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**A Legitimacy Analysis of EU Sanctions**

*Master's Thesis*

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## **Bibliographical note**

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## **Abstract**

Political legitimacy has often been addressed in terms of the legitimacy of actors, while the legitimacy of policies as such is relatively neglected. This thesis argues that an analytical distinction between the categories of the actor and its action is necessary, since an actor's legitimacy does not automatically imply the legitimacy of its behaviour; furthermore, in real social discourse, actions are not exempt from legitimacy judgments. The ambition of the thesis is to make use of this research gap and to examine one of the most important tools of the EU's foreign policy by means of an analytical framework of political legitimacy.

The selected cases are the current episode of CFSP sanctions against Russia; "appropriate measures" under the ACP Partnership agreement against Zimbabwe; and the informal arms embargo against China. Sanctions dealt with in the first two cases are deemed legitimate, while the arms embargo on China failed to meet the legitimacy criteria. Apart from the findings on legitimacy, two major conclusions can be drawn from the analysis: The lack of internal coherence is impairing the legitimacy of the EU's political measures; and the imposition of sanctions through an institutionalised political framework enhances their transparency in contrast to informal measures.

## **Abstrakt**

Doterajšia akademická debata o politickej legitimitate sa ťažiskovo zaoberá legitimitou aktérov, kým legitimita ich politik je málo riešená. Táto práca sa voči danému prístupu vymedzuje, zdôrazňujúc, že legitimita aktéra nemusí byť totožná s legitimitou jeho konania, pričom samotné konanie v spoločenskom diskurze podlieha normatívnym úsudkom. Práca sa snaží využiť tento priestor a zasadiť sankcie ako jeden z kľúčových nástrojov zahraničnej politiky EÚ do analytického rámca politickej legitimacy.

Vybranými prípadovými štúdiami sú súčasné sankcie voči Rusku v rámci SZBP, „vhodné opatrenia“ v rámci partnerských dohôd s krajinami ACP namierené voči Zimbabwe, a neformálne uvalené zbrojné embargo voči Číne. Sankcie analyzované v prvých dvoch prípadoch sú hodnotené ako legitímne, kým zbrojné embargo voči Číne nespĺňa stanovené kritériá legitimacy. Okrem zhodnotenia legitimacy prípadových štúdií z analýzy vyplývajú dva závery: slabá vnútorná súdržnosť EÚ oslabuje legitimitu jej politických nástrojov a uvalenie sankcií v rámci inštitucionalizovaného politického rámca ich legitimitu zvyšuje, na rozdiel od neformálnych opatrení.

## **Klíčov<sup>á</sup> slova**

legitimita, sankce, restriktivní opatření, zahraniční politika EU, Společná zahraniční a bezpečnostní politika, partnerství ACP-EU, zbrojní embargo, Rusko, Zimbabwe, Čína

## **Keywords**

legitimacy, sanctions, restrictive measures, EU foreign policy, Common Foreign and Security Policy, ACP Partnership, arms embargo, Russia, Zimbabwe, China

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## **Declaration of Authorship**

1. The author hereby declares that he compiled this thesis independently, using only the listed resources and literature.
2. The author hereby declares that all the sources and literature used have been properly cited.
3. The author hereby declares that the thesis has not been used to obtain a different or the same degree.

Prague, 12 May 2016

Gabriela Šaturová

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**V čem se oproti původnímu zadání změnil cíl práce?**

Hlavný cieľ práce, analyzovať legitimitu politiky EÚ v oblasti prijímania a implementácie ekonomických sankcií voči tretím štátom a ich predstaviteľom prostredníctvom analýzy prípadových štúdií, sa nezmenil. Upresnila sa však konkrétna dimenzia (resp. dve dimenzie) legitimacy, ktoré budú skúmané. Práca porovná legitimitu troch rôznych politicko-právnych základov sankcií EÚ.

**Jaké změny nastaly v časovém, teritoriálním a věcném vymezení tématu?**

Téma ako taká sa z vecného hľadiska nezmenila, upresnila sa však skúmaná dimenzia legitimacy a aplikácia na prípadové štúdie. Práca sa zameria na aktuálny sankčný režim EÚ voči Rusku ako prípad sankcií Spoločnej zahraničnej a bezpečnostnej politiky, v porovnaní s dvomi inými epizódami sankcií – sankciami, vychádzajúcimi z porušenia partnerských dohôd so štátmi ACP, a neformálnymi sankciami.

**Jak se proměnila struktura práce (vyjádřete stručným obsahem)?**

Štruktúra, plánovaná v projekte diplomovej práce, sa v zásade nezmenila. Vypadla však časť, hodnotiaca celkovo legitimitu sankčnej politiky EÚ po prijatí Lisabonskej zmluvy, pretože toto hodnotenie bude vykonané priamo v prípadových štúdiách. Práca v teoretickej časti spracuje koncept legitimacy, konkrétne legitimacy EÚ ako špecifického typu medzinárodnej organizácie a málo riešenú otázku legitimacy politiky, resp. politického nástroja. Ďalej priblíži sankcie, obzvlášť sankcie EÚ a ich špecifiká, z teoretického hľadiska, a predstaví a odôvodní výber troch prípadových štúdií.

Následne bude na základe teoretickej časti vypracovaný analytický rámec a konkrétne kritériá hodnotenia vstupnej legitimacy sankcií EÚ, ktoré budú aplikované na tri prípadové štúdie. Po zhodnotení a komparácii prípadov nasleduje generácia hypotézy, zhrnutie výsledkov v širšom kontexte a záver práce.

**Jakým vývojem prošla metodologická koncepcie práce?**

Metodologická koncepcia bola v čase zadania projektu práce len približná. Už vtedy však bolo zrejmé, že pôjde o aplikáciu teórie na jednu či viacero prípadových štúdií, po ďalšom štúdiu literatúry sa tento počet vymedzil na tri, podľa rozličných právnych rámcov sankcií EÚ. Práca využije komparáciu a viac sa tiež objasnila metóda analýzy legitimacy: jedna, resp. dve dimenzie legitimacy sankcií budú skúmané na základe konkrétne vytýčených kritérií.

Které nové prameny a sekundární literatura byly zpracovány a jak tato skutečnost ovlivnila celek práce?

Okrem iného bola spracovaná nasledujúca literatúra:

- BICKERTON, Christopher J. The Perils of Performance: EU Foreign Policy and the Problem of Legitimization. *New Perspectives*, 28 / 2007, 24-42.
- COLEMAN, Katharina P. *International Organisations and Peace Enforcement: The Politics of International Legitimacy*. Cambridge: Cambridge University Press, 2007.
- EDWARDS, Geoffrey. The EU's Foreign Policy and the Search for Effect. *International Relations*, September 2013, 27(3), 276-291.
- ERIKSSON, Mikael. *Targeting Peace: Understanding UN and EU Targeted Sanctions*. Farnham, UK/ Burlington, VT: Ashgate, 2011.
- FOLLESDAL, Andreas, HIX, Simon. Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcik. In *JCMS*, 2006 Volume 44. Number 3. pp. 533-62.
- GIUMELLI, Francesco. *Coercing, Constraining and Signalling: Explaining UN and EU Sanctions after the Cold War*. Colchester: ECPR Press, 2011.
- MEYER, Lukas H. (ed.) *Legitimacy, Justice and Public International Law*. Cambridge: Cambridge University Press, 2009.
- MORAVCSIK, Andrew. In Defence of the „Democratic Deficit“: Reassessing Legitimacy in the European Union. *JCMS* 2002 Volume 40. Number 4. pp. 603-24.
- PORTELA, Clara. *European Union Sanctions and Foreign Policy: When and why do they work?* London: Routledge, 2010.

Štúdiom ďalšej literatúry som získala väčší prehľad v téme diplomovej práce, čo mi umožnilo upresniť jej rozsah, analytický rámec, výber prípadových štúdií a metodológiu. Tiež som sa viac zameriavala konkrétne na legitimitu EÚ a problematiku sankcií EÚ. Z tohoto pohľadu bola pre mňa najdôležitejším zdrojom kniha Clary Portely, ktorá (hoci už nie je celkom aktuálna) hodnotí efektívnosť rôznych epizód sankcií EÚ. Nedotýka sa ich legitimacy, no je obsahovo bohatá a zaujímavá tiež z hľadiska zdrojov (sčasti čerpá z rozhovorov s diplomatmi a úradníkmi EÚ). Ďalším dôležitým zdrojom je práca Kathariny Coleman, ktorá hodnotí legitimitu operácií, teda na rozdiel od väčšiny literatúry nie legitimitu medzinárodnej organizácie ako takej.

Charakterizujte základní proměny práce v době od zadání projektu do odevzdání teží a pokuste se vyhodnotit, jaký pokrok na práci jste během semestru zaznamenali (v bodech):

- cieľ a podstata práce sa nezmenili, upresnili sa však dôležité aspekty ako skúmaná dimenzia legitimacy, výber prípadov a metóda analýzy legitimacy
- jasnejší spôsob narábania s teóriou legitimacy, jej konkrétne využitie v práci (výber východísk, autorov, kritérií legitimacy...) a vytvorenie vlastného analytického rámca

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## INTRODUCTION

The concept of political legitimacy is an intriguing phenomenon falling under the purview of political science as well as law and political philosophy. These disciplines predominantly address the legitimacy of actors (international organisations, for instance), while the legitimacy of policies as such is often neglected. The issue of the EU's legitimacy is mostly dealt with at the level of the EU as an international organisation, or, eventually, at the level of its institutions. The ambition of this thesis is to make use of this research gap and to examine one of the most important tools of the EU's foreign policy, or rather external action, by means of the analytical framework of political legitimacy. From the theoretical point of view, the thesis seeks to be innovative in the application of legitimacy criteria to a policy, more specifically to the political instrument of sanctions.

The thesis aims to evaluate the legitimacy of EU sanctions in three case studies, selected according to different political frameworks that serve as a basis for EU sanctions imposition. It employs a comparative method, analysing each case by a set of defined legitimacy criteria. The purpose is not merely to evaluate the legitimacy of the given sanctions regimes, or the political and legal frameworks that enabled their imposition, but also to examine the roles of particular criteria by means of a comparison of the three cases.

The following section provides an overview of the concepts of legitimacy and sanctions and briefly introduces the academic debate related to both topics. The second chapter outlines the theoretical and methodological foundations of this analysis and discusses the selection of case studies and research criteria. The subsequent chapters deal with the analysis of the three case studies, the results of which are examined and compared in the final section.

### *Legitimacy*

Legitimacy has been defined in various ways, in general as well as at the level of international institutions. According to Hurd, it “refers to the normative belief by an

actor that a rule or institution ought to be obeyed.”<sup>1</sup> On the other hand, legitimacy is not an individual, but “a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions.”<sup>2</sup> The notion of legitimacy thus comprises a certain social status or category related to an object (an institution, policy or a political measure) that is commonly perceived as “good”, proper and just, which may be understood as an aggregate of individual perceptions of legitimacy (empirical legitimacy) or based on generally valid norms of a certain society (normative legitimacy). The empirical and the normative aspect are closely interlinked and understood as two perspectives of legitimacy analysis. While the normative approach seeks to understand the criteria by which a political institution, regime or policy should be judged and the conditions of their legitimacy, the empirical approach is concerned with ascertaining whether the individual criteria or perceptions of legitimacy are met.<sup>3</sup>

The two approaches do not necessarily lead to the same conclusions. An institution that meets certain normative criteria of legitimacy might not, for various reasons (such as its portrayal in the media, previous experience, etc.), be empirically viewed as legitimate. Due to the methodological complexity of an empirical legitimacy analysis and the great variety of factors that may influence this perspective, the thesis focuses on the normative approach.

Legitimacy is closely tied to notions of political authority and power, which are only rarely able to influence (exclusively) by means of coercion and of whose exercise legitimacy is an essential basis. In other words, this explains why legitimacy is needed at all: it is a form of informal social control which enables the actor to exercise political power more effectively. According to Beetham, the conditions for legitimacy are (1) legal validity, or conformity to established rules, (2) moral justifiability in terms of shared beliefs, and (3) legitimation through expressed consent of the party subordinated in the power relation.<sup>4</sup>

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<sup>1</sup> HURD, Ian. *Legitimacy and Authority in International Politics*. In *International Organization* 53, 2, Spring 1999, pp. 379–408.

<sup>2</sup> SUCHMAN, Mark. *Managing Legitimacy: Strategic and Institutional Approaches*. In *Academy of Management Review*; July 1995, Vol. 20 Issue 3, p. 571.

<sup>3</sup> ANSELL, C. K. *Political Legitimacy* In *International Encyclopedia of the Social & Behavioral Sciences*, 2001.

## ***Sanctions***

As a result of the current tensions between Russia and the West escalated by the conflict in Ukraine, or the recent lifting of sanctions against Iran, international sanctions are currently a hotly debated topic. Although often criticised for their inefficiency or insignificance, the use of sanctions as a foreign policy tool has increased substantially since the 1990s. Their character has shifted from classical comprehensive economic sanctions (embargoes), typical for the Cold War period, to more targeted and sophisticated measures. They may be imposed by states or international organisations on other states, physical or legal persons, groups of persons (such as terrorist groups) or non-state subjects (such as the government of Transnistria). The EU as an actor in the sanctions field may implement sanctions adopted by the UN Security Council and even tighten them, or adopt its own, autonomous sanctions, which are the subject matter of this thesis.

The specifics of EU sanctions (in EU parlance referred to as “restrictive measures” in CFSP or “adequate measures” in the ACP Partnership framework) are their gradual tightening or easing, employment of political conditionality and their application within a broader foreign-policy strategy, accompanied by political dialogue and often even strengthened humanitarian support and cooperation in the areas of civil society development and the rule of law. The logic of EU sanctions is not merely to exercise economic pressure or restraint, but to signal the infringement of fundamental values (human rights, democracy, and the rule of law) and by that stigmatize and delegitimize the target actor.

## ***Academic Debate***

The topic of this thesis is based on two current research areas in the field of international relations: legitimacy, where literature centres on the concept of political legitimacy in international relations and mostly discusses the legitimacy of international organisations, including the EU; and sanctions, in general as well as EU sanctions.

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<sup>4</sup> BEETHAM, David. *The Legitimation of Power*. Houndmills, Basingstoke, Hampshire; New York: Palgrave Macmillan, 1991.

