, los Estados Miembros han establecido mecanismos de control que limitan la capacidad de maniobra de aquellos organismos.

Palabras clave: Sanciones de la UE, Política Exterior de la UE, Intergubernamentalismo, Supranacionalismo, Modelo Agente Principal, Delegación de Poder.

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1. Introduction.

The comparison of the degree of integration reached by the European Union (EU) in domains such as trade or agriculture with the pace of the ‘Brusselization’ process in the foreign policy domain, reveals a significant discrepancy. Coined by Allen in 1998², the concept of ‘Brusselization’ designates the shift of authority from national capitals to Brussels in the foreign policy domain. Also referred to as the supranationalisation process, it was officially triggered in 1992 with the establishment of the Common Foreign and Security Policy (CFSP) and the creation of the EU’s own foreign policy Administration in Brussels. From then on, the member states gradually lost their grip on foreign policy-making and the successive European Treaties institutionalised the Union’s authority.

The creation of a common foreign policy at the EU level has, nonetheless, not yielded the expected results³. The 28 capitals still retain the power to define their own foreign policies and tend to support the Union’s initiatives in a sporadic manner⁴. The CFSP has therefore become a hybrid policy which “is [...] no longer the purely intergovernmental affair of the early days, but not yet a fully-fledged policy arm of the Union”⁵. However, studies which are able to define this in-between state and identify whether the policy is taking the direction of supranationalisation are missing. In an attempt to fill this gap and identify under which conditions supranationalisation processes occur in the European foreign policy (EFP) this article is going to take the Union’s sanction policy as a case study.

The EU’s resort to international sanctions in the framework of the CFSP can be traced back to the 1980s. If this coercive tool was not attached with great expectations, it nonetheless reached two fundamental milestones. Firstly, in terms of coercive power it yielded superior results than the more celebrated Common Security and Defence Policy (CSDP)⁶. Secondly, and more unexpectedly, by the end of the 1990s member states became fully part of the EU’s common sanctioning platform⁷. Thereby strengthening the idea that the EU is able to coordinate the preferences of its member states into sanctioning third parties but also to make use of its economic power in order to build its international influence⁸.

In the literature on the EFP, this success went unnoticed and it is only at the beginning of the 2000s that the sanction policy started to be addressed. However, if academics have explained why the member states partially transferred their sanctioning powers and participated in the creation of a common sanctioning framework at the EU level, none have

² Allen, David (1998): “Who speaks for Europe?: the search for an effective and coherent external policy”, in John Peterson & Helene Sjursen. *A Common Foreign Policy for Europe? Competing visions of the CFSP*, London, Routledge, pp. 41-58.

³ Seidelmann, Reimund (2002): Problems and Prospects of the Common Foreign and Security Policy (CFSP) and European Security and Defense Policy (CESDP): A German View, at www.desk.c.u-tokyo.ac.jp/download/es_1_Seidelmann.pdf

⁴ Bergmann, Julian & Niemann, Arne: Theories of European Integration, in Aasne Kallan Aarstad, Edith Drieskens, Knud Erik Jørgensen, Katie Laatikainen & Ben Tonra (eds.) (2015): *The Sage Handbook of European foreign Policy*, London, Sage, pp. 166-182.

⁵ Nuttall, Simon (2000): *European Foreign Policy*, Oxford, Oxford University Press, p. 275

⁶ Portela, Clara & Ruffa, Chiara: The politics of coercion: Assessing the EU’s use of military and economic instruments, in Aasne Kallan Aarstad, Edith Drieskens, Knud Erik Jørgensen, Katie Laatikainen & Ben Tonra (eds.) (2015): *The Sage Handbook of European foreign Policy*, London, Sage, pp. 545-558.

⁷ Jones, Seth. G. (2007): *The rise of European Security Cooperation*, Cambridge, Cambridge University Press.

⁸ De Wilde d’Estmael, Tanguy (1998): *La dimension politique des relations économiques extérieures de la communauté européenne. Sanctions et incitants économiques comme moyens de politique étrangère*, Bruxelles, Éditions Emile Bruylant.



gone beyond to analyse how the supranationalisation process concretely took place within the CFSP's structures and what role was given to EU supranational actors with regards to the policy-process. Indeed, it remains puzzling to witness the intentional transfer of control over such a significant foreign policy instrument from the national to the supranational level; especially given the well-known ability of the Union to seize more powers than originally envisioned. The article will consequently seek to establish under what conditions were national sanctioning powers transferred to EU institutions and to what extent has this transfer been accompanied by the member states' loss of control over the policy-making process to the profit of EU institutions.

By doing so, the objective is to get a better understanding of the drivers behind transfers of powers to Brussels-based actors in a field where member states have always been wary of any competence creep from the Union. It also relates to the current state of the Union where the member states are claiming back their sovereignty in the light of the EU's difficulties to provide with proofs of its accountability. To that aim, the article advances the relatively recent tool of the Principal-Agent model which conceptualises intentional transfers of sovereignty. The analysis will demonstrate a reversion of the supranationalisation process after the Lisbon Treaty (2007) and that despite the extensive powers given to two EU bodies, the Commission and the EEAS, the member states have preserved their control relatively well.

The article is organised as follows. It first revises the existent literature dedicated to the EU sanction policy to then adapt the principal-agent model to the institutional framework of the EU sanction policy. Secondly, it proceeds to the empirical study of the case. Finally, the findings will be discussed and their significance for the EU as an autonomous foreign policy actor will be addressed.

2. Literature review

2.1.A hidden gem in the EFP

From the Fouchet plan (1961) to the Maastricht Treaty (1992), the creation of the CFSP marked the termination of years of stalemate and concretised the Union's wish to coordinate the foreign policies of its member states and complement its economic influence with military power⁹. Despite the Union's achievement at defining a common security strategy (2003), the literature on the EFP has nonetheless quickly identified the policy's limitations in the face of coordination issues, competing interests and sporadic support from the member states¹⁰.

In this regard, the inauguration of the CSDP in 1999 as the Union's latest crisis management instrument did not meet its initial and rather ambitious objectives¹¹, whilst the

⁹ Seidelmann, Reimund., *op. cit.*

¹⁰ Major, Claudia (2008): "EU-UN cooperation in military crisis management: The experience of EUFOR RD Congo in 2006", *EUISS Occasional Paper*, Nº 33; Keukeleire, S., & Delreux, T. (2014): "European Integration and Foreign Policy: Historical Overview", in Keukeleire, S. & T. Delreux: *The Foreign Policy of the European Union* (pp. 35-60), Basingstoke, Palgrave Macmillan

¹¹ Toje, Asle (2011): *The European Union as a Small Power after the Post-Cold War*. Basingstoke: Palgrave Macmillan; Karp, Aron, & Karp, Regina (2013): "European security: just getting started, again?", *Contemporary Security Policy*, Vol..34, Nº 2, pp. 350-352.



drop in new CSDP missions since the Lisbon Treaty¹² and the member states' persisting national reflexes discredit the EU's platform for crisis-management¹³.

The EU's imposition of sanctions for foreign policy purposes and for more than three decades has however gone unnoticed in the literature dedicated to the Union's coercive power¹⁴. A timespan during which it succeeded to improve and formalise its sanctioning practice but also to coordinate the one of its member states at the EU level¹⁵. Given the hard nature of this tool it is remarkable that sanctions are now the most resorted to instrument of the EU external action¹⁶. The aim of this article is to further look into this successful example of member states' coordination and EU's ability to exercise influence in the foreign policy domain.

2.2.Sanctions as a coercive foreign policy tools

International sanctions have not been clearly defined by the international community¹⁷ but a scholarly consensus can be found according to which they designate foreign policy measures used by one or more nation-states, *the sender*, in order to end the reprehensible behaviour of another nation-state, *the target*, by inflicting pain or raising the costs of its actions¹⁸. They can be economic in nature while pursuing political goals¹⁹ and EU economic sanctions are, in this regard, a formidable tool used by the Union to convert its economic power into greater political influence²⁰.