A part of the academic debate revolves around the legitimacy of the EU's foreign policy, within the competence of which sanctions largely fall. Bickerton<sup>5</sup> and Edwards<sup>6</sup> identify legitimacy as one of the problems that European foreign policy faces in its struggle for balance between external effectiveness and internal coherence. In Czech academia, Tomáš Weiss has published on the topic, drawing upon Scharpf's theory of legitimacy dimensions<sup>7</sup> in his analysis of the legitimacy of EU foreign policy after the institutional changes brought by the Lisbon Treaty.<sup>8</sup> Except for him, Vojtěch Belling<sup>9</sup> or Petr Kaniok<sup>10</sup> have dealt with legitimacy, although at the level of the EU as a whole. However, the topic remains scarcely addressed in the Czech academic environment.

The literature on sanctions concentrates on their position in international law and their effectiveness, as well as, more specifically, UN or state-imposed sanctions and finally sanctions in the EU's external relations and foreign policy. Considering the intensive academic interest in the EU as an international actor sanctions have, paradoxically, received limited attention so far.

Barely any sources deal with the legitimacy of sanctions directly, and even if they do so, it is only briefly hinted at in discussions of broader issues.

## Legitimacy Debate

The theme of political legitimacy in the academic debate builds on a long tradition, reaching back to Plato<sup>11</sup> and Aristotle.<sup>12</sup> An important point of departure is the unfinished work of Max Weber, *Economy and Society*, which also deals with the

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<sup>5</sup> BICKERTON, Christopher J. *The Perils of Performance: EU Foreign Policy and the Problem of Legitimization*. *New Perspectives*, 28 / 2007, 24-42.

<sup>6</sup> EDWARDS, Geoffrey. *The EU's Foreign Policy and the Search for Effect*. *International Relations*, September 2013, 27(3), 276-291.

<sup>7</sup> SCHARPF, Fritz W. *Governing in Europe: Effective and Democratic?* Oxford: Oxford University Press, 1999.

<sup>8</sup> WEISS, Tomáš. *Evropská služba pro vnější činnost a legitimita zahraniční politiky Evropské unie*. *Mezinárodní vztahy* Vol. 47 (2012), No. 1. pp. 5-21. <<https://mv.iir.cz/article/view/428>> (accessed 15 May 2015).

<sup>9</sup> BELLING, Vojtěch. *Federální model a evropská realita: Krize legitimacy a její překonání*. *Mezinárodní vztahy* Vol. 41 (2006), No. 3. pp. 5-18. <<https://mv.iir.cz/article/view/223>> (accessed 1 May 2016).

<sup>10</sup> KANIOK, Petr. *Statická, či dynamická unie: Euroskepticismus a vnitřní legitimita evropské integrace*. *Mezinárodní vztahy* Vol. 46 (2011), No. 3. pp. 78-93. <<https://mv.iir.cz/article/view/423>> (accessed 1 May 2016).

<sup>11</sup> PLATO. *Republic*.

<sup>12</sup> ARISTOTLE. *Politics*.

legitimacy of authorities.<sup>13</sup> His definition of legitimacy as a belief that an authority is legitimate is applied by Hurd, who emphasizes the need for legitimacy in international relations.<sup>14</sup> On the other hand, Beetham criticises this conception, arguing that “a given power relationship is not legitimate because people believe in its legitimacy, but because it can be justified in terms of their beliefs.”<sup>15</sup> He also expands the concept to include the dimensions of legality and expressed consent.

The debate on legitimacy in international relations tends to apply criteria of state legitimacy to international institutions. This trend has been opposed by alternative approaches, such as that of Steffek, who believes that international organisations cannot be evaluated against the same legitimacy criteria as states, as they do not possess comparable powers.<sup>16</sup> At the same time though he acknowledges that as soon as these organisations become centres of political decision-making, his concept reaches its limits. Especially the EU is in its current shape perceived as a specific, unprecedented form of international organisation, which in many areas holds powers that have traditionally been associated with the state. Issues such as foreign, asylum or economic policy have become part of the EU’s agenda and decision-making, and this has consequences for discussions of its legitimacy criteria that, specifically in the case of foreign policy, depend on the perspective from which the EU and its political set-up are viewed.

A relatively recent shift of the concept of legitimacy to the international level opened the issue of common identity, which had been seen as an essential source of democratic legitimacy even in the earlier literature. How can international organisations be legitimate when the element of *demos* is absent at the international level? Nicolaïdis responds to this debate by developing her concept of global “demoïcracy”, which supersedes the singular identity in the traditional understanding of the nation state by the plural, *demoi*.<sup>17</sup> The question of identity at the international level is most thoroughly

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<sup>13</sup> WEBER, Max. *Economy and Society: An Outline of Interpretive Sociology*. Berkeley/ Los Angeles/ London: University of California Press, 1968.

<sup>14</sup> HURD, Ian. *Legitimacy and Authority in International Politics*. *International Organization* 53, 2, Spring 1999, pp. 379–408.

<sup>15</sup> BEETHAM, David. *The Legitimation of Power*. Houndmills, Basingstoke, Hampshire; New York: Palgrave Macmillan, 1991.

<sup>16</sup> STEFFEK, Jens. *The Legitimation of International Governance: A Discourse Approach*. *European Journal of International Relations* 2003 9: 249.

<sup>17</sup> NICOLAÏDIS, Kalypso. *Our European Demoï-cracy: Is this Constitution a Third Way for Europe?*. In NICOLAÏDIS, Kalypso, WEATHERILL, Stephen. *Whose Europe? National Models and the Constitution of the European Union*. European Studies at Oxford Series, 2003.

dealt with in the case of the EU, where the debate on European identity is dominated by the question whether such an identity at all exists and what its basis might be. A common identity can be traced in empirical data (such as in surveys that show the EU citizens' allegiance to a common European identity, in addition to their national ones) and in its self-construction and thus self-legitimation by the EU, which uses traditionally national identity-fostering symbols such as the anthem, visual symbols, appeals to common values in the Treaties and in political discourse, etc. What may be considered the substance of European identity is the EU itself as a political entity and its values, i.e. democracy, human rights, the rule of law and market economy, as well as a cultural identity, based on a shared historical heritage.<sup>18</sup> From this point of view, identity forms an element of the EU's input legitimacy.

The dimensions of legitimacy were explicitly defined by Scharpf in his theory of input and output legitimacy, which he applied to the EU, although some earlier literature had discerned different levels of legitimacy as well.<sup>19</sup> In this perspective, input legitimacy relates to the participation and representation of citizens, output legitimacy to the results and the impact of European policies and thus to their effectiveness. Contrary to the approach discussed above, Scharpf claims that the EU does not command a sufficient base for collective identity, lacks a shared *demos*, and therefore institutional reforms cannot potentially increase its input legitimacy. He prefers to shift the focus of legitimation to the output side, specifically to the sphere of common interests.<sup>20</sup>

A third, procedural dimension of legitimacy, which earlier featured rather as one of the legitimacy criteria, arises in the debate. It is based on the principles of political accountability, transparency, fairness and efficiency of decision-making processes.<sup>21</sup> These three dimensions have become standard jargon in the legitimacy debate. They do not constitute options, but rather intertwined elements of legitimacy, which may be attributed a different weight in analysis. This thesis focuses primarily on the input and procedural aspects of legitimacy.

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<sup>18</sup> RISSE, Thomas. *A community of Europeans? Transnational identities and public spheres*. Cornell University Press, 2010.

<sup>19</sup> SCHARPF, Fritz W. *Governing in Europe: Effective and Democratic?* Oxford: Oxford University Press, 1999.

<sup>20</sup> Ibid.

<sup>21</sup> SCHMIDT, Vivien. *Democracy and Legitimacy in the European Union*. In *The Oxford Handbook of the European Union*. Oxford: Oxford University Press, 2012; TYLER, Tom R. *Psychological Perspectives on Legitimacy and Legitimation*. In *Annual Review of Psychology*, 2006. 57:375-400.

The notorious debate on the EU's democratic deficit appears to be the most distinctive topic in the literature dealing with the EU's legitimacy. Weiler and later Follesdal and Hix formulated a so-called "standard version" of the democratic deficit, which entails a set of arguments widespread among academics, policy experts, the public and media.<sup>22</sup> In short, it relates to five issues: the weak impact of national parliaments on EU decision-making; the limited powers of the European Parliament; the absence of "European" elections (according to this model, voters are not able to vote on EU policies, apart from referenda, domestic issues prevail in national elections, and the decision-making of voters in the elections to the EP is based on the parties' domestic behaviour);<sup>23</sup> the EU's "distance" from its electorate, which often does not even understand or is not interested in its functioning; and finally the policy drift, meaning the adoption of policies that often do not find majoritarian support in many member states.<sup>24</sup>

Moravcsik and Majone take the opposite stance in this debate and contest the existence of democratic deficit. Moravcsik claims that the EU cannot be judged against criteria of ideal democracy pertaining to the nation state, but rather as a system of national democracies which operate at different levels.<sup>25</sup> In the literature, this relation is also termed a shift from "government" to "governance". Majone's line of argumentation is similar, he presents the democratic legitimacy of the EU as a matter of standards, identifying „non-majoritarian“ sources of legitimacy such as expertise, procedural rationalisation, transparency and accountability by results. He differentiates between the process of legitimisation of redistributive policies, which can only be legitimised through democratic majority, and policies aimed at efficiency, legitimised by their results.<sup>26</sup> Majone thus alludes to two important issues: the relation between efficiency

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<sup>22</sup> FOLLESDAL, Andreas, HIX, Simon. *Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik*. In JCMS, 2006 Volume 44. Number 3. pp. 533-62;

HIX, Simon, HØYLAND, Bjørn. *The Political System of the European Union*. Palgrave Macmillan, 2011.

<sup>23</sup> This argument, however, appears problematic considering the increasing spillover of "European" issues into the national political discourse.

<sup>24</sup> HIX, Simon, HØYLAND, Bjørn. *The Political System of the European Union*. Palgrave Macmillan, 2011.

<sup>25</sup> MORAVCSIK, Andrew. *In Defence of the „Democratic Deficit“: Reassessing Legitimacy in the European Union*. JCMS 2002 Volume 40. Number 4. pp. 603-24.

<sup>26</sup> MAJONE, Giandomenico. *Europe's "Democratic Deficit": The Question of Standards*. In European Law Journal, Vol. 4, No. 1, March 1998, pp. 5-28.

and legitimacy, and the analytical separation of an institution and its policies, which are essential to this thesis.

A vast majority of the literature relates legitimacy to institutions that exercise power, and those institutions that are not meant to do so, as well as actions, are thus excluded from the concept's ambit. Such a theoretical perspective shuts out the possibility of applying legitimacy criteria to particular policies or decisions, while as a matter of fact they are not exempt from such judgments in social discourse.<sup>27</sup> An analytical distinction between the categories of the actor (institution) and its action is necessary, since an actor's legitimacy does not automatically imply the legitimacy of its behaviour. In practice, while the legitimacy of a policy is derived from that of an actor, even an actor whose legitimacy is not disputed (such as a democratic state) may engage in an illegitimate activity or policy (e.g., the much discussed question of the legitimacy of the US invasion of Iraq in 2003). The two categories are certainly not absolutely independent - illegitimate behaviour casts a shadow on the actor's legitimacy in the long run;<sup>28</sup> however, in the short and medium term it is crucial to separate the two in order to precisely define the analysed object. A related distinction in this regard is that between the matters of legitimacy and legality, which overlap to some extent, but are in no way identical. Thus some operations may be deemed legal but illegitimate, or vice versa (e.g., NATO bombing former Yugoslavia without the UN Security Council mandate, which was explicitly called "illegal but legitimate" by the Independent International Commission on Kosovo).<sup>29</sup>

Legitimacy research has so far often been based on such inputs as normative judgements or public opinion (the methodology of legitimacy research is tackled in the next chapter), analysing the legitimacy of objects represented at an international level by states or institutions. This approach may lead to generalisation and thus to certain distortions. If for instance a debate on the EU's legitimacy draws upon empirical benchmarks (e.g., public opinion or political behaviour, whether participative or protest), it is essential to distinguish what represents their object: do people demonstrate their attitude towards the EU as an organisation, its particular institution, policy or

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<sup>27</sup> COLEMAN, Katharina P. *International Organisations and Peace Enforcement: The Politics of International Legitimacy*. Cambridge: Cambridge University Press, 2007.

<sup>28</sup> Ibid.

<sup>29</sup> Independent International Commission on Kosovo. *The Kosovo Report*. Oxford: Oxford University Press, 2000.

a specific person or persons? As the research of this thesis focuses on the EU's policy, more specifically on its tools, this distinction must be taken into account.

## **Sanctions Debate**

Academic interest in international sanctions reaches at least to the pre-WWII period, while the key theoretical works were written in the 1960s and 1970s. Many authors dealt with the issue of sanctions' effectiveness and considered them a less effective, but more attractive and more easily legitimised foreign policy measure than military operations.<sup>30</sup>

The classical sanctions theory was formulated by Galtung, who criticised the so-called naïve theory of sanctions, which stands on the assumption that the direct impact of the economic hardship caused by sanctions will disintegrate the target state politically, the faster the greater it is.<sup>31</sup> The theory presupposes the existence of a "societal transmission belt", a certain threshold of social bearing that, if reached, initiates a coup and a removal of the government, while sanctions act as a coercive measure and a negative incentive for the target government to change its behaviour, if it is interested in maintaining power. Galtung denies a direct relation between economic harm and political impact, such as is suggested by the naïve theory, since from both the psychological and economic perspective, people can become accustomed to hardship, and this may even lead to closer political integration. He also introduces the concepts of positive and targeted sanctions, the latter merely as a possible future scenario at that time. Galtung's ideas have since been adapted and amended, but still remain relevant for sanctions theory.

The most important milestone in sanctions research so far has been the work of Hufbauer et al., *Economic Sanctions Reconsidered*, published in the 1980s (with two editions and several revisions since then).<sup>32</sup> Although this research study no longer reflects the current concept of targeted sanctions in international relations, it was a major influence on the subsequent literature, especially from the methodological

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<sup>30</sup> ERIKSSON, Mikael. *Targeting Peace: Understanding UN and EU Targeted Sanctions*. Farnham, UK/ Burlington, VT: Ashgate, 2011.

<sup>31</sup> GALTUNG, Johan. *On the Effect of International Economic Sanctions: With Examples from the Case of Rhodesia*. World Politics, Volume 19, Issue 3 (April 1967): 378-416.

<sup>32</sup> HUFBAUER, Gary Clyde, SCHOTT, Jeffrey J. *Economic Sanctions Reconsidered: History and Current Policy*. Washington, DC: Institute for International Economics, 1985.

perspective. The extensive study analyses a dataset of 115 case studies of sanctions regimes and evaluates their effectiveness according to the extent to which the set political objectives were attained and to which this was a direct consequence of sanctions. Hufbauer's methodology was later contested and revised by Pape, who asserted that the reason to impose sanctions is not their effectiveness so much as their greater political acceptability by the imposing state's own electorate in comparison to a military operation, and their function to underpin the credibility of an eventual threat to use force.<sup>33</sup> Even though Pape's theory too requires revision today, it is important to note in the context of this thesis that it works with the credibility or legitimizing function of sanctions.

*Economic Sanctions Reconsidered* furthermore considers legitimacy as a normative factor in sanctions regimes, especially when sanctions are imposed unilaterally or by a smaller group of states (in contrast to multilateral UN sanctions). The relation between legitimacy and the efficiency of sanctions thus determines their character either as purely a tool of power, or as a legitimate measure to enforce international law. An important legitimizing criterion is the involvement of the international community, either in the form of multilateral sanctions or other support of the sanctions regime, or, on the other hand, by the economic and political support of the target state, regime, or actors. The social dimension of international relations therefore impacts the effectiveness as well as the legitimacy of sanctions.

Drezner contributes to the debate with an approach based on game theory and considerations of alternative costs of coercive measures.<sup>34</sup> He observes a paradox in the structure of sanctions, consisting in the fact that a state (actor) is more inclined to impose sanctions against an enemy than an ally, though the potential effect is much greater in the latter case. Other authors agree that the very threat to impose sanctions is already effectual, while those states that do not count on sanctions imposed by their ally and underestimate their possible impact experience the threat only after the imposition of the sanctions regime. This proposition is crucial to consider in the case of EU sanctions, which often target the EU's partners, such as China, Russia and ACP countries, as examined in this thesis.

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<sup>33</sup> PAPE, Robert A. *Why Economics Sanctions Do Not Work*. *International Security*, Volume 22, Issue 2 (Autumn 1997), 90-136.

The gradual transition towards targeting in sanctions practice has influenced the academic interest in the past 15 years. The significant authors in the early stage of this turn were Cortright and Lopez, who also addressed issues relevant for the moral and political legitimacy of sanctions by criticising the effects of targeted sanctions on the civilian population through their secondary impact (for instance, state income curtailed by sanctions imposed on a targeted industry translates into a decline of the whole population's welfare).<sup>35</sup> They do not regard targeted sanctions as an efficient tool though, even if they admit the connection between efficiency and socioeconomic impact, which, if greater, may lead to more visible political change, and blame the sanctions' ineffectiveness on a lack of expertise and institutional capacity of states and international organisations in the initial phases of sanctions implementation. The key problem is the need for consensus in defining the concrete goals of sanctions and means to their attainment. While Cortright's and Lopez's analysis focused on UN sanctions, the vague formulation of the political aims of EU sanctions is also often criticised.

Portela, Giumelli and Eriksson are the authors who deal with EU sanctions in particular. Portela draws on Hufbauer's methodology and some hypotheses of classical sanctions theory, which she critically analyses and adapts to the present world of targeted sanctions. Her purpose is to clarify what the determinants of targeted sanctions' effectiveness are, for instance, whether the decisive factor is the economic constraint they cause or rather the stigma of sanctions which undermines the target's international reputation. She analyses four groups of autonomous EU sanctions, based on their different legal nature. Portela admits that there exist certain methodological issues that complicate her sanctions research, such as an often unclear definition of the sanctions' goals and conditions for their lifting on the EU's part, or the acute problem of the availability of sources. In her research, she makes use of information from interviews which she conducted with present and former diplomats and EU officials. The frequent fluctuation of staff at the institutions, however, constitutes a major problem, while neither the Council nor the Commission conduct systematic evaluation of the sanctions' impact (albeit the EU has been trying to address the issue of effective monitoring in the past two years by setting up an EU Sanctions Mechanism within the RELEX working

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<sup>34</sup> DREZNER, Daniel W. *The Sanctions Paradox: Economic Statecraft and International Relations*. Cambridge: Cambridge University Press, 1999.

party). For the purpose of negotiations on the extension of sanctions regimes in the CFSP framework, the member states obtain information from reports of their heads of mission in the target state, or, eventually, from NGO reports. The former Directorate-General for the External Relations, currently the European External Action Service, keeps an archive, but it is only accessible to EU officials.

One of the key findings of Portela's study is the connection between the effectiveness of sanctions and the legal framework used for their imposition, the choice of which, she claims, is partly based on the expected success rate. Measures of an economic nature also appear to be more successful than non-economic measures in initiating the desired political change.<sup>36</sup> She also raises the rarely researched issue of the EU's management of sanctions regimes, which concerns the procedural dimension, flexibility of decision-making and the ability to adequately react to the behaviour of the target actor by relaxing or tightening sanctions.

Eriksson examines UN and EU targeted sanctions from the point of view of the decision-making process leading to their imposition,<sup>37</sup> which has to do with the input and procedural dimension of legitimacy. He points out several factors that influence the result but have yet to be sufficiently analysed, such as the role of informal decision-making, the broader strategic context of single cases, the behaviour of sanctioned individuals and entities, the interaction between the sender and the target, or the psychological impact of sanctions. Similarly to Portela, Eriksson tries to offer a new analytical approach, however, he deviates from classical sanctions theory and concentrates on the role of sanctions in crisis management. He criticises mainstream research on sanctions for its focus on sanctions as standalone events, neglecting their position in an overall political strategy. This point of view is especially important for the EU, which has established political relations with almost every part of the world, and therefore always adopts sanctions as part of a comprehensive approach.

Giumelli adverts to the risk of too targeted or weak sanctions that may jeopardize the position (or legitimacy) of the imposing actor, and discusses the sanctions' targets

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<sup>35</sup> CORTRIGHT, David, LOPEZ, George A. (eds.) *Smart Sanctions: Targeting Economic Statecraft*. New York: Rowman & Littlefield, 2002.

<sup>36</sup> Ibid.

<sup>37</sup> ERIKSSON, Mikael. *Targeting Peace: Understanding UN and EU Targeted Sanctions*. Farnham, UK/ Burlington, VT: Ashgate, 2011.

possibility of appeal to the European Court of Justice, which was introduced by the Lisbon Treaty and is a considerable factor for sanctions legitimacy. He distinguishes three aspects of the functioning of sanctions: coercing, constraining and signalling.<sup>38</sup> The third aspect equips sanctions with leverage without necessarily posing a threat of material impact, presupposing the existence of an international audience in front of which the sanctions target cares about his reputation. The importance of the target's interest in its international image as a determinant of the sanctions' effectiveness is also emphasized by Portela. If the sanctions target is an isolated authoritarian regime, this interest is often absent (especially if it is supported by a regional power), but if it aims to establish itself as a legitimate player on the international scene, it is concerned about not being branded a "rogue state" by becoming the subject of sanctions. This has been, for instance, a clear motivation in the case of the EU's arms embargo on China, which latter has repeatedly lobbied for its lifting, not so much for economic reasons as for its international delegitimation as a target of the EU's sanctions.

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<sup>38</sup> GIUMELLI, Francesco. *How EU Sanctions Work: A New Narrative*. Paris: EU Institute for Security Studies. Chaillot Paper No. 129, May 2013.

## 1. THEORETICAL FRAMEWORK

This thesis employs Scharpf's concept of input and output legitimacy and applies it to the case of EU sanctions.<sup>39</sup> It is the mainstream and basically the only elaborate approach to legitimacy research, based on the legitimacy of political institutions and applicable to a broader scope of objects (such as the legitimacy of policy or of a political tool). The other approaches often use different terms, but are after all based on the same logic as Scharpf's model, and either do not offer a sufficient theoretical basis for the purposes of this thesis, or fall under the scope of a more abstract philosophy and are thus difficult to apply in order to analyse the legitimacy of EU sanctions in particular. Scharpf's model of dimensions or sources of political legitimacy is therefore the obvious choice for the theoretical basis of this thesis.

Input legitimacy has in this case to do with the participation and representation of citizens (see above, the notorious debate on democratic deficit), common identity, or the mode of political decision-making; output legitimacy is connected with the results and impact of European policies, and therefore their effectiveness.<sup>40</sup> This model is extended by a third, procedural dimension of legitimacy, related to criteria of political accountability, transparency, fairness and efficiency of decision-making processes.<sup>41</sup>

An analysis of the output legitimacy of EU sanctions would be extensive and hard to develop in this thesis. It would require a large-scale dataset and an enormous volume of information, since the imposition of sanctions impacts economic, political and other circumstances both in the society of the target state as well as that of the imposing actor. A complex analysis would have to evaluate the impact of sanctions on both sides, their effectiveness or the degree to which they fulfilled their goals, as well as the sanctions' impact on popular, empirical awareness of their legitimacy. In view of the scope of this thesis and the methodological demands of an output legitimacy analysis of EU sanctions, the present analysis limits itself to the input and procedural dimension of legitimacy (which, after all, are not strictly separable). The choice of literature-based research criteria reflects this approach.

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<sup>39</sup> SCHARPF, Fritz W. *Governing in Europe: Effective and Democratic?* Oxford: Oxford University Press, 1999.

<sup>40</sup> Ibid.

<sup>41</sup> SCHMIDT, Vivien. *Democracy and Legitimacy in the European Union*. In *The Oxford Handbook of the European Union*. Oxford: Oxford University Press, 2012.

Autonomous EU sanctions constitute the object or the empirical case to which legitimacy theory is applied, and this leads to questions as to how they should be approached, categorised and how concrete case studies should be selected. The thesis takes as its point of departure a categorisation of sanctions according to their political/legal framework inspired by Portela, who analyses the effectiveness of four groups of autonomous EU sanctions:

- sanctions imposed in the framework of the Common Foreign and Security Policy (CFSP);
- development aid suspensions in the framework of Art. 96 of the Partnership Agreement between the EU and the group of African, Caribbean and Pacific countries (ACP);
- withdrawal of trade preferences agreed under the Generalized System of Preferences (GSP) scheme;
- other sanctions adopted outside of these three regimes, albeit not always reflected in Presidency statements and Council conclusions, which she terms “informal sanctions”.<sup>42</sup>

The first category represents measures that are mostly understood under the term “sanctions”, although they are far from constituting all of the restrictive measures of the EU’s external action. The nature of the other measures conforms to the characteristics of sanctions, even though they may not be officially labelled as such (for instance, sanctions in the ACP framework are called „appropriate measures” in EU parlance). This thesis adopts Portela’s categorization, but in contrast to her research, it focuses on the legitimacy of sanctions instead of their effectiveness.

The purpose of the thesis is to analyse the legitimacy of EU policy related to the adoption and implementation of sanctions against third countries and actors by examining three case studies represented by specific sanctions regimes, each belonging to a different political/legal framework, namely CFSP sanctions, sanctions in the ACP context and informal sanctions. The analytical framework and criteria of input and procedural legitimacy of EU sanctions are worked out, based on theoretical literature,

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<sup>42</sup> PORTELA, Clara. *European Union Sanctions and Foreign Policy: When and why do they work?* London: Routledge, 2010.

and subsequently applied to the three case studies which are analysed in a comparative perspective. At the end, the findings are summarized, compared and discussed.

The research question of this thesis is the following: To what extent are EU sanctions a legitimate tool from the perspective of input and procedural legitimacy? The investigation is based on the idea that the legitimacy of EU sanctions, imposed through different political/legal frameworks, varies. The thesis attempts to substantiate this idea and explain the divergences in the legitimacy of EU sanctions.

### *1.1 Selection of Case Studies*

As stated above, this thesis deals with three types of EU sanctions based on their political/legal framework.

The first case represents sanctions as they are most commonly understood. CFSP sanctions are the type of sanctions that is most discussed and promoted in the media, and this legal framework is often the only way to impose restrictive measures against strong targets.

A suspension of development aid based on the ACP Partnership Agreement is an example of a withdrawal of unilaterally provided benefits, similar to the withdrawal of trade preferences under the GSP scheme. For reasons of this similarity, only ACP framework sanctions have been chosen as a case study. The sanctions mechanism in this context is particularly interesting because of its elaborate procedure, including the institutionalised political dialogue that precedes the very imposition of “appropriate measures” (i.e., sanctions).

Lastly, the special feature of informal sanctions is that they are only politically, not legally binding, and may nevertheless encompass a broad range of instruments. In this way, the EU can informally impose measures outside of the legal framework where they would belong by default, which is remarkable from the legitimacy perspective. It is a category that has long been neglected in research, and is not subject to standard political processes, nor addressed in the EU’s legal terminology.<sup>43</sup> Even though informal sanctions are often announced in Council conclusions, it is difficult to monitor their implementation and management, since they do not fall within the scope of any EU policy. Primary sources related to this category are therefore very limited and the

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<sup>43</sup> Ibid.

thesis relies on secondary literature dealing with informal sanctions which incorporates information obtained in interviews with diplomats and EU officials.

Specific sanctions regimes, meaning measures imposed against one target in a defined time period, are chosen to represent each political/legal framework. Additionally, the selected sanctions regimes react to different types of crises (a military conflict, undemocratic elections, and human rights violations).

The current episode of sanctions against Russia, prompted by the escalation of the conflict in Ukraine in 2014, is selected as an example of CFSP sanctions. Considering the presence of the topic in the media and the sanctions' impact on Russian as well as many European economies, it is a well-documented case. Although the affair is not over yet, this sanctions regime can already be analysed from the perspective of input and procedural legitimacy.

Sanctions, or "appropriate measures" under Article 96 of the Cotonou Agreement are examined on the example of sanctions against Zimbabwe between 2002 and 2014, which were a response to the undemocratic elections and the authoritarian rule of President Mugabe. The process of consultations under Art. 96, preceding the imposition of sanctions, was launched in response to the suppression of the opposition in Zimbabwe that culminated in illegal expropriation of big farms and forced eviction of their owners.

For the analysis of informal sanctions, the case chosen is the controversial arms embargo against China, an anomaly in the EU's sanctions policy, considering that it has been in force since 1989 despite China's intensive lobby efforts for its lifting. Compared with the other two cases, it is indeed a significantly older sanctions regime, imposed in a pre-Maastricht political constellation (at that time, the European Communities). Therefore, it would not prove a suitable case for sanctions under CFSP, which were only established by the Maastricht Treaty in 1993. However, since informal sanctions are not bound to the legal framework of an institutionalised policy, this case is not a major deviation from the other two.