EU restrictive measures taken in the framework of the CFSP are divided in two categories in order to solve issues of overlapping competencies between the economic and foreign policy domain²¹. The first one refers to economic and/or financial measures such as embargoes or asset freezes and are a shared competence of the member states and the Union. The second type is, on the contrary, under the exclusive authority of the member states since it concerns arms embargoes, visa restrictions and diplomatic sanctions.

A surprisingly pessimistic consensus can be found in the literature which posits that sanctions rarely work²² and EU sanctions have not escaped the rule²³. Some scholars have

¹² Howorth, Jolyon (2014): "The EU as an Overseas Crisis Management Actor", in Jolyon. Howorth, *Security and Defence Policy in the European Union* (2nd ed.), London: Palgrave Macmillan.

¹³ Batora, Jozef : "European Defence Agency: A Flashpoint of Institutional Logics". *West European Politics*, Vol.32, Nº 6, (2009) pp. 1075-1098.

¹⁴ Portela, Clara, & Ruffa, Chiara, *op. cit*

¹⁵ *Ibid.*

¹⁶ Gebert, Konstanty (2013): *Shooting in the dark? EU sanctions policies. European Council on Foreign Relations (ECFR)*, Policy Brief, Nº71, at http://www.ecfr.eu/page/-/ECFR71_SANCTIONS_BRIEF_AW.pdf

¹⁷ Partsch, Karl. Josef (1994): "Reprisals", in. Bernhardt, Rudolf: *Encyclopaedia of Public International Law*, Amsterdam. North-Holland; Portela, Clara (2010): *European Union Sanctions and Foreign Policy: When and Why Do They Work?* London, Routledge.

¹⁸ Hazelzet, Hadewych.(2001): *Carrots or Sticks? EU and US reactions to Human Rights violations (1989-2000)*. *European University Institute*; Hufbauer Gary, Schott Jeffrey, Elliott Kimberley & Oegg Barbara. (2007): *Economic Sanctions Reconsidered*. Washington DC, Institute for International Economics; Portela, Clara: *European Union Sanctions and Foreign Policy, op. cit.*, p. 21.

¹⁹ Pape, Robert P. : "Why Economic Sanctions Do Not Work", *International Security*, Vol.22, Nº 2, (1997), pp. 90-136.

²⁰ De Wilde d'Estmael, Tanguy, *op. cit.*

²¹ Portela, Clara: *European Union Sanctions and Foreign Policy, op. cit.*, pp. 27-28.

²² Baldwin, David Allen (1985): *Economic Statecraft*, Princeton, Princeton University Press; Pape, Robert P., *op. cit.*; Drezner, Daniel. W. (1999): *The Sanction Paradox: Economic Statecraft and International Relations*. Cambridge, Cambridge University Press; Hufbauer et al., *op. cit.*



however attempted to depart from this negative postulate by either re-assessing the utility of sanctions²⁴ or emphasizing the signalling role played by sanctions²⁵. Moreover, sanctions have gained in sophistication over time in order to gain in efficiency and avoid collateral damage²⁶. Called 'smart' sanctions, they target specific economic sectors, companies or even individuals²⁷. This evolution is visible in the EU's sanctioning practice where Russian and Syrian officials have recently been placed under a set of interdictions as part of the EU's response to the Ukrainian conflict and the Syrian civil war²⁸.

2.3. The EU sanction behaviour

The EU's sanctioning power comes from its member states²⁹ and was first used in the 1980s against the USSR and Argentina³⁰. From then on, the member states gradually abandoned their individual sanctioning practice and had, by the end of the 1990s, entirely invested in EU's common sanctioning framework³¹. This transfer of sanctioning authority from the national to the supranational level was either linked to the emergence of a unipolar international system where balancing the power of the U.S became a priority³², or to the fact that sanctions applied uniformly by all member states greatly improved their effectiveness and reduced the risk of defection³³. Both explanations are perfectly valid and both suggest that the establishment of a joint sanction framework benefited both the national and supranational levels.

EU sanction policy was officially recognised as a part of the foreign policy toolbox with the creation of the CFSP in 1992³⁴. The contours of the policy were later clarified with the release of two strategic documents: (1) the Guidelines on the Implementation and

²³ Eriksson, Mikael (2010): *Targeting Peace: Understanding UN and EU Targeted Sanctions*, Farnham, Ashgate; Gebert, Konstanty, *op. cit.*

²⁴ Portela, Clara: *European Union Sanctions and Foreign Policy*, *op. cit.*

²⁵ Druláková Radka, Rolenc Jan Martin, Trávníčková Zuzana & Zemanova Štěpánka (2010): Assessing the Effectiveness of EU Sanctions Policy, *CEJISS*, at <http://www.cejiss.org/issue-detail/assessing-the-effectiveness-of-eu-sanctions-policy>; Barber, James: "Economic Sanctions as a Policy Instrument", *International Affairs*, Vol. 55 Nº3, (1979), pp. 367-384; Giumelli, Francesco: "New analytical categories for assessing EU sanctions", *The International Spectator*, Vol.45 Nº3, (2010), pp. 131-144; Giumelli, Francesco (2013): "How EU sanctions work: A new narrative", *European Union Institute for Security Studies*, Nº 129, pp. 1-46.

²⁶ Galtung, Johan: "On the effects of International Economic Sanctions: with examples from the case of Rhodesia", *World Politics*, Vol. 19, Nº3, (1967), pp. 378-416.

²⁷ Hufbauer Gary Clyde & Oegg Barbara (2000): "Targeted Sanctions: A Policy Alternative?", Paper presented at the Symposium on "Sanctions Reform? Evaluating. Sanctions Reform? Evaluating the Economic Weapon in Asia and the World", Institute for International Economics.

²⁸ Portela, Clara: *European Union Sanctions and Foreign Policy*, *op. cit.*; Portela, Clara (2014): "The EU's Use of "Targeted" Sanctions - Evaluating effectiveness", Centre for European Policy Studies, Nº 391, pp. 1-50; de Vries, Anthonius W., Portela Clara & Guijarro-Usobiaga Borja (2014): "Improving the Effectiveness of Sanctions: A Checklist for the EU", *Centre for European Policy Studies*, Nº 95, pp. 1-14.

²⁹ Portela, Clara: *European Union Sanctions and Foreign Policy*, *op. cit.*

³⁰ The EC adopted sanctions against the USSR in 1980 and 1981 for its role in the military crackdown in Poland. The sanctions against Argentina were adopted in 1982 by EC members in the context of the Falklands war between the United-Kingdom and Argentina

³¹ Lehne, Stefan (2012): "The Role of Sanctions in EU Foreign Policy", *Carnegie Endowment for International Peace*, (December 14), at www.carnegieeurope.eu/publications/?fa=50378

³² Jones, Seth. G., *op. cit.*

³³ Koutrakos, Panos (2001): *Trade, Foreign Policy and Defence in EU Constitutional Law: The legal regulation of sanctions, exports of dual-use goods and armaments*, Oxford, Hart; Lukaschek, Anita (2002): "Economic Sanctions and the European Union Legal Framework", in S. Griller. Weidel: *External Economic Relations and Foreign Policy in the European Union*, Vienna, Springer.

³⁴ Portela, Clara: *European Union Sanctions and Foreign Policy*, *op. cit.*



Evaluation of Restrictive Measures (Sanctions)³⁵ and (2) the Basic Principles of the Use of Restrictive Measures (Sanctions)³⁶. They confirmed the Union's previous practice and its sanctioning rationale which includes the protection of human rights, democracy, the rule of law and good governance but also the fight against terrorism and the proliferation of weapons of mass destruction³⁷.

Beyond these official sanctioning principles, the true motivations behind the EU's sanctioning practice are the subject of much debate. Some, like Manners³⁸, argue that the EU is purely driven by normative objectives. Portela³⁹ and Kreutz⁴⁰ provide with a more nuanced conclusion as they find that the EU's motives, whether security-related or norm-driven, differ depending on the target's geographical location. For Portela this differentiation pattern visible in the EU's sanctions agenda reveals its regional approach.