Furthermore, it is important to see sanctions regimes not as static events, but rather as dynamic processes, continuously influenced by various factors, such as positive or negative changes in the target's behaviour, the EU's reaction to these developments, the related political debate and assertions of the member states' interests. The component of sanctions' input legitimacy thus includes, apart from the decision on

the adoption of sanctions, the discussion throughout the period of their imposition and the eventual decision-making on their further extension, modification or repeal. In this case the arms embargo against China is still in force, despite the heated debate and lobbying (for instance, around 2003-2005, the chance that the embargo would be lifted was very real, but the EU decided not to do so for reasons discussed in Chapter 4). This demonstrates how sanctions in general are the subject of decision-making even after they are imposed, and this feature too must be considered from the perspective of legitimacy.

## ***1.2 Methodology and Criteria***

The analysis employs a method of three case studies, each representing one type of EU sanctions. It treats the selected criteria as independent variables, which are assigned one of the values yes/no/partially. The thesis aims to construct a useful analytical framework for analysing the legitimacy of a political measure that may be applied to a wider variety of cases.

Legitimacy may be analysed at two levels, the normative and the empirical. Legitimacy criteria differ across the literature; however, they tend to revolve around values of a similar nature such as democracy, fairness, common beliefs, etc. Although this analysis primarily focuses at normative criteria, the empirical approach, such as that of Schmidtke and Schneider, is certainly worth mentioning. Their methodological scheme is based on two methods that have been used in legitimacy analysis before, public opinion research and analysis of political behaviour, which are complemented with a newer method of political communication analysis that seeks to grasp legitimisation processes and practices through a discursive approach.<sup>44</sup> From a realistic point of view, such an empirical analysis would exceed the scope of this thesis; besides, it is also problematic in terms of the availability of sources. This is why the normative approach has been chosen.

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<sup>44</sup> SCHMIDTKE, Henning, SCHNEIDER, Steffen. *Methoden der empirischen Legitimationsforschung: Legitimität als mehrdimensionales Konzept*. In GEIS, Anna, NULLMEIER, Frank, DAASE, Christopher (eds.) *Der Aufstieg der Legitimitätspolitik. Rechtfertigung und Kritik politisch-ökonomischer Ordnungen* (Leviathan Sonderband 40/27). Baden-Baden: Nomos, 2012.

When it comes to the normative assessment of the legitimacy of EU sanctions, the analysis derives its criteria from the literature, selecting those that represent a crosscut of input and procedural legitimacy criteria and capture aspects which are crucial for the legitimacy of sanctions in particular. Buchanan and Keohane lay out a set of criteria, comprising accountability, transparency, democracy and efficiency.<sup>45</sup> These general conditions relate to the input as well as the procedural dimension of legitimacy, while they require operationalisation according to the concrete object of research. The criterion of efficiency primarily concerns the output dimension, however, for the purposes of this analysis, it will be employed from the perspective of sanctions design (potential of a sanctions regime), in the sense of a choice of appropriate measures and foresight of the probable impact of a set of measures at the stage of policy formulation.

Buchanan and Keohane further outline the following legitimacy standards of an international organisation: minimal moral acceptability, comparative benefit of its members, and institutional integrity.<sup>46</sup> On top of that, an organisation may fulfil these criteria under the condition of the continual consent of democratic states, which is the pillar of its input legitimacy.

Another set of legitimacy criteria relevant for this thesis is that of Beetham, already discussed at the beginning:

- legal validity, or conformity to established rules;
- moral justifiability in terms of shared beliefs;
- legitimation through expressed consent of the party subordinated in the power relation.<sup>47</sup>

Based on the aspects and criteria of legitimacy described above, the following criteria for the legitimacy of EU sanctions have been established, each of them composed of two sub-criteria:

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<sup>45</sup> BUCHANAN, Allen, KEOHANE, Robert O. *The Legitimacy of Global Governance Institutions*. In MEYER, Lukas H. (ed.) *Legitimacy, Justice and Public International Law*. Cambridge: Cambridge University Press, 2009.

<sup>46</sup> BUCHANAN, Allen, KEOHANE, Robert O. *The Legitimacy of Global Governance Institutions*. In *Ethics and International Affairs* 20 (4):405–437, 2006.

<sup>47</sup> BEETHAM, David. *The Legitimation of Power*. Houndmills, Basingstoke, Hampshire; New York: Palgrave Macmillan, 1991.

### *1. Democratic consent of the member states and internal coherence*

Was the imposition of sanctions preceded by a democratic decision at the EU level? Have the member states acted in coordination or have they followed their own interests?

The criterion of democracy has been sufficiently covered in legitimacy research, although it needs to be noted that it cannot be generalised as an absolute condition of legitimacy. The bearer of political power or a political institution in an undemocratic system (e.g., in traditional tribal societies or in a monarchy) may as well enjoy legitimacy that is derived from other sources, such as shared values, traditions, etc. On the other hand, when dealing with political legitimacy in Western societies, it is essential for historical reasons to insist on democracy as a condition for the legitimacy of political decision-making. After all democracy, one of the core values of the EU, is invoked in the process of the EU's own self-legitimation. The interpretation of this criterion at the EU level, however, remains open, as can be seen from the debate on the EU's democratic deficit, over questions such as how „democratic” foreign policy should be (if at all), and to what extent the EU may be viewed either as a state (considering the traditional functions of the state that it took over) or as an international organisation composed of democratic states.

Internal coherence is necessary to substantiate the democratic decision and the legitimacy of the EU, “speaking with one voice”. The analysis will examine the coherence of member states as well as the EU's inter- and intra-institutional coherence.

The two indicators will be labelled “Democratic Consent” and “Internal Coherence”.

### *2. Transparency of the decision-making process and the process of implementation*

Has the decision-making process leading to the imposition of sanctions and connected with their management been transparent? In other words, have the essential matters been known to all stakeholders and to the public, and was the decision on the implementation of the measures reasonably justified and their target clearly defined? Did the target have an opportunity to react, including an option to appeal?

Despite the sensitive nature of foreign policy, transparency is an important aspect of sanction legitimacy. Since sanctions are a major intervention against a third country

or an actor responding to objectionable behaviour on its part, and are often considered an alternative to military intervention and diplomatic negotiations, it is crucial that the measures taken are clearly defined. This concerns the process leading to their implementation, which derives from the respective legal framework, reacts to a specific violation of international law and must therefore be justified. A fair inclusion of the third party in this process is just as important, for example, in the form of political dialogue or of a possibility to appeal to the Court of Justice of the EU (enabled in the CFSP framework after the Lisbon Treaty).

These two sub-criteria will be titled “Visibility, Transparent Communication” and “Fair Design”.

### *3. Efficiency - adequate design of the sanctions regime*

Have the sanctions’ goals been clearly defined? Have the concrete measures been adequately designed, considering the specific situation and the extent of the legal violation to which they react? Has an adequate time frame been set, and have conditions for the lifting of restrictive measures been spelled out?

As mentioned above, the criterion of efficiency normally concerns the output dimension of legitimacy, however, for the purpose of an input and procedural legitimacy analysis, it will be related to the planning and imposition stage of a particular sanctions regime, whose “harshness” and the choice of measures may be tailored to the specific situation. Although it is difficult to predict the sanctions’ impact, they should be realistic in their aims, for instance in terms of the changes they are meant to bring about and the measures to their attainment. Another aspect of EU sanctions that has been criticised is the insufficient or vague formulation of their goals. This indeterminacy offers the EU some space for manoeuvre; however, it is impossible to clearly evaluate the execution of weakly defined demands and thus the effectiveness of such sanctions. In relation to the transparency criterion, the definition of the goals of a political tool constitutes a precondition of its legitimacy, particularly in the case of restrictive measures.

The two indicators related to efficiency will be called “Formulation of Goals and Conditions”, “Efficient Design”.

The three criteria of the analysis of input and procedural legitimacy of EU sanctions are applied to the three case studies of political/legal frameworks of EU sanctions, whose legitimacy is accordingly analysed and compared.

## 2. CASE 1 – CFSP SANCTIONS AGAINST RUSSIA

The current EU sanctions regime against Russia (or, to be more precise, against targeted Russian and Ukrainian subjects) will serve as the first case study for the legitimacy analysis. Its measures have been implemented within the framework of Common Foreign and Security Policy, which is the only institutionalized vehicle for imposing sanctions against strategic, important players. (This can be contrasted with developing countries, where launching a sanctions' mechanism is either a reaction to an ACP Partnership Agreement violation or takes the form of a withdrawal of unilaterally granted benefits.) Compared with other sanctions categories, CFSP sanctions are heterogeneous and flexible instruments, often imposed when no other tools are available.<sup>48</sup> Furthermore, this case has been selected as a type of crisis where restrictive measures are being implemented in a situation of conflict, with an aim to manage and resolve it. The case of Russia is particularly interesting in this regard, as such measures have been traditionally taken against less developed countries. Thus the abovementioned regime is a trial of the EU's abilities and of the instrument of sanctions itself in its current form to tackle a conflict situation by targeting an economically and politically strong international actor.

The EU and the US imposed sanctions on Russian and Ukrainian individuals in response to the annexation of Crimea in March 2014 and to a further escalation of the crisis in Ukraine. The EU imposed the first asset freezes and travel bans after a series of fruitless diplomatic efforts in March 2014 and has repeatedly expanded their scope, combining targeted and wider types of sanctions. The measures taken can be summarized as follows:

### *Targeted restrictive measures*

- Travel restrictions, freezing of funds and economic resources of listed natural and legal persons, entities and bodies. As of 12 May 2016, there are 146 natural persons and 37 entities who are identified as responsible for "actions which undermine or threaten the territorial integrity, sovereignty and

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<sup>48</sup> PORTELA, Clara. *European Union Sanctions and Foreign Policy: When and why do they work?* London: Routledge, 2010.

independence of Ukraine”<sup>49</sup> and are therefore subject to targeted EU sanctions. Further individuals are subject to an asset freeze over their responsibility for “the misappropriation of Ukrainian state funds.”<sup>50</sup>

- Limited access to EU primary and secondary capital markets for selected Russian institutions and companies (“five major Russian majority state-owned financial institutions and their majority-owned subsidiaries established outside of the EU, as well as three major Russian energy and three defense companies”).<sup>51</sup>

#### *Comprehensive restrictive economic measures*

- Sanctions restricting economic exchange and cooperation in specific sectors with Russia: an embargo on arms, related material and dual-use goods, as well as a ban on their import, restrictions on the issuance of and trade in certain financial instruments, curtailed access to sensitive technologies and services exploitable in the oil and gas industry.
- Suspension of the signature of the EIB’s new financing operations in Russia, a reassessment and partial suspension of the implementation of EU-Russia bilateral and regional cooperation programs.<sup>52</sup>
- Sanctions responding to the illegal annexation of Crimea and Sevastopol: a ban on the import of goods from Crimea and Sevastopol, export restrictions in selected key economic sectors (such as an export ban on “equipment for the prospection, exploration and production of oil, gas and mineral resources”),<sup>53</sup> a ban on the provision of tourism services in Crimea, and a full ban on investment in Crimea and Sevastopol.

#### *Diplomatic sanctions*

- G8 summit in Sochi scheduled for June 2014 replaced by G7 meeting, suspension of OECD accession talks with Russia, cancelled EU-Russia summit, and suspension of bilateral summits with Russia.

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<sup>49</sup> Official website of the European Council and the Council of the European Union. *EU restrictive measures in response to the crisis in Ukraine*. 26 April 2016.

<<http://www.consilium.europa.eu/en/policies/sanctions/ukraine-crisis/>> (accessed 12 May 2016).

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> European Union Newsroom. *EU Sanctions against Russia over Ukraine Crisis*.

<[http://europa.eu/newsroom/highlights/special-coverage/eu\\_sanctions/index\\_en.htm](http://europa.eu/newsroom/highlights/special-coverage/eu_sanctions/index_en.htm)> (accessed 25 March 2016);

European Commission. *Restrictive measures (sanctions) in force (Article 215 TFEU)*. 15 January 2016.

<[http://eeas.europa.eu/cfsp/sanctions/docs/measures\\_en.pdf](http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf)> (accessed 25 March 2016)

<sup>53</sup> Ibid.

## 2.1 Criteria

The case study of targeted sanctions aimed at Russian subjects will now be evaluated against the set of normative criteria previously established in the research framework. Each indicator will be analysed through its characteristics and then attributed a value – either “yes”, “no” or “partially” – which will allow a comparison between the three basic criteria and between the three case studies.

### 2.1.1 Democratic consent of the member states and internal coherence

CFSP sanctions are adopted in CFSP Council Decisions, which in most cases require unanimity pursuant to Chapter 2 of Title V of the Treaty on European Union.<sup>54</sup> At the beginning of the adoption procedure, the High Representative of the Union for Foreign Affairs and Security Policy proposes to impose restrictive measures which are further discussed by the following Council preparatory bodies:

- “the Council working party responsible for the geographical region to which the targeted country belongs (for example the Eastern Europe and Central Asia Working Party (COEST) for Ukraine or Belarus; the Mashraq/Maghreb Working Party for Syria, etc.);
- the Foreign Relations Counsellors Working Party (RELEX);
- the Political and Security Committee (PSC);
- the Committee of Permanent Representatives (COREPER II).”<sup>55</sup>

The unanimous Council Decision is then implemented via Council regulation under Article 215 of the Treaty on the Functioning of the European Union,<sup>56</sup> adopted on a joint proposal of the High Representative and the Commission, which is examined by the RELEX working party and then forwarded to COREPER and the Council for

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<sup>54</sup> Official Journal of the European Union. *Consolidated version of the Treaty on European Union*. October 26, 2012. <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012M/TXT&from=EN>> (accessed 10 April 2016).

<sup>55</sup> Official website of the European Council and the Council of the European Union. *Adoption procedure of EU restrictive measures*. 18 October 2015. <<http://www.consilium.europa.eu/en/policies/sanctions/adoption-procedure/>> (accessed 10 April 2016).

<sup>56</sup> Official Journal of the European Union. *Consolidated version of the Treaty on European Union*. October 26, 2012. <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012M/TXT&from=EN>> (accessed 10 April 2016).

adoption.<sup>57</sup> The European Parliament is finally informed that a regulation has been adopted. Two exceptions to this procedure of implementation are arms embargoes and restrictions on admission, which fall under the competence of the member states that are bound to implement the Council Decision. Council Decisions are open to amendment, extension or temporary suspension in response to developments of the particular situation or concessions on the target's part. Before expiry, autonomous restrictive measures are also reviewed by the Council in order to assess whether their duration should be extended.