2.4. The formulation of EU sanctions

An analysis of the policy-making process of EU sanctions can be found in the work of Portela and Raube⁴¹. Their analysis focuses on issues of coherence that arise between two levels of policy-making. The first one corresponds to the vertical coherence between the measures adopted at the EU level and their implementation by member states. For Portela⁴², the presence of informal control mechanisms seems to prevent member states from defecting. The rare cases of non-compliance arise from 'big' member states which have the resources to defect and whose goals are incompatible with EU goals. This is however not enough for Gebert⁴³, who points at the member state's relative freedom when applying sanctions.

The second perspective concerns issues of horizontal coherence between the bodies crafting sanctions and relates to the double-step adoption procedure of sanctions. Before their final adoption by the Council of the EU, sanctions are crafted by two separate preparatory bodies of the Council which have different priorities; one political, the other economic. As a result, this procedure tends to provoke the measures' watering down, as demonstrated by Buchet de Neuilly⁴⁴ in the case of EU sanctions against the Federal Republic of Yugoslavia during the Kosovo crisis. If in principle this two-step procedure evenly shares sanctioning competences between the national and supranational level, in reality it did not succeed in

³⁵ Council of the European Union (2012): *Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy*, at <https://europeansanctions.files.wordpress.com/2013/03/eu-guidelines-on-sanctions-2012.pdf>

³⁶ Council of the European Union (2004): *Basic Principles on the Use of Restrictive Measures (Sanctions)*, at <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2010198%202004%20REV%201>

³⁷ Portela, Clara & Ruffa, Chiara, *op. cit.*, p. 551

³⁸ Manners, Ian: "Normative Power Europe: A Contradiction in Terms?", *Journal of Common Market Studies*, Vol.4, Nº2 (2002), pp. 235-258.

³⁹ Portela, Clara: "Where and why does the EU impose sanctions?", *Politique Européenne*, Vol 3, Nº 17, (2005), pp. 83-111.

⁴⁰ Kreutz, Joakim: "Human Rights, Geostrategy, and EU Foreign Policy, 1989–2008", *International Organization*, Vol.69, Nº 1 (2015), pp. 195-217.

⁴¹ Portela, Clara, & Raube, Kolja: "The EU Polity and Foreign Policy Coherence", *Journal of Contemporary European Research*, Vol 8, Nº1, (2012), pp. 3-20.

⁴² Portela, Clara: Member States Resistance to EU Foreign Policy Sanctions, *op. cit.*

⁴³ Gebert, Konstanty, *op. cit.*, p. 7.

⁴⁴ Buchet de Neuilly, Yves (2003): "European Union's External Relations Fields: the Multi-pillar Issue of Economic Sanctions against Serbia", in Knodt Michèle & Princen Sebastiaan. *Understanding the European Union's external relations*, Abingdon, Routledge.



toning down the underlying conflicts between member states and EU institutions⁴⁵ or between the EU institutions themselves for the control over the policy-process⁴⁶.

Consequently, an overview of the expending literature on EU sanctions reveals the distribution of sanctioning competences between the national and supranational levels and the existing conflicts for the control of the policy-process. However, a more in-depth study on the internal adoption process would disclose the role played by member states and EU bodies, how they collaborate and most particularly whether the balance of power has evolved in favour of EU supranational bodies since the policy's creation.

3. The Principal-Agent model and EU sanction policy

The Principal-Agent model provides a comprehensive grid of analysis with which to access the hybrid nature of the EFP in a way that the classical integration theories⁴⁷ do not. Taken from rational choice new institutionalism⁴⁸, the model approaches supranationalisation in an original manner as a condition of the degree of discretion enjoyed by EU supranational agents in the policy-making process. It subsequently goes beyond the legal nature of the policy and focuses on the modalities of transfers of power from the national to the supranational level. More particularly, it posits that transfers of authority are regulated by a binding contract between two parties, the national bodies partially delegating their authority, called *the principals*, with one or more supranational bodies, referred to as *the agents*. The principals' decision to delegate is the result of a cost-benefit calculation where the benefits, namely the more efficient resolution of collective problems, outweigh the costs or the so-called 'agency losses' which result from the principals' inability to control the agents' opportunistic behaviour⁴⁹.

Initially developed to study the comitology system of the U.S congress and later adapted to the economic field⁵⁰, the PA model was introduced in European studies to examine the Commission's behaviour in international negotiations under the member states' mandate⁵¹. In the foreign policy domain, Drieskens has used the model in order to reveal the limited actorness of the EU, exerted through its member states, within the United Nations Security Council⁵². For the purpose of this article, the model is now going to be used to

⁴⁵ Portela, Clara: "The EU Sanctions against Syria: Conflict Management by other Means?", *UNISCI Discussion Papers*, Nº30, (2012), pp. 151-158.

⁴⁶ Van Elsuwege, Peter: "The Adoption of 'Targeted Sanctions' and the Potential for Interinstitutional Litigation after Lisbon", *Journal of Contemporary European Research*, Vol.7, Nº4, (2011) pp. 488-499.

⁴⁷ Intergovernmentalism: Hoffmann, Stanley : "Obstinate or obsolete? The Fate of the Nation State and the case of Western Europe", *Daedalus*, Vol.95, Nº3, (1966), pp. 862-915; Neofunctionalism: Haas, Ernst(1961): International Integration: The European and the universal process", *International Organizations*, Vol.14, Nº3, (1961), pp. 366-92.

⁴⁸ Hall, Peter A. & Taylor, Rosemary C. R. : "Political Science and the Three New Institutionalisms", *Political Studies*, Vol. 96, Nº 6, (1996), pp. 936-957.

⁴⁹ Pollack, Mark: Delegation, Agency, and Agenda-Setting in the European Community. *International Organization*, Vol.51, Nº1, (1997), pp. 99-134.

⁵⁰ Ross, Stephen: "The Economic Theory of Agency: The Principal's Problem", *American Economic Review*, Vol 63 Nº 2, (1973).

⁵¹ Nicolaïdis, Kalypso:"Minimizing agency costs in two-level games: Lessons from the trade authority controversies in the United States and the European Union" in Mnookin Robert & Susskind Lawrence (1999): *Negotiating on Behalf of Others*, London, Sage, pp. 87-126; Kerremans, Bart : "What went wrong in Cancun? A principal-agent view on the EU's rationale towards the Doha Development Round", *European Foreign Affairs Review*, Vol. 9, Nº3, (2004), pp. 363-393.

⁵² Drieskens. Edith: "EU Actorness at the UN Security Council: A Principal-Agent Comparison of the Legal Situation Before and After Lisbon European", *Journal of Law Reform*, Vol. 10 Nº4, (2008), pp 599-619.



analyse which level of autonomy was granted by the member states to EU supranational bodies for the making of EU autonomous sanctions.

For the two parties bound by a delegation contract *the principals* will correspond to the EU foreign ministries and the national representatives present in the Council of the EU and the Council working groups actively shaping sanctions⁵³. It can be assumed that their rationale for partially delegating their sanctioning powers is to increase the credibility and coercive power of sanctions and to avoid defection issues⁵⁴. Conversely, the EEAS and the Commission are designated as *the agents* given the fact that they are the EU bodies which have been granted with the most extensive sanctioning responsibilities⁵⁵. Their objective is to increase their room of manoeuvre in order to adopt the most far-reaching sanctions and therefore to strengthen the EU's international influence⁵⁶. Most importantly, the model established that the EU supranational agents' ability to gain in discretion from the member states is conditioned by four factors.

Firstly, the institutional design of delegation, which is crafted by the principals, establishes the agents' mandate and the decision-making procedure under which they have to operate⁵⁷. This factor constitutes a powerful *ex-ante* control mechanism for the principals given that it sets the foundations of the contractual relationship⁵⁸. The degree of agents' autonomy will depend on the clarity of mandate, the scope of the authority delegated to the agents and how flexible the decision-making procedure is⁵⁹.

Secondly, *ex-post* control mechanisms are set-up by the principals in order to limit the level of discretion enjoyed by the agents when participating in the making of sanctions⁶⁰. Those mechanisms can take the form of monitoring⁶¹ or sanctions to punish agents exceeding their mandates⁶². The extent to which those *ex-ante* control mechanisms are limiting the agents' autonomy will depend on how formal and credible they are.

Thirdly, the distribution of the principals' preferences (their degree of unity) can affect their ability to control the agents. The latter can exploit conflicts between member states to

⁵³ The Foreign Affairs Council (FAC); the Political and Security Committee (PSC); the competent regional working group; the Working Party of Foreign Relations Counsellors (RELEX); and the Committee of the Permanent Representatives of the Governments of the Member States to the European Union (COREPER II)

⁵⁴ Koutrakos, Panos., *op. cit.*; Lukaschek, Anita, *op. cit.*

⁵⁵ The European Parliament solely has the right to be informed by the Council of the EU while the European Court of Justice is in principle not allowed to review the legality of CFSP restrictive measures, excepted on measures concerning natural or legal persons since the Lisbon treaty: Wessel, Ramses A.: "The Legal Dimensions of European Foreign Policy" in Aasne Kallan Aarstad, Edith Drieskens, Knud Erik Jørgensen, Katie Laatikainen & Ben Tonra (eds.) (2015): *The Sage Handbook of European foreign Policy*, London, Sage; Portela, C., *European Union Sanctions and Foreign Policy*, *op. cit.*, p. 24; Giumelli Francesco: "How EU sanctions work", *op. cit.*, p. 11.

⁵⁶ Gegout, Catherine (2010): "The European Commission: Modes of Intervention and Control in CFSP", in Catherine Gegout: *European Foreign and Security Policy: States, Power, Institutions, and American Hegemony* University of Toronto Press, pp. 161-175.

⁵⁷ Pollack, Mark, *op. cit.*, p. 108.

⁵⁸ Furness, Mark: "Who Controls the European External Action Service? Agent Autonomy in EU External Policy", *European Foreign Affairs*, Vol. 18, Nº1, (2013), pp. 103-126.

⁵⁹ *Ibid*, pp. 109-10

⁶⁰ *Ibid*, p. 11

⁶¹ Pollack, Mark, *op. cit.*, p. 111

⁶² Klein, Nadia: "Conceptualising the EU as a civil-military crisis manager: institutional actors and their principals", in Eva Gross & Anna Juncos (2011): *EU Conflict Prevention and Crisis Management*, Abingdon, Routledge, pp. 66-82.



avoid sanction⁶³ or adopt an entrepreneurial attitude by providing an uncertain collective principal with solutions⁶⁴. Subsequently, it will be assumed that a high degree of disunity amongst the principals will grant the agents higher autonomy in the making of sanctions.

Fourthly, the nature of the agent-agent relationship is likely to affect the overall degree of the agents' autonomy. Indeed, when granted with similar responsibilities by the principals, EU supranational agents tend to compete for the finite amount of power and resources available⁶⁵. These turf wars negatively affect their ability to gain independence from the principals or to fulfil their delegated functions. Subsequently, it is assumed that a high degree of competence overlap between agents increases the chance of turf wars and decreases agents' autonomy.

The analysis of each of those factors will subsequently help determine the conditions under which sanctioning powers have been delegated to EU supranational agents and, more importantly, the degree of autonomy enjoyed by those agents in the making of EU sanctions.

The analysis in this article is going to use a wide timespan; starting with the formalisation of the sanction policy in 1992 until 2015. This allows it to trace the impact of the above factors throughout the development of the policy and to find evidence of variations in the supranationalisation process. Special attention will be paid to the impact of the Lisbon Treaty on the policy because it deeply reorganised the institutional framework of the EFP and introduced the EEAS as a new actor.

In doing so, the analysis is going to rely on a qualitative content analysis of institutional documents detailing the sanction policy-process (Treaty provisions, Council decisions and national parliaments' reports), declarations from the High Representative (HR), press releases, and non-papers used by member states and EU institutions to express public views in a more informal way. Secondary literature will also be used to access the above set of data.

4. The institutional design of the delegation

The institutional design of the delegation from the national to the EU supranational level is the most crucial phase when studying processes of supranationalisation since it permanently determines the agents' frame of action. The delegation of national sanctioning powers to EU agents was designed by the Maastricht Treaty (1992) which established that the Council of the EU, in cooperation with the Commission (and the EEAS after the Lisbon Treaty), could now enact sanctions for foreign policy purposes⁶⁶. Additionally, it formalised the shared nature of the sanction policy between the principals and the agents by recognising the two-step adoption procedure.

The Commission's mandate was established in 1992 and later clarified with the issuing of official sanctioning guidelines (2003). It states that the Commission's main responsibility is to ensure the uniform application of sanctions that fall within its

⁶³ Delreux, Tom: "Bureaucratic Politics, New Institutionalism and Principal-Agent Models", in Aasne Kallan Aarstad, Edith Drieskens, Knud Erik Jørgensen, Katie Laatikainen & Ben Tonra (eds.) (2015): *The Sage Handbook of European foreign Policy*, London, Sage, pp. 152-165.

⁶⁴ Pollack, Mark, *op. cit.*, p. 130

⁶⁵ Klein, Nadia (2011) "Conceptualising the EU as a civil-military crisis manager", *op. cit.*, p. 71

⁶⁶ Portela, Clara: "Member States Resistance to EU Foreign Policy Sanctions", *European Foreign Affairs Review*, Vol.20, (2015), pp. 39-62.



competences⁶⁷; these measures are those interrupting or reducing economic and/or financial relations with the target⁶⁸. Furthermore, competences have been extended since by the Lisbon Treaty to include measures against natural or legal persons⁶⁹.

More concretely, the Commission is involved in both steps of the legislative procedure. It has the right to put forward, with the support of the member states, a Common Position which corresponds to the first legal and political act required to issue new sanctions⁷⁰. The Commission is then able to submit draft proposals for the Regulation, which is the second and more technical legislative act of the procedure⁷¹. Subsequently, the Commission is able to shape the technical details of the restrictive measures for as long as it respects the political intention laid down in the Common Position⁷².

The task of monitoring the member states' implementation of sanctions has also been attributed to the Commission⁷³. However, the Commission has difficulties in fulfilling this task given its limited access to the relevant information and the member states' reluctance to communicate about the application of sanctions by their authorities. The Commission is subsequently reliant on the principals' good faith to ensure the uniform implementation of sanctions⁷⁴. The member states have even found a way to circumvent the Commission's monitoring powers by establishing a new Council working group (RELEX/sanctions) which is also vested with monitoring functions⁷⁵. The advantage of this new body is that it remains within the intergovernmental realm of the Council and is therefore out of the Commission's reach.

The introduction of the EEAS⁷⁶ in the EFP landscape triggered a redistribution of sanctioning responsibilities between the Commission and the EEAS. However, the agency was constrained from the start given the hostility of both the principals and the Commission with regards to its undefined nature; between intergovernmentalism and supranationalism⁷⁷. Subsequently, the EEAS's mandate was stated in rather broad and indeterminate terms which placed the agency at the service of the newly reformed position of the High Representative of the Union for Foreign Affairs and Security Policy (HR) (Art. 27(3) TEU).

More concretely, the EEAS was granted the right to initiate proposals for the sanctions' Common Decisions⁷⁸ and Regulations (Title IV Art. 215 TEU). The EEAS was therefore given the same ability as the principals to set the political and technical terms of

⁶⁷ European Commission (2008): *Restrictive measures*, at http://eeas.europa.eu/cfsp/sanctions/docs/index_en.pdf

⁶⁸ Council of the European Union (2005): *Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common foreign and Security Policy*

⁶⁹ Cardwell, Paul James (2012): *EU External Relations Law and Policy in the Post-Lisbon Era*, Heidelberg, Springer.

⁷⁰ European Commission: *Restrictive measures*, *op. cit.*, p. 9.

⁷¹ *Ibid*, p. 9

⁷² Portela, Clara, 14 June 2016, Personal Interview

⁷³ European Commission: *Restrictive measures*, *op. cit.*, p. 10

⁷⁴ Portela, Clara (2013): *Sanctions and the Balance of Competences*. Singapore Management University.

⁷⁵ Council of the European Union (2004): *Establishment of a 'Sanctions' formation of the Foreign Relations Counsellors Working party (RELEX/Sanctions) 5603/04*. Brussels.