In the case of the sanctions regime in question, the Council adopted restrictive measures following a joint Statement of the Heads of State or Government of the European Union on Ukraine from 6 March 2014 condemning Russia's military action in Ukraine, calling for an immediate withdrawal of its forces and announcing a decision to impose sanctions should negotiations between the Governments of Ukraine and Russia not lead to any noticeable results.<sup>58</sup> The following Council Decisions and regulations have been issued:

- Council Decision 2014/145/CFSP (OJ L 78, 17 March 2014) concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, containing notice to listed persons/entities bodies, travel restrictions, and asset freezes,<sup>59</sup> amended by 14 subsequent Council Decisions amending the list of persons and entities subject to restrictive measures, the reasons and the criteria for listing;
- Council Regulation (EU) No 269/2014 (OJ L 78, 17 March 2014) concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, containing asset freezes,<sup>60</sup> amended by 18 subsequent Council Regulations amending the list of persons and entities subject to restrictive measures, including separatist groups from the Donbas region, and amending the reasons and the criteria for listing;
- Council Decision 2014/386/CFSP (OJ L 183, 24 June 2014) concerning restrictions on goods originating in Crimea or Sevastopol, in response to the illegal annexation of Crimea and

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<sup>57</sup> Official website of the European Council and the Council of the European Union. *Adoption procedure of EU restrictive measures*. 18 October 2015.

<<http://www.consilium.europa.eu/en/policies/sanctions/adoption-procedure/>> (accessed 10 April 2016).

<sup>58</sup> Official website of the European Council and the Council of the European Union. *Statement of the Heads of State or Government on Ukraine*. Brussels, 6 March 2014.

<<http://www.consilium.europa.eu/en/meetings/european-council/2014/03/06/>> (accessed 10 April 2016).

<sup>59</sup> Official Journal of the European Union. *Council Decision 2014/145/CFSP (OJ L 78, 17 March 2014)*. <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2014:078:0016:0021:EN:PDF>> (accessed 10 April 2016).

<sup>60</sup> Official Journal of the European Union. *Council Regulation (EU) No 269/2014 (OJ L 78, 17 March 2014)*. <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2014:078:0006:0015:EN:PDF>> (accessed 10 April 2016).

Sevastopol,<sup>61</sup> amended by 2 Council Decisions implementing further restrictive measures related to finance, goods, tourism and infrastructure;

- Council Decision 2014/512/CFSP (OJ L 229, 31 July 2014) concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine,<sup>62</sup> containing prohibition on certain financial transactions with Russian institutions, and prohibition on exporting arms to Russia, with 5 subsequent amendments, expanding the list of banned entities and extending the date of expiration to 31 July 2016;
- Council Regulation (EU) No 833/2014 (OJ L 229, 31 July 2014) adopting restrictions on trade in dual-use goods and technology, trade with regard to oil technologies, and on access to European capital markets for certain Russian financial institutions,<sup>63</sup> with 3 amendments clarifying the decision's provisions, expanding the restrictions, amending the exemptions and exceptions to the sanctions and updating their listings.

The criterion of democratic consent will be deemed to have been fulfilled, considering the above-described procedure for the adoption of decisions and regulations on EU sanctions against Russian subjects in 2014-2016, and the unanimity of the representatives of the member states' governments, acting in accordance with the legal basis for decision-making in the Council concerning CFSP.

EU democratic deficit proponents may indeed argue that democratic decision would require examination of the drafted act by national parliaments (as is often the rule, in cases that are not urgent)<sup>64</sup> or inclusion of the European Parliament in the process. However, as discussed in the theoretical foundation of this thesis, the EU has taken on several functions traditionally associated with the nation state, and foreign policy is a prominent example. In this regard, and considering the nature of foreign policy decision-making, the criterion of democracy has shifted to the Council level as an institution that gathers representatives of member states, with a legitimate mandate to take decisions on common issues and thus capable of an efficient and prompt reaction. This thesis takes an ideological stance on the EU as a governance or a system of

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<sup>61</sup> Official Journal of the European Union. *Council Decision 2014/386/CFSP (OJ L 183, 24 June 2014)*. <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014D0386&from=EN>> (accessed 10 April 2016).

<sup>62</sup> Official Journal of the European Union. *Council Decision 2014/512/CFSP (OJ L 229, 31 July 2014)*. <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014D0512&from=EN>> (accessed 10 April 2016).

<sup>63</sup> Official Journal of the European Union. *Council Regulation (EU) No 833/2014 (OJ L 229, 31 July 2014)*. <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0833&from=EN>> (accessed 10 April 2016).

<sup>64</sup> Official website of the European Council and the Council of the European Union. *Voting System*. 4 November 2015. <<http://www.consilium.europa.eu/en/council-eu/voting-system/>> (accessed 10 April 2016).

national democracies in Moravcsik's sense,<sup>65</sup> and considers unanimous decision by the Council to be fully satisfactory for the criterion of democratic consent.

Coming to the second aspect, internal coherence, we will have to look beyond the decision-making process. A further criterion for the assessment of the democratic legitimacy of sanctions derives from the internal coherence of sanctions management, involving coherence in strategy and consent among EU member states. This need has remained partly unfulfilled, with pro-Russian voices coming from several member states. Among the loudest critics of Russian sanctions are Hungarian Prime Minister Viktor Orbán, Czech President Miloš Zeman, Slovak Prime Minister Robert Fico, and Greek Prime Minister Alexis Tsipras, who have repeatedly criticized the measures as inefficient and harmful for European economies.<sup>66</sup> These claims, however, need to be reconsidered in the light of these politicians' political affiliations and especially with regard to the economic interests of the countries they represent. Central European states are heavily dependent on energy imports and trade with Russia, while the Greek PM's most vocal criticism came in the time of the approaching deadline for the repayment of Greece's loan to the International Monetary Fund and subsequent speculations about possible financial aid from Russia.<sup>67</sup>

More recently, Marcus Pretzell, member of the European Parliament from the German right-wing populist party Alternative for Germany (AfD), claimed at an event in Yalta hosted by the Russian government that AfD represents "not only a threat to the Ukrainian government, but also to the German government" and supported the immediate lifting of sanctions.<sup>68</sup> AfD has been known for its ties with Russia, together

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<sup>65</sup> MORAVCSIK, Andrew. *In Defence of the „Democratic Deficit“: Reassessing Legitimacy in the European Union*. JCMS 2002 Volume 40. Number 4. pp. 603-24.

<sup>66</sup> SZAKACS, Gergely. *Europe "shot itself in foot" with Russia sanctions: Hungary PM*. Reuters, 15 August 2014. <<http://www.reuters.com/article/us-ukraine-crisis-sanctions-hungary-idUSKBN0GF0ES20140815>> (accessed 10 April, 2016);

ČTK (Czech News Agency). *Unie by mohla ještě letos zrušit sankce proti Rusku, řekl Zeman v Moskvě*. iDNES.cz, 10 May 2015.

<<http://zpravy.idnes.cz/zeman-sankce-rusko-rozhovor-dg2->

[/zahranicni.aspx?c=A150510\\_092019\\_zahranicni\\_skr](http://zpravy.idnes.cz/zeman-sankce-rusko-rozhovor-dg2-/zahranicni.aspx?c=A150510_092019_zahranicni_skr)> (accessed 10 April, 2016);

WALKER, Shaun. *Alexis Tsipras in Moscow asks Europe to end sanctions against Russia*. The Guardian, 8 April 2015. <<http://www.theguardian.com/world/2015/apr/08/alexis-tsipras-in-moscow-asks-europe-to-end-sanctions-against-russia>> (accessed 10 April, 2016).

<sup>67</sup> SMITH, Helena, LUHN, Alec. *Alexis Tsipras flies to Moscow amid speculation of bailout from Putin*. The Guardian, 8 April 2015. <<http://www.theguardian.com/world/2015/apr/07/alexis-tsipras-flies-to-moscow-speculation-greek-bailout-vladimir-putin>> (accessed 10 April, 2016).

<sup>68</sup> AMANN, Melanie, LOKSHIN, Pavel. *Moscow's Fifth Column: German Populists Forge Ties with Russia*. Der Spiegel, 27 April 2016. <<http://www.spiegel.de/international/germany/german-populists-forge-deeper-ties-with-russia-a-1089562.html>> (accessed 30 April, 2016).

with other European right-wing populist parties such as Front National in France and the Freedom Party of Austria (FPÖ). However, similar anti-sanctions moods are not merely present on the extreme right, as demonstrated by the (non-binding) resolution calling for the lifting of Russian sanctions which was passed in the French National Assembly on 28 April 2016, largely by the votes of the French centre-right Les Républicains party (led by Nicolas Sarkozy, whose warm relations with Russia and Putin have themselves sparked controversy).<sup>69</sup> The key arguments against the measures used in the debate have been their alleged ineffectiveness, the harm caused to European economies and appeals to the need for partnership with Russia in the fight against Daesh.<sup>70</sup>

Apart from the politicians' pronouncements, numerous entities in the private sector have lobbied against sanctions in order to protect their business ties, notably the Chairman of the Board of Executive Directors of BASF, Kurt Bock, the CEO of Siemens, Joe Kaeser, or the late CEO of Total, Christophe de Margerie.<sup>71</sup>

Not only is it more difficult to formulate and implement any policies when so many stakeholders are involved, but the differences in national as well as private interests have been particularly manifest in the debate on the sanctions' imposition and management. Despite the democratic consent of the Council as the legislative body of the EU, member states and private stakeholders have lacked coordination and a common aim to such an extent that the issue of sanctions and the different opinions have become a "bone of contention" within the EU and one of the most controversial topics in the media. For these reasons, the EU's sanctions policy towards Russia will be considered not sufficiently compliant with the criterion of internal coherence.

On the other hand, as de Galbert aptly comments on loud political statements: "Although such frustrations led to bitter public statements, they rarely resulted in formal positions opposing sanctions in Brussels when the issue came to the EU agenda. Therefore, they could be read as attempts to sit on the fence, sending friendly messages

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<sup>69</sup> MAURICE, Eric. *French MPs call to lift Russia sanctions*. EU Observer, 29 April 2016. <<https://euobserver.com/foreign/133271>> (accessed 30 April, 2016).

<sup>70</sup> Ibid.

<sup>71</sup> NEUERER, Dietmar. *Keine Bedenken aus der CDU: BASF-Chef kritisiert Sanktionen gegen Russland*. Handelsblatt. <<http://www.handelsblatt.com/politik/deutschland/keine-bedenken-aus-der-cdu-basf-chef-kritisiert-sanktionen-gegen-russland/9761814-2.html>> (accessed 10 April, 2016); The Wall Street Journal. *Total CEO Christophe de Margerie's Speech About Russian Sanctions*. 21 October 2014. <<http://blogs.wsj.com/corporate-intelligence/2014/10/21/total-ceo-christophe-de-margeries-speech-about-russian-sanctions/>> (accessed 10 April, 2016).

to Russia, with which serious economic interests and ties must be protected, without jeopardizing European unity at the end of the day. It should therefore not come as a surprise that the decision taken in June 2015 to extend European sanctions until January 2016 did not even require a debate among EU foreign ministers.”<sup>72</sup>

Therefore, taken together, according to the criterion of democracy the sanctions regime in question will be evaluated as “partially legitimate”.

### **2.1.2 Transparency of the decision-making process and the process of implementation**

Several EU sanctions regimes have faced criticism in the past regarding the vague formulation of their objectives. Even if such ambiguities allowed EU sanctions to be to a certain degree flexible, the transparency criterion would not be satisfied if this were the case. Furthermore, it complicates analysing their effectiveness and assessing whether conditions for their lifting have been met, since it is difficult to determine whether goals have been (or could be) achieved when there are no (or only very general) goals spelled out in the first place. The issue of a clear indication of the sanctions’ goals will be further tackled below in connection with criterion no. 3, “Efficiency - adequate design of the sanctions regime”, though it is equally relevant for the criterion of transparency.

In brief, taken together with statements of EU politicians and the discourse in the media, particularly in the decision-making process leading to the extension of sanctions in June 2015, December 2015 and March 2016, an improvement has been observed and more concrete goals have been communicated. The feature of the sanctions’ clarity therefore needs to be reassessed against the former criticism considering the current shape of this instrument. Being an important and increasingly often employed tool of foreign policy, sanctions have become a more developed and nuanced mechanism, taking firm root in EU legislation.

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<sup>72</sup> DE GALBERT, Simond. *A Year of Sanctions against Russia – Now What? A European Assessment of the Outcome and Future of Russia Sanctions*. Center for Strategic and International Studies, A Report of the CSIS Europe Program, October 2015. p. 15.  
<[http://csis.org/files/publication/150929\\_deGalbert\\_SanctionsRussia\\_Web.pdf](http://csis.org/files/publication/150929_deGalbert_SanctionsRussia_Web.pdf)> (accessed 13 April 2016).

Related communications on EU Newsroom<sup>73</sup> and on the webpage of the Council of the EU (which now contains relatively abundant information on the functioning of EU sanctions in general, and EU sanctions in response to the crisis in Ukraine in particular, including even a timeline overview of the key decisions of this sanctions regime)<sup>74</sup> also significantly improved during the past one or two years. Official EU sources aim to present clear and concise information on the topic accessible to the broad public, which substantiates the EU's endeavour to put sanctions among the priorities of its communication agenda, acknowledging their significance as a political instrument.

The availability of information on EU sanctions has fundamentally improved since the outbreak of the crisis in Ukraine. Official EU sources have devoted more space to the topic and immense attention has been paid to it by the media. Unsurprisingly, this interest has been provoked by the economic and political significance of the measures for EU member states, Russia ranking as the EU's third trading partner,<sup>75</sup> as well as the geographic proximity of the events to which the sanctions regime reacted. In contrast to military action which demands enormous political costs, sanctions are a coercive measure designed to make a more palpable impact than diplomatic dialogue. Furthermore, the effects of sanctions are foreseeable in the medium- to long-term and their purpose may just as well be preventive, which might be particularly relevant in tackling conflict at the EU's Eastern borders, where the restrictive measures "are designed to curb further Russian aggression in Ukraine or in other post-Soviet states in the future."<sup>76</sup>

Increased attention has made more information accessible to a broader audience, enabling the public to closely follow the course of the sanctions regime, and thus enhancing the transparency of the imposition and management of restrictive measures. In this regard, for instance, the campaign for increased transparency in the Russian sanctions regime led by the Open Dialogue Foundation, which addressed the Ministries

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<sup>73</sup> European Union Newsroom. *EU Sanctions against Russia over Ukraine Crisis*.