⁷⁶ Council of the European Union (2010): *Council decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service (2010/427/EU)*, at [eeas.europa.eu](http://www.eeas.europa.eu/eeas): http://www.eeas.europa.eu/background/docs/eeas_decision_en.pdf

⁷⁷ Pomorska Karolina & Vanhoonaeker Sophie: "Resisting the European External Action Service", *European Foreign Affairs Review*, Vol. 20, Nº2/1, (2015), pp. 21-38.

⁷⁸ Common Position have become Common Decision after the Lisbon Treaty



sanctions. It also plays the role of a legal adviser to the Foreign Affairs Council (FAC) and the geographical working group in addition to supporting the HR's chair of the FAC⁷⁹.

With regard to the FAC, the EEAS's ability to shape the content of FAC meetings is constrained by the HR's own lack of leadership. Indeed, the HR is still taking into account the member states' preferences when setting the agenda⁸⁰ and lacks the authority to exclude some of their priorities during meetings⁸¹.

The HR's inability to impose itself as a foreign policy agenda-setter directly affects the EEAS's capacity to advise and influence the sanction legislative process. It was indeed pointed out in a report from the European Parliament that the EEAS "should exercise greater control over the agenda of the FAC by being more strategic and forward looking through more advance planning and more leadership"⁸². Consequently, the principals are still strongly reliant on the role played by the rotating presidency which is still in place at the COREPER level and which is a key actor in the sanctions' domain⁸³.

The other *ex-ante* mechanism available to the principals in order to limit the EEAS and the Commission's agency is the two-step adoption procedure⁸⁴. The Lisbon Treaty did not significantly change this procedure and it in fact perpetuated its inter-pillar character⁸⁵. Firstly, it appears that this procedure grants a high level of *ex-ante* control to the principals since they are responsible for the final approval of both the Decision and the Regulation⁸⁶. Secondly, the adoption of the Decision requires the unanimity of the Council which is the most constraining voting rule⁸⁷. The principals have consequently vested themselves with the highest degree of authority when determining the political intention of sanctions. Nonetheless, the existence of a particular mechanism of 'constructive abstention' (Art. 31, para. 1 TEU) introduces more flexibility as it allows any member state to opt-out in case of disagreement on a legislative proposal without it being casted as a veto⁸⁸.

The adoption of the Regulation is performed under the Qualified Majority Voting (QMV) due to the fact that it is a community act and constraining in nature⁸⁹. Subsequently, this second step grants the agents with more room to design the technical aspects of restrictive measures according to their preferences since they have to convince a lower number of principals. The application of the QMV rule for the Regulation's adoption was reaffirmed by

⁷⁹ Council of the EU: *Guidelines on implementation and evaluation (2012)*, *op. cit.*, p. 45

⁸⁰ Helwig, Niklas (2014): *The High Representative of the Union: The constrained agent of Europe's foreign policy* (Dissertation). *Erlangung des Doktorgrades der Wirtschafts- und Sozialwissenschaftlichen Fakultät der Universität zu Köln*. at

https://www.academia.edu/15224474/The_High_Representative_of_the_Union_The_constrained_agent_of_Europe's_foreign_policy

⁸¹ Vanhoonacker Sophie & Pomorska Karolina (2013): *The European External Action Service and agenda-setting in European foreign policy*, *Journal of European Public Policy*, 20(9), pp. 1316-1331.

⁸² European Parliament (2013): *Study on the Organisation and functioning of the European External Action Service: Achievements, challenges and opportunities*, at

[http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/457111/EXPO-AFET_ET\(2013\)457111_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/457111/EXPO-AFET_ET(2013)457111_EN.pdf)

⁸³ Vanhoonacker, Sophie & Pomorska, Karolina, *op.cit.*, p. 1325

⁸⁴ Pollack, Mark, *op.cit.*, p. 122

⁸⁵ Portela, Clara, *Personal Interview*, *op. cit.*

⁸⁶ Council of the EU: *Guidelines on implementation and evaluation*, *op. cit.*

⁸⁷ Furness, Mark, *op. cit.*, p. 109

⁸⁸ Franco, Chiara (2015): *Coercive Diplomacy, Sanctions and International Law*. *Instituto Affari Internazionali's Conference on Coercive Diplomacy in Global Governance: The Role of Sanctions*. Rome.

⁸⁹ Buchet de Neuilly, Yves, *op. cit.*, p. 9 ; Van Elsuwege, P., *op. cit.*, p. 493



the Lisbon Treaty and therefore confirms Lord Owen's view that the sanction policy represents "yet another area where there would be creep"⁹⁰ within the CFSP.

However, the member states have retained a considerable advantage with regards to the renewal of sanctions because their unanimous approval is systematically needed⁹¹. At the occasion of renewal, the principals therefore have the opportunity to oppose the continuation of sanctions. This situation is well illustrated by the now cyclical meetings of the Council for the renewal of the sanctions against the Russian Federation⁹² and which invariably stir new debates and the issuing of threats by some principals⁹³.

To conclude, in spite of efficiently protecting the principals' sovereignty by imposing constraining voting rules, the costs that the procedure generates are high. In an attempt to tackle its cumbersome nature it was agreed that the Council should start voting simultaneously on both legal acts⁹⁴. The Commission also suggested a simplification of the procedure, a proposition that was included in the failed European Constitutional Treaty but which was not kept by the Lisbon Treaty⁹⁵.

5. A posteriori control mechanisms

The second institutional factor which impacts the agents' ability to influence the policy process concerns *a posteriori* control mechanisms. Such additional locks are vital given the ability of agents to gain more power in the course of their function. Their main purpose is to allow the member states to both monitor the agents' daily input in the legislative process and punish independent behaviour.

Evidenced by Pollack⁹⁶, the 'comitology' system is the most efficient and costly form of monitoring which consists in the daily review of the Commission's legislative proposals by the Council working groups. Indeed, the latter provide the principals with a platform where both national and supranational experts negotiate and formulate legislative proposals before their final submission to the Council⁹⁷.

The case of the sanction policy, the daily monitoring of the agents' proposals is performed in a hierarchical and gradual manner by the following working groups⁹⁸: the FAC, the relevant geographical working group, PSC, RELEX and COREPER II. A sanction proposal is first submitted to the FAC and examined in parallel by the PSC to be then transferred upon approval to RELEX, where the technical and economic aspects are discussed. The proposal is then transferred to COREPER II where the member states' permanent representatives issue their decision before it reaches the Council where it is formally adopted⁹⁹. This 'multi-layered' monitoring system where a consensus is required at

⁹⁰ House of Commons, *op. cit.*, p. 47.

⁹¹ Portela, Clara: *Sanctions and the Balance of Competences*, *op. cit.*, p. 3.

⁹² Council of the EU, *Guidelines on implementation and evaluation*, *op. cit.*

⁹³ Rettman, Andrew : "Hungary: EU sanctions on Russia unlikely to be renewed", *EUobserver.com*, 17 February 2016.

⁹⁴ European Commission, *Restrictive measures*, *op. cit.*

⁹⁵ Portela, Clara: *European Union Sanctions and Foreign Policy*, *op. cit.*, p. 25

⁹⁶ Pollack, Mark, *op. cit.*

⁹⁷ Pollack, Mark, *op. cit.*, p. 114

⁹⁸ Council of the European Union (2015): *Adoption procedure of EU restrictive measures*, at www.consilium.europa.eu: http://www.consilium.europa.eu/en/policies/sanctions/adoption-procedure/

⁹⁹ Giunelli, Francesco: *How EU sanctions work*, *op. cit.*, p. 11.



every stage greatly constrains the agents and prevents them from shaping the measures independently of member states.

Nonetheless, Gegout¹⁰⁰ argues that the Commission, in the period before Lisbon, managed to take advantage of this cumbersome mechanism by using it as a platform to exercise influence on the principals. Based on her study of the adoption process of the EU sanctions against the former Republic of Yugoslavia (1999), she demonstrates that the Commission benefits from an informational advantage. This is because over time it has accumulated expertise in the economic and financial domains on which member states have become increasingly reliant and this information is the foundation of EU sanction regimes. Furthermore, the principals are constrained by the lack of coordination within their own foreign ministries, since very often the political and economic sections are separated which thus limits the circulation of information¹⁰¹. Subsequently, far from being constrained by the principals' preferences, in the first twenty years of the sanction policy the Commission adopted an entrepreneurial attitude that placed it in a position where it became a 'provider' rather than a 'taker' of solutions.