<[http://europa.eu/newsroom/highlights/special-coverage/eu\\_sanctions\\_en](http://europa.eu/newsroom/highlights/special-coverage/eu_sanctions_en)> (accessed 25 March 2016).

<sup>74</sup> Official website of the European Council and the Council of the European Union. *EU restrictive measures in response to the crisis in Ukraine*. 26 April 2016.

<<http://www.consilium.europa.eu/en/policies/sanctions/ukraine-crisis>> (accessed 28 April 2016).

<sup>75</sup> SZCZEPAŃSKI, Marcin. *Economic impact on the EU of sanctions over Ukraine conflict*. European Parliament, European Parliamentary Research Service, October 2015.

<[http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/569020/EPRS\\_BRI\(2015\)569020\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/569020/EPRS_BRI(2015)569020_EN.pdf)> (accessed 30 April 2016).

<sup>76</sup> DREYER, Iana, POPESCU, Nicu. *Do sanctions against Russia work?* European Union Institute for Security Studies, December 2014.

<[http://www.iss.europa.eu/uploads/media/Brief\\_35\\_Russia\\_sanctions.pdf](http://www.iss.europa.eu/uploads/media/Brief_35_Russia_sanctions.pdf)> (accessed 30 April 2016).

of Foreign Affairs of the member states and MEPs, and asked for a creation of a joint EU information platform with regular updates on sanctions implementation on the EEAS or Council webpages, may have contributed to the significant improvement of the EU's communication on sanctions via its channels.<sup>77</sup>

Due to the improvement in policy formulation considering the clarity of sanctions' goals and the availability of information, the criterion of transparency of the decision-making process and the process of implementation will be considered fulfilled. In addition, there are two more factors contributing to the transparency of the current sanctions against Russia that need to be taken into account: the review process of Council Decisions by relevant Council preparatory bodies (as outlined at the beginning of this chapter), and the targeted actors' right to appeal to the Court of Justice of the European Union. This option has been introduced as a feature of CFSP sanctions since the Lisbon Treaty, as a means to include the sanctions' targets in the policy implementation process and thus enhance its transparency and "fairness":

**Article 275**

*"The Court of Justice of the European Union shall not have jurisdiction with respect to the provisions relating to the common foreign and security policy nor with respect to acts adopted on the basis of those provisions. However, the Court shall have jurisdiction to monitor compliance with Article 40 of the Treaty on European Union and to rule on proceedings, brought in accordance with the conditions laid down in the fourth paragraph of Article 263 of this Treaty, reviewing the legality of decisions providing for restrictive measures against natural or legal persons adopted by the Council on the basis of Chapter 2 of Title V of the Treaty on European Union."*<sup>78</sup>

Appeals with the Court of Justice have already been lodged by the Russian banks Sberbank, Vnesheconombank (VEB) and the state-controlled oil company Rosneft, who have been subject to EU restrictive measures and demand that they be lifted (with no ruling issued yet).<sup>79</sup>

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<sup>77</sup> KOJ, Anna. *Open Dialog calls on the EU Member States to be more transparent on the implementation of sanctions against Russia*. The Open Dialog Foundation, 22 July 2015. <<http://en.odfoundation.eu/a/6710,open-dialog-calls-on-the-eu-member-states-to-be-more-transparent-on-the-implementation-of-sanctions-against-russia>> (accessed 15 April 2016).

<sup>78</sup> Official Journal of the European Union. *Consolidated Version of the Treaty on the Functioning of the European Union*. 26 October 2012. <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>> (accessed 10 April 2016).

<sup>79</sup> SHARMA, Ankush. *Russia challenges European Council sanctions -Financial Times*. Reuters, 16 October 2014. <<http://www.reuters.com/article/russia-sanctions-lega-idUSL3N0SB6EA20141016>> (accessed 10 April 2016);

### 2.1.3 Efficiency - adequate design of the sanctions regime

A clear justification of the imposition of sanctions and their goals is a prerequisite for their justifiable and legitimate imposition on selected individuals and subjects. Furthermore, it is a prerequisite for evaluating their efficiency after some time has elapsed since their imposition. This condition is also stipulated in the Annex to the TEU and TFEU (Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon):

***“25. Declaration on Articles 75 and 215 of the Treaty on the Functioning of the European Union***

*The Conference recalls that the respect for fundamental rights and freedoms implies, in particular, that proper attention is given to the protection and observance of the due process rights of the individuals or entities concerned. For this purpose and in order to guarantee a thorough judicial review of decisions subjecting an individual or entity to restrictive measures, such decisions must be based on clear and distinct criteria. These criteria should be tailored to the specifics of each restrictive measure.”<sup>80</sup>*

Similarly, “Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy”, agreed to in 2005, provide the following objectives when addressing the issue of sanctions’ efficiency:

*“5. The objective of each measure should be clearly stated and consistent with the Union’s overall strategy in the area concerned. Both the overall strategy and the specific objective should be recalled in the introductory paragraphs of the Council legal instrument through which the measure is imposed. The restrictive measures do not have an economic motivation.”<sup>81</sup>*

They also call for the regular assessment of the efficiency of sanctions, responsiveness in light of positive developments and the exchange of information between member states in order to enhance the effective monitoring of a sanctions regime. Furthermore, “EU Best Practices for the effective implementation of restrictive

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TADEO, Maria. *Russia’s Sberbank launches legal challenge against EU over Ukraine sanctions*. 24 October 2014. <<http://www.independent.co.uk/news/business/news/russias-sberbank-launches-legal-challenge-against-eu-over-ukraine-sanctions-9816280.html>> (accessed 10 April 2016).

<sup>80</sup> Official Journal of the European Union. *Consolidated version of the Treaty on European Union*. 26 October 2012. <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012M/TXT&from=EN>> (accessed 10 April 2016).

<sup>81</sup> Council of the European Union. *Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy – new elements*. 30.4.2013. <<http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%209068%202013%20INIT>> (accessed 3 May 2015).

measures” adopted in 2003 (updated in June 2015) seek to provide detailed guidance and recommendations in this respect.<sup>82</sup>

Particularly the first rounds of the sanctions regime in question have been criticized for not having had clear goals and purposes. This critique was not merely aimed at the general formulation of the policy, but also at the different views of EU member states regarding the purpose of sanctions. As discussed by Ivan in March 2014: “If some member states see the purpose to be the withdrawal of Russian forces back to their bases and the return of Crimea to Ukraine, others seem to believe that Crimea is already lost and that economic (stage three) sanctions should only be imposed if Russia intervenes in Eastern Ukraine. This latter view seems to be shared by a majority of member states, as proven by the most recent European Council decisions. Moreover, the exact trigger for stage three sanctions is also not clear, as Russian intervention in Eastern Ukraine can take diverse covert and overt forms.”<sup>83</sup>

However, in the later stages of the crisis, improvements have been made to the formulation of goals and more concrete demands have been put forward. More recent EU decisions on the imposition of sanctions have been clear about their aims, reasons for imposition and about conditions for their lifting. The conclusions of the European Council from 26/27 June 2014 call for the implementation of a peace plan and strongly urge “the Russian Federation to actively use its influence over the illegally armed groups and to stop the flow of weapons and militants across the border, in order to achieve rapid and tangible results in de-escalation.”<sup>84</sup> They also set out the following demands, to be fulfilled if the adoption of a new package of economic sanctions against Russia is to be avoided:

*“33. The European Council recalls that the European Commission, the EEAS and the Member States have been undertaking preparatory work on targeted measures, as it requested in March, so that further steps can be taken without delay. In that respect, the European Council expects that by Monday 30 June the following steps will have been taken:*

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<sup>82</sup> Council of the European Union. *EU Best Practices for the effective implementation of restrictive measures*. 24 June 2015. <<http://data.consilium.europa.eu/doc/document/ST-10254-2015-INIT/en/pdf>> (accessed 20 March 2016).

<sup>83</sup> IVAN, Paul. *EU's sanctions against Russia – The need for clear goals: Comments on the 20-21 March Council*. European Policy Centre, 21 March 2014. p. 1-2. <[http://www.epc.eu/documents/uploads/pub\\_4285\\_eu\\_s\\_sanctions\\_against\\_russia.pdf](http://www.epc.eu/documents/uploads/pub_4285_eu_s_sanctions_against_russia.pdf)> (accessed 15 May 2015).

<sup>84</sup> European Council, General Secretariat of the Council. *Conclusions of the European Council (26/27 June 2014)*. p. 12. <<http://www.consilium.europa.eu/en/press/press-releases/2014/06/pdf/EUROPEAN-COUNCIL-2627-JUNE-2014---CONCLUSIONS/>> (accessed 10 April 2016).

- *agreement on a verification mechanism, monitored by the OSCE, for the cease-fire and for the effective control of the border;*
- *return to the Ukrainian authorities of the three border checkpoints (Izvarino, Dolzhanskiy, Krasnopartizansk);*
- *release of hostages including all of the OSCE observers;*
- *launch of substantial negotiations on the implementation of President Poroshenko's peace plan.*<sup>85</sup>

Because these conditions were not complied with, the Council adopted additional restrictive measures by Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine, supporting them with the following reasoning:

*“(5) On 22 July, the Council urged the Russian Federation to actively use its influence over the illegally armed groups in order to achieve full, immediate, safe and secure access to the site of the downing of Malaysian Airlines Flight MH17 in Donetsk, full cooperation with the work on recovering remains and possessions and full cooperation with the independent investigation, including unhindered access to the site for as long as needed for the investigation and possible follow up investigations.*

*(6) The Council also urged Russia to stop the increasing flow of weapons, equipment and militants across the border in order to achieve rapid and tangible results in de-escalation. The Council further urged Russia to withdraw its additional troops from the border area.”<sup>86</sup>*

The European Council repeatedly extended the duration of these restrictive measures and made their lifting contingent on the full implementation of the Minsk agreements in March 2015.<sup>87</sup> The original and unsuccessful Minsk agreement was replaced by Minsk II, which was negotiated by the leaders of Russia, Ukraine, Germany and France, and signed on 11 February 2015, announcing immediate and full ceasefire from 15 February 2015.<sup>88</sup> Apart from the ceasefire, Minsk II dictates further steps to be accomplished, including the withdrawal of heavy weapons and troops, the release of all hostages, full control for Ukraine of its border with Russia, humanitarian and

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<sup>85</sup> Ibid.

<sup>86</sup> Official Journal of the European Union. *Council Decision 2014/512/CFSP (OJ L 229, 31 July 2014)*. <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014D0512&from=EN>> (accessed 10 April 2016).

<sup>87</sup> Official website of the European Council and the Council of the European Union. *EU restrictive measures in response to the crisis in Ukraine*. 26 April 2016. <<http://www.consilium.europa.eu/en/policies/sanctions/ukraine-crisis>> (accessed 28 April 2016).

<sup>88</sup> BBC News. *Ukraine crisis: Leaders agree peace roadmap*. BBC, 12 February 2015. <<http://www.bbc.com/news/world-europe-31435812>> (accessed 15 April 2016).

development aid for the Donetsk/Luhansk region, and political dialogue and constitutional reform in Ukraine.<sup>89</sup> Although these goals have not been fully achieved by now, the conditions under which EU sanctions will be lifted remain clearly set out, with member states jointly insisting on their full realisation.<sup>90</sup>

In relation to the sanctions against Russia and Ukrainian separatists, the EU has sought to address the issue of effective implementation and monitoring of sanctions by Council Decision in July 2014 to set up an EU Sanctions Mechanism within the framework of the RELEX working party “to optimize consistency in the application and monitoring of EU restrictive measures.”<sup>91</sup> Its target is to promote legal certainty and improve “information sharing, coordination and effectiveness of Member States, the Council, the Commission and the European External Action Service (EEAS) work in the field of implementation, outreach and monitoring of EU restrictive measures, within their respective institutional roles.”<sup>92</sup>

From the point of view of efficiency and transparency, the sanctions in question are legitimate considering their design and clearly formulated conditions. It might not have always been the case, but this specific aspect of legitimacy has improved throughout the period of the sanctions’ imposition, demonstrating a process of policy learning.

Current sanctions against Russia are considered one of the harshest sanctions regimes to have been implemented since the end of the Cold War.<sup>93</sup> Their objectives have been twofold: to coerce Russia through inflicting economic harm to de-escalate the crisis, cease military support and other destabilizing activities in Ukraine; and to signal and reflect on human rights violations and the use of force against the territorial

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<sup>89</sup> The Telegraph. *Minsk agreement on Ukraine crisis: text in full*. The Telegraph, 12 February 2015. <<http://www.telegraph.co.uk/news/worldnews/europe/ukraine/11408266/Minsk-agreement-on-Ukraine-crisis-text-in-full.html>> (accessed 15 April 2016).

<sup>90</sup> NORMAN, Laurence. *EU Foreign Ministers Skirmish over Russia Sanctions*. The Wall Street Journal, 14 March 2016. <<http://blogs.wsj.com/brussels/2016/03/14/eu-foreign-ministers-skirmish-over-russia-sanctions/>> (accessed 15 April 2016).

<sup>91</sup> Council of the European Union. *EU Sanctions Mechanism to optimize consistency in the application and monitoring of EU restrictive measures*. 9 September 2014. <<http://www.statewatch.org/news/2014/sep/eu-council-eeas-sanctions-12977-14.pdf>> (accessed 15 May 2016).

<sup>92</sup> Ibid.

<sup>93</sup> KATAKEY, Rakteem. *Crimea Crisis Pushes Russian Energy to China from Europe*. Bloomberg, 25 March 2014. <<http://www.bloomberg.com/news/articles/2014-03-25/russian-oil-seen-heading-east-not-west-in-crimea-spat>> (accessed 15 April 2016).

integrity of Ukraine.<sup>94</sup> So far, sanctions have had a severe impact on the Russian economy: loss of investor confidence contributed to a decline in the value of the Russian ruble and, coupled with falling oil prices, led to the collapse of the ruble and a serious financial crisis in Russia. In January 2015, Standard & Poor's cut Russia's sovereign credit rating to "junk status", from BBB- to BB+.<sup>95</sup> And finally, Russian GDP fell by -3.75% in 2015 and a further decline by -1.85% is estimated for 2016, a significant drop in comparison with 2014's mild growth of 0.75%.<sup>96</sup>

Besides economic injury, the element of the target's international prestige is a powerful factor to consider when designing a sanctions regime. Such informal or diplomatic sanctions are potentially effective, however, only if the target cares about its prestige to such an extent that it is motivated to implement the required reforms or change its behaviour. This can be the case with small or emerging states, eager to convey a positive international (as well as domestic) image, or greater powers that seek to legitimate themselves through their good relations with the EU (such as China, which has been lobbying for the withdrawal of the EU arms embargo for years). At the moment, it does not seem that Russia would fall into this category; on the contrary, the state-run propaganda mechanism actively uses the EU as an anti-model. The sanctions imposed on Russia fit well with this perception, and are often used to create falsifying narratives by means of which Russia itself is legitimized. Therefore, economic sanctions that have a determinate negative economic effect are a logical prerequisite for effective sanctions design in the case of Russia.