This trend is most likely set to continue as the Union is increasingly resorting to far-reaching sets of sanctions which invariably include economic and financial measures. The comprehensive economic sanction package adopted against Iran in 2010¹⁰² and which takes the form of broad interdictions to invest in the Iranian banking and energy sectors is a prime example¹⁰³. Furthermore, the Lisbon Treaty introduced the possibility for the Union to take sanctions against individuals and is another sign of increasing Commission power. However, the introduction of the EEAS as a new agent vested with similar sanctioning powers potentially threatens the Commission's influence in the Council's preparatory bodies. Whether the EEAS has challenged the Commission's entrepreneurial role in the period after the Lisbon Treaty will be assessed in the last section of this article.

Following the Lisbon Treaty, the inclusion of member state officials within the EEAS's services¹⁰⁴ provides another monitoring mechanism to the principals. These nationals make up one third of the EEAS staff¹⁰⁵ and officially serve the Union however, in practice, they keep communication lines with their capitals and "understand very well what the national interests and national measures are"¹⁰⁶. Nonetheless, it does not mean that the EEAS is purely an intergovernmental body as it has succeeded in retaining control over the recruitment process of these diplomats¹⁰⁷ in spite of member state complaints to Ashton¹⁰⁸.

¹⁰⁰ Gegout, Catherine, *op. cit.*

¹⁰¹ Gegout, Catherine, *op. cit.*, p. 163; Buchet de Neuilly, Y., *op. cit.*

¹⁰² It is currently being gradually lifted off under the Joint Comprehensive Plan of Action (JCPOA) established by E3/EU+3 (China, France, Germany, the Russian Federation, the United Kingdom and the United States, with the High Representative of the European Union for Foreign Affairs and Security Policy) and the Islamic Republic of Iran in July 2015.

¹⁰³ Patterson, Ruairi : "EU Sanctions on Iran: the European Political Context", *Middle East Policy*, Vol.20, Nº1, (2013), pp. 135-146.

¹⁰⁴ Furness, Mark, *op. cit.*, p. 118

¹⁰⁵ Article 27(3) TEU

¹⁰⁶ House of Commons, *op. cit.*, p. 63

¹⁰⁷ Pomorska, Karolina, & Vanhoonacker, Shopie, *op. cit.*, p. 31

¹⁰⁸ Non paper on the European External Action Service from the Foreign Ministers of Belgium, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland and Sweden, 8 December 2011, at:

http://www.europarl.europa.eu/meetdocs/2009_2014/documents/afet/dv/201/201203/20120321_nonpaperfms_en.pdf



With regards to the sanctioning of a shirking agent, the principals have the ability to amend the terms of the agent's mandate¹⁰⁹. The review of the CFSP's legal basis by the Lisbon Treaty provided an opportunity for the principals to review the agents' sanctioning powers and introduce additional safeguards. However, of all solutions, this is the most costly and cumbersome because it requires Treaty revision. Furthermore, in the history of the European Community, Treaty revisions have all been driven by integrationist objectives and are equally shaped by the agents¹¹⁰. Therefore, the principals run the risk that a new Treaty modifies the status quo is changed in a way that is not beneficial to them. Consequently, for the House of Commons¹¹¹, The Lisbon Treaty has introduced the potential for competence creep because it introduced QMV for the adoption of a sanctions' Regulation while extending the Commission's powers to sanction individuals.

For principals, informal sanctions are a more efficient and less constraining tool allowing them to express dissent and delegitimise the agents' behaviour. As demonstrated by Pomorska and Vanhoonacker¹¹², member states can resort to diverse forms of public contestation such as the issuance of non-papers and declarations from their foreign ministers. The most likely target of this form of sanction is the High Representative because they represent the member states globally and speak on their behalf. Therefore, "The possible sanctioning of unwanted behaviour by the member states hangs over the High Representative like the Sword of Damocles" and most particularly in situations of crisis¹¹³. Mogherini's recent attempt to formulate an independent position in the case of the EU sanctions against the Russian Federation illustrates how little room of manoeuvre they enjoy. Indeed, Mogherini's declaration about the potential resumption of trade talks with Moscow provided that the Federation respected the Minsk agreements was not well received by the member states who issued statements reminding the HR of their position and their remit¹¹⁴.

6. The principals' unity

The third factor which also conditions the degree of the agents' influence over EU sanction policy concerns the relationship maintained amongst the principals and the distribution of their preferences. Indeed, the PA literature posits that the principals' conflict of interests prevents them from giving clear instructions to the agents, thereby granting the later with greater room of manoeuvre to shape the policy-process according to their preferences¹¹⁵.

Conflicting preferences between the principals require two conditions. Firstly, the presence of contradictory positions on a particular issue and, secondly, the failure to

; Benelux paper (2011): The European External Action Service: Improving Synergy between the Union and its Member States, at:

https://www.google.nl/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0ahUKEwjQmdz1_KzNAhWJmB_oKHYlvBtUQFggqMAI&url=https%3A%2F%2Fwww.tweedekamer.nl%2Fdownloads%2Fdocument%3Fid%3D350b6ce3-bdce-4c0a-97ff-69e8f831b531%26title%3DNon-paper%2520aan%2520HV%2520Asht

¹⁰⁹ Pollack, Mark., *op. cit.*, p. 118

¹¹⁰ Council of the European Union (2015): *Intergovernmental conferences*, at

<http://www.consilium.europa.eu/en/documents-publications/intergovernmental-conferences/>

¹¹¹ House of commons, *op. cit.*, p. 44

¹¹² Pomorska, Karolina, & Vanhoonacker, Sophie, *op. cit.*, p. 33

¹¹³ Helwig, Niklas *op. cit.*, p. 170

¹¹⁴ Euractiv (2015): "Time no right to ease Russia sanctions, EU says", *Euractiv.com*, 20 January 2015, at <http://www.euractiv.com/section/global-europe/news/time-not-right-to-ease-russia-sanctions-eu-says/>

¹¹⁵ Klein, Nadia: "Conceptualising the EU as a civil-military crisis manager", *op. cit.*, p. 71; Pollack, Mark, *op. cit.*



overcome this¹¹⁶. Both conditions are easily found in the CFSP domain where “Consensus (...) remains elusive” and member states are highly likely to “break rank to protect their national economic and/or political interests”¹¹⁷. The case of the negotiations that led to the adoption of sanctions against the Russian Federation by the Union highlights this conflict. The member states were largely divided along the lines of their economic and/or political interests with Moscow. For instance, France was restricted by its contract to supply the Federation with two warships and was therefore reluctant to support the UK’s proposal to introduce an arms embargo. Conversely, London did not support Paris’ incentive to introduce financial sanctions, given the impact such measures could have on the City of London¹¹⁸.

However, the rule of consensus in the Council forces them to find a compromise and overcome their disagreements but this affects the quality of the measures adopted. Indeed, the necessity to reach a consensus triggers a “race to the bottom for the lowest common denominator”¹¹⁹ where measures are significantly watered-down in order to secure the support of all 28 members¹²⁰. Besides, the consensus obtained remains very fragile given the limited lifetime of sanctions and the necessity of regular renewal¹²¹. On these occasions, sanctions are placed on the ‘hot seat’ and agreements previously reached by the member states are put to the test.

The mechanism of constructive abstention introduces more flexibility because it allows up to a third of the member states¹²² to abstain from applying certain sanctions without stalling the adoption process¹²³. However, it has been used only once during the Council Decision establishing the EULEX Kosovo mission (by Cyprus)¹²⁴.

Consequently, it would therefore appear that the high degree of disunity and the intergovernmental character of the policy-process constitutes an obstacle rather than an opportunity for the agents, which is the opposite of the initial assumption. The agents are directly dependent on the member states’ political willingness to sanction and introduce a proposal to the Council in order to intervene in the working groups and shape the measure. Ashton rightly pointed out that in the “absence of political will or an agreement between Member States”¹²⁵ the HR and the EEAS both can achieve very little as they do not have the mandate to act independently. The Commission is in a similar position since a blockade of the political decision to sanction in the Council’s preparatory bodies prevents it from getting involved in the subsequent formulation of the Regulation¹²⁶.

¹¹⁶ Helwig, Nadia, *op. cit.*, p. 58

¹¹⁷ Blockmans, Steven (2014): Ukraine, Russia and the need for more flexibility in EU foreign policy-making. *Centre for European Policy Studies*, Policy Brief No. 320.

¹¹⁸ “EU leaders divided over new sanctions to punish Russia for annexing Crimea”, *The Telegraph*, 20 March 2014, at <http://www.telegraph.co.uk/news/worldnews/europe/ukraine/10710268/EU-leaders-divided-over-new-sanctions-to-punish-Russia-for-annexing-Crimea.html>

¹¹⁹ Blockmans, Steven, *op. cit.*, p. 3.

¹²⁰ Portela, Clara, *Sanctions and the Balance of Competences*, *op. cit.*, p. 3.

¹²¹ Kanter, James: “Italy Delays E.U.’s Renewal of Sanctions against Russia”, *The New York Times*, 14 December 2015, at http://www.nytimes.com/2015/12/15/world/europe/italy-delays-eus-renewal-of-sanctions-against-russia.html?_r=0

¹²² representing one third of the Union’s population

¹²³ Blockmans, Steven., *op. cit.*, pp. 3-4

¹²⁴ *Ibid*, p. 5

¹²⁵ Ashton, Catherine (2013): *EEAS Review*, p. 7 at https://eeas.europa.eu/library/publications/2013/3/2013_eeas_review_en.pdf

¹²⁶ Portela, Clara, Personal Interview, *op. cit.*



A comparison of the adoption process of sanctions recently adopted against Syria and Russia highlights the impact of the principals' disunity¹²⁷ on the agents' ability to push for the adoption of far-reaching measures. As seen previously, the sanctions against Russia generated strong disagreements between the member states given the close economic and political ties maintained by some of them with the Federation. For instance, Greece relies greatly on the exports of agricultural goods to Russian markets and maintains good diplomatic relations with Moscow and therefore threatened to veto the decision in the Council and has repeatedly called for an end to the sanctions¹²⁸. Germany or France have both also looked to ease off the sanctions during their renewal as part of their attempt to renew the dialogue with Moscow¹²⁹.

Consequently, the adoption of sanctions happened gradually starting with individual sanctions and moving on to measure targeting banking, defence and energy sectors¹³⁰. This took over a year and was repeatedly questioned¹³¹. Nonetheless, the Union's ability to sanction one of its main economic partners despite such significant disagreements should not be overlooked.

By contrast, sanctions adopted against the Syrian Regime in 2012¹³² because of the civil war generated a high level of consensus due the lack of significant material ties between the EU and Syria. Moreover, the member states all agreed that the issuance of sanctions against the Assad regime would decrease the need for them to intervene militarily (for the time being). As a result, the sanction package was remarkably broad (arms and trade embargo) and adopted in less than a year, which is particularly swift for the CFSP¹³³. Besides, the sanctions were given a renewable twelve month-lifetime¹³⁴ as opposed to six months for the sanctions against Russia.

7. The agent-agent relationship

The last factor influencing the agents' ability to impact the EU sanction policy-process concerns the nature of the agents' relationship in the period after the Lisbon Treaty following the introduction of a new supranational agent, the EEAS. Indeed, the PA literature evidenced that the delegation of responsibilities to more than one agent is likely to generate inter-agent competition due to resource and power limitations¹³⁵. However, such competition constrains the agents' ability to shape sanctions according to their preferences and can therefore hinder their influence to the benefit of the principals. Subsequently, the nature of the relationship

¹²⁷ Amongst other factors

¹²⁸ Euractiv: "Tsipras calls for end to EU sanctions on Russia", 8 April 2015, at

<http://www.euractiv.com/section/euro-finance/news/tsipras-calls-for-end-to-eu-sanctions-on-russia/>

¹²⁹ Euractiv: "France, Germany concerned about Russia sanctions policy", 6 January 2015, at

<http://www.euractiv.com/section/europe-s-east/news/france-germany-concerned-about-russia-sanctions-policy/>;

Dubien, Arnaud (2016) : Russie : vers une levée des sanctions fin 2016, *IRIS*, interview of Dubien, A, 23 May 2016, at <http://www.iris-france.org/76654-russie-vers-une-levée-des-sanctions-fin-2016/>

¹³⁰ Council of the European Union. (2016): *Timeline - EU restrictive measures in response to the crisis in Ukraine*, at <http://www.consilium.europa.eu/en/policies/sanctions/ukraine-crisis/history-ukraine-crisis/>

¹³¹ Moret, Erica (2016): "What would Brexit mean for EU sanctions?" *European Council on Foreign Relations (ECFR)*, Policy brief, March 2016.

¹³² European Commission (2016): "European Union Restrictive measures (sanctions) in force", *Service for Foreign Policy Instruments*, Brussels, at http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf

¹³³ Portela, Clara: *The EU Sanctions against Syria*, *op. cit.*, p. 152.

¹³⁴ Council of the European Union (2015): *Press release - Syria: EU extends sanctions against the regime and its supporters by one year*, at <http://www.consilium.europa.eu/en/press/press-releases/2015/05/28-syria-sanctions/>

¹³⁵ Klein, Nadia: *Conceptualising the EU as a civil-military crisis manager*, *op. cit.*, p. 71.



between agents is a key factor in the policy process and depends on the degree of competence overlap and their ability to control one another.

As noted by the European Parliament¹³⁶, the institutional set up of the EEAS and the Commission has resulted in both agents running “a parallel organisational structure in many policies related to EU external action” which is “detrimental to bringing about more coherent and effective EU external action”. Furthermore, one may add that it restricts the granting of increased autonomy to both agents.

Consequently, a comparative analysis of the EU sanction guidelines of 2005 and 2012 reveals a large overlap of competences between the two agents. Firstly, the proposal of the Regulation to be adopted by the Council is now a shared competence between the HR and the Commission which is a competence overlap of agenda setting powers¹³⁷. Secondly, with regards to the monitoring function of the Commission, the EEAS has also been granted similar responsibilities in that domain. Resultantly, the member states are now invited to communicate relevant information about their application of sanctions to both the Commission and the EEAS¹³⁸. Similarly, the assessment of the sanctions’ efficacy performed by RELEX/sanction working group in cooperation with the Commission now also includes the EEAS and its Head of Missions¹³⁹.

With regards to the formulation of sanctions in the Council’s relevant working groups, the Commission’s experts are now working in collaboration with the EEAS’ experts. The EEAS is also present in the FAC meetings and is responsible for chairing the Council’s competent regional working group where the political aspects and broad terms of the restrictive measures are discussed. To fulfil that mission, it is assisted by its own country desks and sanction officers as well as experts from the Commission and the Council’s legal service. Once an agreement has been reached, the proposal is transferred to RELEX where the EEAS and the Commission jointly deliver technical advice to the national representatives¹⁴⁰. Consequently, it appears that there is a great degree of competence overlap in the sanction’s field between the EEAS and the Commission which potentially provides a fertile ground for conflictual relations.

In order to gain a better understanding of the implications of this competence overlap, it is necessary to analyse how the EEAS was embedded in framework of the EFP and the influence the Commission is able to exert on it. The legal nature of the EEAS places it in an uneasy position, in between the Council and the Commission, and in such a manner that it appears to have absorbed some of the Commissions powers, which renders the Commission hostile to its presence¹⁴¹. In fact, the creation of the EEAS is the result of the member states’ reluctance to transfer their foreign policy powers to the Commission because it would have threatened the intergovernmental nature of the CFSP. Hence, they opted for the establishment of an independent agency that would support the newly reformed HR in its coordinating role between the Council and the Commission¹⁴². Nonetheless, the Commission succeeded in restraining the EEAS despite its autonomous status, including in the sanction policy.