Furthermore, irrespective of the nature of sanctions - whether economic or non-economic - the measures taken and the means used must be fine-tuned to specific economic, political, social, geographical, cultural and historical contexts and to the type of target (e.g. large, small state, non-state entities, individuals, etc.). To put it another way, even with targets of a similar nature different measures may and need to be imposed.

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<sup>94</sup> HORVATHY, Balazs, NYIRCSÁK, Adrienn. *EU-Russia Sanctions War. Part I: The legal framework*. Hungarian Academy of Sciences, Centre for Social Sciences, 2 October 2014. <<http://hpops.tk.mta.hu/en/blog/2014/10/eu-russiasanctions-war-part-i-the-legal-framework>> (accessed 15 May 2015).

<sup>95</sup> GROVE, Thomas, KORSUNSKAYA, Darya. *S&P downgrades Russia's sovereign credit rating to 'junk'*. Reuters, 27 January 2015. <<http://in.reuters.com/article/2015/01/26/us-russia-rating-downgrade-idINKBN0KZ25920150126>> (accessed 15 May 2015).

<sup>96</sup> International Monetary Fund. World Economic Outlook Database, April 2016. <<http://www.imf.org/external/pubs/ft/weo/2016/01/index.htm>> (accessed 15 April 2016).

Classical sanctions theory (Galtung's formulation of the "naïve theory")<sup>97</sup> relies on the existence of a "societal transmission belt". It is a line that, when crossed in consequence of foreign pressure, will cause the destabilization of the troublesome political regime from the inside and thus its change. However, its possible operation presupposes the existence of certain features, such as a democratic regime or the existence of relevant opposition groups. Furthermore, according to Galtung, the naïve theory neglects the capacity of the target state's society to adapt to value-deprivation and "life under hardship" in both psychological and economic terms. New conditions may in fact even induce political integration rather than fragmentation. I would argue that these aspects appear to be particularly relevant in the Russian case, considering its history, which is replete with suppression and economic hardship. Apart from historical and cultural factors, the powerful propaganda, reflected by Putin's popularity hitting 85%,<sup>98</sup> unifies a vast majority of Russian society. Comprehensive sanctions would thus not bring about proportionate political concessions through the economic injury suffered by the population, not in the short run at least.

As mentioned above, the EU's strategy consists in deploying a range of measures, including targeted sanctions, which aim on important fields, companies and persons. Targeting is not an easy process, but it is crucial in the formulation stage of sanctions policy and there is no consensus as to whether this set of measures has been adequately tailored. The EU has been criticized for abandoning trade measures in favour of too much targeting (i.e., placing too much emphasis on individual measures and arms embargoes), which avoids conflicts with industries and minimizes humanitarian impact, but also jeopardizes the EU's position. Based on my reasoning above and according to the opinion of analysts, one way to increase the efficacy of the present sanctions regime would be to focus more on refined restrictive measures to target businesses owned by Russian oligarchs close to Putin,<sup>99</sup> as their economic power is a decisive factor in sustaining Putin's regime. That is what the EU has been trying to achieve, although

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<sup>97</sup> GALTUNG, J. *On the Effects of International Economic Sanctions, With Examples from the Case of Rhodesia*. In *World Politics* 19, April 1967, pp 378-416.

<sup>98</sup> TSVETKOVA, Maria, ANIN, Roman, Reuters. *'We are hardly surviving': As oil and the ruble drop, ordinary Russians face growing list of problems*. *Financial Post*, 1 January 2015. <<http://business.financialpost.com/news/economy/we-are-hardly-surviving-as-oil-and-the-ruble-drop-ordinary-russians-face-growing-list-of-problems>> (accessed 15 May 2015).

<sup>99</sup> LAIN, Sarah. [interview] In LYNCH, D. *Ukraine Crisis: EU Hints At New Sanctions On Russia, But Effectiveness Questioned*. *International Business Times*, 18 February 2015. <<http://www.ibtimes.com/ukraine-crisis-eu-hints-new-sanctions-russia-effectiveness-questioned-1820662>> (accessed 15 April 2016).

probably not convincingly enough. But again, to exert a serious economic impact on big businesses is time-consuming and the results of such measures will only become visible over a longer period of time. For now, it has been suggested that despite the fact that sanctions have clearly had an effect on the Russian economy, they are of little consequence in affecting Russia's actions in Ukraine but still influence its tactics.<sup>100</sup>

As already discussed, an efficiency analysis would require a very complex dataset and is not fully conceivable yet. This thesis focuses on the input and procedural level of legitimacy, concentrating on the stage of decision-making, policy drafting and implementation, and analyses efficiency for the purpose of legitimacy assessment. To put it simply: Do EU sanctions against Russia have the potential to be efficient? Backed by the evidence provided in this section, the answer is “yes, but”. The sanctions regime is not ideal, but since its beginning it has taken into account important economic and political considerations, and even more importantly, has demonstrated a learning curve, with efficiency already observable at some points. Therefore, considering the efficiency of the sanctions' design, or in other words, if we are to evaluate in a certain simplified manner whether the measures taken have been adequate and well-targeted in the specific context, it seems that sanctions against Russia have been partly efficient in the stages of policy drafting and implementation.

Taken together, while sanctions were legitimate in terms of the formulation of their goals and conditions and only “partially legitimate” based on the indicator of efficient sanctions design, they will be evaluated as “legitimate” according to criterion no. 3.

The following table provides an overview of the analysed criteria in the case of CFSP sanctions against Russia.

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<sup>100</sup> DE GALBERT, Simond. *A Year of Sanctions against Russia – Now What? A European Assessment of the Outcome and Future of Russia Sanctions*. Center for Strategic and International Studies, A Report of the CSIS Europe Program, October 2015.  
<[http://csis.org/files/publication/150929\\_deGalbert\\_SanctionsRussia\\_Web.pdf](http://csis.org/files/publication/150929_deGalbert_SanctionsRussia_Web.pdf)> (accessed 13 April 2016).

Criterion	Indicator 1	Indicator 2	Outcome
1. DEMOCRACY	Democratic Consent	Internal Coherence	partially
	yes	no	
2. TRANSPARENCY	Visibility, Transparent Communication	Fair Design	yes
	yes	yes	
3. EFFICIENCY	Formulation of Goals and Conditions	Sanctions Design	yes
	yes	partially	
LEGITIMACY			yes

Table 1: Legitimacy criteria evaluation, Case 1 – CFSP sanctions against Russia

### 3. CASE 2 – AID SUSPENSIONS IN THE ACP PARTNERSHIP CONTEXT, THE CASE OF ZIMBABWE

The suspension of development aid in the context of the Partnership Agreement between the EU and the ACP (African-Caribbean-Pacific) Group of States will be examined as the second case study of EU sanctions. Even though they are not referred to as “sanctions” in EU parlance nor treated as such in the mainstream sanctions debate,<sup>101</sup> development aid suspensions foreseen in the Cotonou Agreement are coercive measures of an economic nature with political aims, and therefore fulfil the characteristics of sanctions in their substance. They are a crucial component of the “appropriate measures” designated under Article 96 of the Cotonou Agreement, whose purpose is to respond to violations of human rights, democracy and the rule of law should such incidents occur in the signatory states of the ACP Agreement. Aid suspensions are based on the principle of political conditionality – the EU aims to coerce the target to comply with the human rights and democracy clause by withdrawing unilaterally granted benefits (aid and trade preferences).

Sanctions, or “appropriate measures” under Article 96 will be analysed by examining the case of measures imposed on Zimbabwe between 2002 and 2014, in reaction to undemocratic elections and the authoritarian rule of President Robert Mugabe. The process of consultations under Art. 96, preceding the imposition of sanctions, was launched in response to the suppression of the opposition in Zimbabwe, which culminated in illegal expropriation of big farms and forced eviction of their owners.

Given the design and objectives of the ACP Partnership Agreement, this case represents a sanctions tool from the EU’s repertoire which targets a developing country dependent on foreign aid, i.e. a very different kind of player than Russia in the previous chapter or China in the next one. On the other hand, the case of Zimbabwe bears certain similarities to both. Development aid suspensions were employed in a similar context to that of the arms embargo against China, in response to a comparable “type of crisis”, a particular case of suppression of human and civil rights, and in order to promote

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<sup>101</sup> PORTELA, Clara. *European Union Sanctions and Foreign Policy: When and why do they work?* London: Routledge, 2010. p. 127.

democracy and the rule of law. Furthermore, aid suspensions under the Cotonou Agreement in the case of Zimbabwe were adopted simultaneously with the CFSP sanctions regime, which makes it a rare example among Article 96 suspensions cases. However, Portela proposes that this overlap was „related more to the EU’s legal constellation at the time when measures were imposed than to any teleological distinction between them.“<sup>102</sup> This chapter will focus on aid suspensions in the ACP Partnership framework, separating them from CFSP measures for the purposes of the legitimacy analysis.

### ***3.1 Legal basis of aid suspensions in the ACP Partnership context***

The EC/EU’s development cooperation with ACP states dates back to the two Yaoundé Conventions (in force between 1964-1969 and 1971-1975), which associated 19 newly independent African states, former overseas countries and territories of the member states of the European Economic Community.<sup>103</sup> Yaoundé was superseded by Lomé I-IV Conventions, which constituted the legal basis for trade and development cooperation between 1975 and 2000.<sup>104</sup> Although development aid had been suspended even earlier, the legal basis was first introduced in Lomé IV “as a provision to enhance the protection of Human Rights and democracy.”<sup>105</sup> However, it was only the revised Lomé IV of 1995 that included the conditionality aspect in the partnership agreement, and whose amended Article 5§1 introduced the “essential element”:

*“Respect for human rights, democratic principles and the rule of law, which underpins relations between the ACP States and the Community and all provisions of the Convention, and governs the domestic and international policies of the Contracting Parties, shall constitute an essential element of this Convention.”<sup>106</sup>*

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<sup>102</sup> Ibid. p. 139.

<sup>103</sup> European Parliament Fact Sheets. 6.4.5. *Relations with the African, Caribbean and Pacific countries: from the Yaoundé and Lomé Conventions to the Cotonou Agreement*. 15 September 2004. <[http://www.europarl.europa.eu/facts\\_2004/6\\_4\\_5\\_en.htm](http://www.europarl.europa.eu/facts_2004/6_4_5_en.htm)> (accessed 20 April 2016).

<sup>104</sup> Ibid.

<sup>105</sup> PORTELA, Clara. *Aid Suspensions as Coercive Tools? The European Union’s Experience in the African-Caribbean-Pacific (ACP) Context*. Review of European and Russian Affairs vol. 3 issue 2/2007. <[http://ink.library.smu.edu.sg/soss\\_research/1689/](http://ink.library.smu.edu.sg/soss_research/1689/)> (accessed 5 March 2016).

<sup>106</sup> Official Journal of the European Union. *Agreement amending the fourth ACP-EC Convention of Lomé signed in Mauritius on 4 November 1995 - Second Financial Protocol - Final Act - Joint Declaration on trade development*. Official Journal L 156, 29 May 1998 P. 0003 – 0106. <[http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:21998A0529\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:21998A0529(01):EN:HTML)> (accessed 20 April 2016).

Finally the Cotonou Agreement, adopted in 2000 for a 20 year period, contains a human rights clause that is particularly elaborate and exceptional for its incorporation of an internal implementation mechanism for the adoption of “appropriate measures” in the event of an “essential element” violation.<sup>107</sup> The procedure leading to the adoption of sanctions is remarkably institutionalised and precise in the ACP legal context. The mid-term review of the Agreement in 2005 also introduced the institution of an “Intensified Political Dialogue” that “shall exhaust all possible options prior to consultations under Article 96 of the Agreement.”<sup>108</sup> Furthermore, Article 96 stipulates:

*“2.(a) If, despite the political dialogue on the essential elements as provided for under Article 8 and paragraph 1a of this Article, a Party considers that the other Party fails to fulfil an obligation stemming from respect for human rights, democratic principles and the rule of law referred to in Article 9(2), it shall, except in cases of special urgency, supply the other Party and the Council of Ministers with the relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties. To this end, it shall invite the other Party to hold consultations that focus on the measures taken or to be taken by the Party concerned to remedy the situation in accordance with Annex VII.*

...

*If the consultations do not lead to a solution acceptable to both Parties, if consultation is refused or in cases of special urgency, appropriate measures may be taken. These measures shall be revoked as soon as the reasons for taking them no longer prevail.*

...

*(c) The ‘appropriate measures’ referred to in this Article are measures taken in accordance with international law, and proportional to the violation. In the selection of these measures, priority must be given to those which least disrupt the application of this agreement. It is understood that suspension would be a measure of last resort.”<sup>109</sup>*

Following a serious violation of the “essential element” and if all possibilities have been exhausted, the situation is first discussed in the relevant geographical Council working party under the CFSP and the ACP working party. “The difference between the regional working group and the ACP working group is that the first one makes a more

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<sup>107</sup> BARTELS, Lorand. *A Model Human Rights Clause for the EU’s International Trade Agreements*. German Institute for Human Rights, 2014. p. 10. <[http://www.institut-fuer-menschenrechte.de/uploads/tx\\_commerce/Studie\\_A\\_Model\\_Human\\_Rights\\_Clause.pdf](http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/Studie_A_Model_Human_Rights_Clause.pdf)> (accessed 20 April 2016).

<sup>108</sup> European Commission. *The Cotonou Agreement and multiannual financial framework 2014-20*. Development and Cooperation — EuropeAid, 2014. Annex VII, Article 2, p. 173. <[http://www.europarl.europa.eu/intcoop/acp/03\\_01/pdf/mn3012634\\_en.pdf](http://www.europarl.europa.eu/intcoop/acp/03_01/pdf/mn3012634_en.pdf)> (accessed 20 April 2016).