¹³⁶ European Parliament: *Study on the Organisation and functioning*, *op. cit.*, p. 46

¹³⁷ Council of the EU: *Guidelines on implementation and evaluation (2012)*, *op. cit.*, p. 6.

¹³⁸ *Ibid*, p. 13

¹³⁹ *Ibid*, p. 14

¹⁴⁰ *Ibid*, p. 45

¹⁴¹ European Parliament: *Study on the Organisation and functioning*, *op. cit.*, p. 20.

¹⁴² Furness, Mark, *op. cit.*, p. 116.



The Commission's influence is mainly exerted through its Service for Foreign Policy Instrument (FPI). Created simultaneously to the EEAS, the service is responsible for the operational budgets of the CFSP including that of the EEAS¹⁴³. This means that every EEAS budgetary decision for increase spending must be approved by the Commission. This institutional setting is "cumbersome" in the words of an EU head of delegation and gives the Commission monetary power over the EEAS¹⁴⁴.

The establishment of the FPI has also enabled the Commission to maintain its expertise on foreign policy matters which hinders the EEAS's capacity to advise the FAC and other technical working groups¹⁴⁵. Indeed, the FPI is "clearly a remnant of the European Commission's foreign affairs department (DG Relex)"¹⁴⁶ that was established in order to prevent the integral transfer of the DG Relex staff to the EEAS's services. With regards to the sanction policy, the FPI represents the Commission in RELEX and prepares proposals for Regulations. It also keeps track of the EU's action in the sanction's domain and publishes technical guidance to the member states to ensure a uniform application¹⁴⁷. Furthermore, since 2012 the FPI has been assisted by the new Inter-Service Group (ISG) for Restrictive Measures¹⁴⁸ which has, in its first year, "prepared and negotiated 27 Proposals for Council Regulations and 31 draft Commission Regulations on CFSP restrictive measures", was "instrumental in preparing the proposal on sanctions against Iran [...] and also proved useful in discussions on the Syria flight ban issue"¹⁴⁹.

Faced with such a strong 'protectionist reflex' from the Commission over its competence in the sanction policy, Ashton invoked the need for "a transfer of responsibilities and associated staff for the implementing measures for the EU sanctions regime from FPI into the EEAS or into a joint unit"¹⁵⁰. This confirms that the EEAS policy team needs reinforcement before it is able to get fully involved in the formulation of sanctions.

The competency conflict that resulted from the insertion of the EEAS can be seen as part of the principals' strategy to regain a significant degree of control over the sanction policy after the Lisbon Treaty. Indeed, now that the Commission has to table a sanction Regulation in cooperation with the HR, it automatically enhances the Council's power in the drafting of the Regulation¹⁵¹. The HR consequently limits the Commission's ability to present proposals that only reflect its preferences.

8. Conclusions

In conclusion, this article aimed to gain an insight into the internal aspects of supranationalisation processes in the Common Foreign and Security Policy using sanction

¹⁴³ EEAS (2011): *Report by the High Representative to the European Parliament, the Council and the Commission*, at http://www.eeas.europa.eu/images/top_stories/2011_eeas_report_cor_+_formatting.pdf

¹⁴⁴ Rettman, Andrew: "Commission still pulls the strings on EU foreign policy", *EUobserver*, 6 February 2012, <https://euobserver.com/institutional/115145>

¹⁴⁵ Ashton, Catherine, *op. cit.*, pp. 8-10.

¹⁴⁶ "Commission hopes service will hit all the right notes", *Politico*, 27 October 2010, at <http://www.politico.eu/article/commission-hopes-service-will-hit-all-the-right-notes/>

¹⁴⁷ European Commission (2015): *Service for Foreign Policy Instruments (FPI)*, at ec.europa.eu:ec.europa.eu/dgs/fpi/what-we-do/sanctions_en.htm

¹⁴⁸ "Service for Foreign Policy Instruments. (2012): Annual Activity Report", *European Commission*, at http://ec.europa.eu/dgs/fpi/documents/fpi_activity_report_2012_en.pdf

¹⁴⁹ *Ibid.* p. 7

¹⁵⁰ Ashton, Catherine, *op. cit.*, p. 9.

¹⁵¹ Portela, Clara, Personal Interview, *op. cit.*



policy as a case study. Through the prism of the Principal-Agent model, the analysis scrutinised which mechanisms were put in place by the member states in order to maintain their control over the sanction policy and limit the agency of the EU institutions it empowered; the Commission and later the EEAS. In that sense, it also determined the extent to which the policy has been supranationalised since the Maastricht Treaty.

From Maastricht until the Lisbon Treaty the sanction policy gained significant supranational features under the influence of the Commission. This institution was delegated significant legislative powers and consequently became a key policy-maker in the Councils' preparatory bodies. Its ability to draft sanctions Regulations and provide member states legal advice is reliant on its economic and financial expertise. However, it is clear that member states are reluctant to grant the Commission the authority to monitor and sanction them in case of non-compliance. Nonetheless, this supranational trend has not been accompanied by the member states' loss of control over the sanction policy. The latter has been able to limit the Commission's agency due to the creation of police-patrols in the Council's working groups as well as the presence of the highly constraining two-steps adoption procedure.

However, a decrease of the Commission's influence on the policy-making process after the Lisbon Treaty led to a reduction of sanction policy's supranationalisation. The Commission is now being challenged by the EEAS whose competences with regards to the sanctions policy largely overlap with those of the Commission. The competition for resources and expertise between the two agents hinders their ability to coordinate their preferences and exert influence on the policy-making process. The Commission's 'protectionist' and non-cooperative attitude with regards to the EEAS is illustrated by the creation of its FPI service with the goal of retaining sanction expertise. However, this can be seen as horizontal control because it has reasserted the primacy of the Council and, by extension, the member states' primacy in the decision-making process. It has also been demonstrated that the ability of the EEAS to gain sanctioning powers is limited by the nature of the mandate it received and by its supporting role to the High Representative. The mandate's provisions are very general and unclear which, contrary to the initial assumption, hinders rather than facilitates its ability to gain autonomy from the principals' preferences. Furthermore, the High Representative's general lack of entrepreneurship and authority in the CFSP domain indirectly limits the EEAS' level of discretion.

Furthermore, the analysis has revealed that a divergence between the principals' preferences reduces, as opposed to increase, the agents' degree of autonomy. This is a result of the peculiarities of the decision-making process which, based on the unanimity rule, can be blocked by the member states at any moment in the case of a disagreement. It subsequently prevents the agents from putting forward their proposals as long as the member states have not politically agreed to take on new sanctions. Moreover, this situation has not changed since the introduction of the mechanism of 'constructive adoption' because the member states persist in following an informal unanimity rule, thereby protecting the intergovernmental nature of the sanction policy.

To conclude, the analysis was useful to assess the variations in the balance of power between the member states and the agents in the sanction policy-making process. It demonstrated that processes of supranationalisation can be reversed and that member states are not necessarily helpless since they have an array of control mechanisms at their disposal in order to correct agency slippage. Furthermore, it is evident that despite the member states' preservation of the intergovernmental nature of the sanction policy, it did not hinder the



development of a fruitful cooperation between the member states, the Commission and the EEAS nor the growing sophistication of the policy since the Maastricht Treaty. The EU's latest far-reaching sanction packages adopted against Iran, Syria and Russia are prime examples.

This finding goes against the common assumption in EU studies that the preservation of intergovernmentalism in a policy field is restrictive of policy sophistication and effective collaboration between the national and supranational levels. Further study of the impact of supranationalisation processes on the efficiency of policies is worthy of further to enable the EU to better identify the institutional conditions generating greater efficiency in the CFSP framework in order to, ultimately, become a stronger foreign policy actor.

Finally, an alternative application of the PA model on the sanction policy could include the European Court of Justice (ECJ) as one of the supranational agents. Known for being a strong driver of EU integration, the ECJ has started, since the Lisbon Treaty, to contest sanctions adopted against individuals in the CFSP framework. Greater attention should consequently be paid to the ECJ as a potential agent for greater supranationalisation in the sanction policy.

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