<sup>109</sup> *Ibid.* Article 96, p. 103-104.

political assessment of the situation whereas the second discusses the problem in more technical terms.”<sup>110</sup> Accordingly, the Commission issues a proposal to proceed to consultations, either on its own initiative or per request of the Council, after which the latter takes the decision to start the consultations procedure and formally invites the ACP country considered in breach to participate.<sup>111</sup>

Consultations cannot last for more than 120 days and are held at the governmental level between the country in question and the EU represented by the European Commission and the Presidency of the Council.<sup>112</sup> The consultations are concluded at the Commission’s discretion. Depending on their outcome, the parties may either agree on a roadmap setting out commitments to be fulfilled within a given timeframe, or else, if consultations had not lead to an acceptable solution, appropriate measures may be taken.<sup>113</sup> The draft letter is prepared by the Council’s ACP working group, agreed upon in the Committee of Permanent Representatives (COREPER),<sup>114</sup> and subsequently adopted by a Council decision. It can include partial (by qualified majority in the Council, although in practice it is decided by unanimity)<sup>115</sup> or total (by unanimous agreement) suspension of development aid,<sup>116</sup> as well as positive incentives, such as the redirection of funds or the increase of humanitarian aid, which is often the case.<sup>117</sup> Subsequently, the implementation of measures is subject to close scrutiny, and their

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<sup>110</sup> Interview with an official, DG Development, European Commission, Brussels, 19 February 2009. In CUYCKENS, Hanne. *Human Rights Clauses in Agreements between the Community and Third Countries. The Case of the Cotonou Agreement*. Katholieke Universiteit Leuven, Institute for International Law Working Paper No. 147, March 2010.

<<https://www.law.kuleuven.be/iir/nl/onderzoek/wp/WP147e.pdf>> (accessed 20 April 2016).

<sup>111</sup> PORTELA, Clara. *European Union Sanctions and Foreign Policy: When and why do they work?* London: Routledge, 2010. p. 130.

<sup>112</sup> Official website of the European Council and the Council of the European Union. *Article 96 of the Cotonou Agreement - consultation procedure*. 14 March 2016.

<<http://www.consilium.europa.eu/en/policies/eu-africa/article-96-cotonou-agreement/>> (accessed 20 April 2016).

<sup>113</sup> Ibid.

<sup>114</sup> LAAKSO, Liisa, KIVIMÄKI, Timo, SEPPÄNEN, Maaria. *Evaluation of Coordination and Coherence in the Application of Article 96 of the Cotonou Partnership Agreement*. Evaluation Services of the European Union, Studies in European Development Co-operation Evaluation No 6, April 2007. p. 27. <<http://ecdpm.org/wp-content/uploads/2013/11/2007-evaluation-coordination-coherence-CPA-article-96.pdf>> (accessed 20 April 2016).

<sup>115</sup> Ibid. p. 16, 26.

<sup>116</sup> Official Journal of the European Communities. *Internal Agreement between the representatives of the governments of the Member States, meeting within the Council, on measures to be taken and procedures to be followed for the implementation of the ACP-EC Partnership Agreement*. 2000/771/EC, OJ L 317, 15 December 2000, p. 375-381. <[http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:42000A1215\(02\)&qid=1461455761835&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:42000A1215(02)&qid=1461455761835&from=EN)> (accessed 20 April 2016).

<sup>117</sup> PORTELA, Clara. *European Union Sanctions and Foreign Policy: When and why do they work?* London: Routledge, 2010. p. 130.

lifting or gradual easing is dependent on observed progress, in line with the principle of conditionality.

### **3.2 Criteria**

Just as in the case of sanctions against Russia, Article 96 suspensions aimed at Zimbabwe between 2002 and 2014 in reaction to undemocratic elections will be analysed against the set of outlined research criteria and assigned one of the values “yes”, “no” or “partially”.

#### **3.2.1 Democratic consent of the member states and internal coherence**

As outlined above, aid suspensions in the ACP context are foreseen in Article 96 of the Cotonou Agreement, signed by all EU member states and the ACP group states. Article 96 is invoked by a Council Decision where qualified majority voting is applicable; in practice, however, general consensus applies.<sup>118</sup> Thus even a discussion about the very possibility of taking appropriate measures forces the member states to coordinate and to consider the desirability of the instrument’s adoption.<sup>119</sup> The same applies to decisions on the adoption of aid suspension measures, where even partial suspensions are de facto decided by unanimity.

Generally, in terms of its powers in the realm of development policy, the European Parliament is placed on an equal footing with the Council, which is a rather unusual legal setting for one of the areas of the EU’s foreign policy. Article 209 TFEU states that Parliament and the Council, “acting in accordance with the ordinary legislative procedure, shall adopt the measures necessary for the implementation of development cooperation policy”.<sup>120</sup> Parliament has obtained “the right to question the

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<sup>118</sup> LAAKSO, Liisa, KIVIMÄKI, Timo, SEPPÄNEN, Maaria. *Evaluation of Coordination and Coherence in the Application of Article 96 of the Cotonou Partnership Agreement*. Evaluation Services of the European Union, Studies in European Development Co-operation Evaluation No 6, April 2007. p. 26. <<http://ecdpm.org/wp-content/uploads/2013/11/2007-evaluation-coordination-coherence-CPA-article-96.pdf>> (accessed 20 April 2016).

<sup>119</sup> Ibid. p. 26.

<sup>120</sup> Official website of the European Parliament. RAMET, Valerie. *A general survey of development policy*. March 2016. <[http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU\\_6.3.1.html](http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_6.3.1.html)> (accessed 20 April 2016).

Commission and even object to implementing decisions whenever it finds that proposals promote causes other than development (e.g. trade, fighting terrorism, etc.) and if it considers that the Commission is exceeding its jurisdiction. Parliament also exerts control by regularly discussing policies with the Commission, in both formal and informal settings.”<sup>121</sup> Although the European Parliament is not directly involved in decision-making leading to aid suspensions, it is informed about the launch and completion of the consultations by the Council. Furthermore, it monitors the implementation of EU human rights policy and therefore closely follows cases where Article 96 has been applied as well as those in which it has not been invoked.<sup>122</sup>

The Council of the EU adopted Common Position 2002/145/CFSP to take “appropriate measures” (together with CFSP restrictive measures) against Zimbabwe on 18 February 2002,<sup>123</sup> and implemented it by Council Decision 2002/754/CFSP of 13 September 2002.<sup>124</sup> They were initially imposed for a period of 12 months, subject to annual review, and included the following measures:

- “the suspension of financing of budgetary support and support for projects;”
- “the suspension of the signature of the 9th EDF National Indicative Programme;”
- “the suspension of Article 12 of Annex 2 to the ACP-EU Partnership Agreement, concerning current payments and capital movements, in so far as required for the application of further restrictive measures, and in particular the freezing of funds.”<sup>125</sup>

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<sup>121</sup> Ibid.

<sup>122</sup> LAAKSO, Liisa, KIVIMÄKI, Timo, SEPPÄNEN, Maaria. *Evaluation of Coordination and Coherence in the Application of Article 96 of the Cotonou Partnership Agreement*. Evaluation Services of the European Union, Studies in European Development Co-operation Evaluation No 6, April 2007. p. 27. <<http://ecdpm.org/wp-content/uploads/2013/11/2007-evaluation-coordination-coherence-CPA-article-96.pdf>> (accessed 20 April 2016).

<sup>123</sup> Official Journal of the European Communities. *Council Common Position of 18 February 2002 concerning restrictive measures against Zimbabwe*. 21 February 2002. <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002E0145&qid=1461522237688&from=EN>> (accessed 23 April 2016).

<sup>124</sup> Official Journal of the European Communities. *Council Decision of 13 September 2002 implementing Common Position 2002/145/CFSP concerning restrictive measures against Zimbabwe*. 14 September 2002. <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002D0754&from=EN>> (accessed 23 April 2016).

<sup>125</sup> Official website of the European External Action Service - Delegation of the European Union to the Republic of Zimbabwe. *Restrictive measures*. 18 February 2013. <[http://eeas.europa.eu/delegations/zimbabwe/eu\\_zimbabwe/political\\_relations/restrictive\\_measures/index\\_en.htm](http://eeas.europa.eu/delegations/zimbabwe/eu_zimbabwe/political_relations/restrictive_measures/index_en.htm)> (accessed 23 April 2016).

However, suspensions did not affect “the contributions to operations of a humanitarian nature and projects in direct support to the population, in particular those in social sectors, democratisation, respect for human rights and the rule of law.”<sup>126</sup>

Appropriate measures under Article 96 were regularly renewed and stayed in force for more than 10 years. On 17 February 2012 the Council decided to extend them for merely 6 more months by Council Decision 2012/96/EU, and announced their reassessment “in light of concrete progress in the implementation of the Global Political Agreement and the preparation of peaceful and credible elections.”<sup>127</sup> The application of appropriate measures was suspended later that year, although their validity was still extended for 12 months, with the intention to keep them under constant review and eventually apply them again should the situation in Zimbabwe deteriorate, by Council Decision 2012/470/EU.<sup>128</sup>

Finally, in the Declaration by the High Representative of the European Union on 19 February 2014, following a review of EU-Zimbabwe relations, it was announced that the Council had unanimously agreed on the measures to expire on 1 November 2014, “provided there is no serious deterioration in the governance and human rights situation”.<sup>129</sup> Since this was not the case, the sanctions’ expiry was announced in an EEAS Statement by the Spokesperson on the expiration of the appropriate measures under Article 96 of the Cotonou Agreement concerning Zimbabwe on 31 October 2014.<sup>130</sup> (The parallel CFSP sanctions have remained in force, even if they were gradually eased. By February 2016, most persons had been de-listed, while the arms embargo remains in place, and a travel ban and asset freeze continue to apply to

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<sup>126</sup> Ibid.

<sup>127</sup> Official Journal of the European Union. *Council Decision of 17 February 2012 adapting and extending the period of application of the appropriate measures first established by Decision 2002/148/EC concluding consultations with Zimbabwe under Article 96 of the ACP-EC Partnership Agreement*. 18 February 2012. <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012D0096>> (accessed 23 April 2016).

<sup>128</sup> Official Journal of the European Union. *Council Decision of 7 August 2012 extending the validity of Decision 2012/96/EU and suspending the application of the appropriate measures set out in Decision 2002/148/EC*. 10 August 2012. <<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1461529783497&uri=CELEX:32012D0470>> (accessed 23 April 2016).

<sup>129</sup> Official website of the European Council and the Council of the European Union. *Declaration by the High Representative, Catherine Ashton, on behalf of the European Union on the review of EU-Zimbabwe relations*. 19 February 2014.

<[http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/cfsp/141065.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/cfsp/141065.pdf)> (accessed 23 April 2016).

<sup>130</sup> Official website of the European External Action Service. *Statement by the Spokesperson on the expiration of the appropriate measures under Article 96 of the Cotonou Agreement concerning Zimbabwe*. Brussels, 31 October 2014. <[http://eeas.europa.eu/statements/docs/2014/141031\\_01\\_en.pdf](http://eeas.europa.eu/statements/docs/2014/141031_01_en.pdf)> (accessed 23 April 2016).

President Mugabe, his wife, and Zimbabwe Defense Industries until 20 February 2017.)<sup>131</sup>

Considering the outlined adoption and implementation procedure and the unanimity in decision-making, the criterion of democratic consent has been clearly fulfilled throughout the whole duration of the sanctions regime.

On the other hand, the aspect of internal coherence appears problematic in the case in question. Portela states that “few CFSP sanctions regimes have exposed so publicly EU internal disagreements.”<sup>132</sup> Although she is referring to CFSP sanctions that ran parallel to development aid suspensions, the internal tensions impacted ACP aid suspensions as well. The mixed nature of the Cotonou Agreement (covering fields of intergovernmental foreign policy, development as a shared competence, and trade as an exclusive competence of the EU) implies that more actors are involved, which makes internal coordination efforts between Member States, with and within the Commission, more challenging.<sup>133</sup> In the context of Article 96 “the choices to be made in the prioritisation between development objectives and political foreign policy objectives are usually at their most stark.”<sup>134</sup>

Tensions were felt from 2002 when the measures were first adopted until 2012 when they were eased. The United Kingdom in particular followed the hard-line approach, barring the lifting of sanctions at the time.<sup>135</sup> On the other hand, the attendance of Robert Mugabe at the French-African summit in February 2003 stirred

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<sup>131</sup> Official Journal of the European Union. *Council Decision (CFSP) 2016/220 of 15 February 2016 amending Decision 2011/101/CFSP concerning restrictive measures against Zimbabwe*. 17 February 2016. <[http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2016.040.01.0011.01.ENG&toc=OJ:L:2016:040:TOC](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.040.01.0011.01.ENG&toc=OJ:L:2016:040:TOC)> (accessed 23 April 2016).

<sup>132</sup> PORTELA, Clara. *European Union Sanctions and Foreign Policy: When and why do they work?* London: Routledge, 2010. p. 140.

<sup>133</sup> MARANGONI, Anne-Claire, VANHOONACKER, Sophie. *The consistency of EU external action post-Lisbon: Renewing appropriate measures against Zimbabwe in 2012*. p. 16. In NEUHOLD, Christine, VANHOONACKER, Sophie (eds). *Dynamics of institutional cooperation in the European Union: Dimensions and effects*. European Integration online Papers (EIoP), Special issue 1, Vol. 19 (2015), Article 3, pp. 1-22. <<http://eiop.or.at/eiop/pdf/2015-003.pdf>> (accessed 15 April 2016).

<sup>134</sup> LAAKSO, Liisa, KIVIMÄKI, Timo, SEPPÄNEN, Maaria. *Evaluation of Coordination and Coherence in the Application of Article 96 of the Cotonou Partnership Agreement*. Evaluation Services of the European Union, Studies in European Development Co-operation Evaluation No 6, April 2007. p. 27. <<http://ecdpm.org/wp-content/uploads/2013/11/2007-evaluation-coordination-coherence-CPA-article-96.pdf>> (accessed 20 April 2016).

<sup>135</sup> MARANGONI, Anne-Claire, VANHOONACKER, Sophie. *The consistency of EU external action post-Lisbon: Renewing appropriate measures against Zimbabwe in 2012*. p. 16. In NEUHOLD, Christine, VANHOONACKER, Sophie (eds). *Dynamics of institutional cooperation in the European Union:*

great controversy.<sup>136</sup> In the same year, a planned Europe-African summit had to be cancelled due to the EU's ban on Mugabe's participation in summit meetings, and when it finally took place in 2007, British Prime Minister Gordon Brown protested against Mugabe's presence by not attending.<sup>137</sup> France, subject to harsh criticism, was forced to withdraw Mugabe's invitation to the France-African Summit in 2007. Such disputes harm the legitimacy of the EU's policy and may provide the target regime with leverage. Furthermore, tensions within the Commission also illustrate the politicisation of the appropriate measures in the Zimbabwe case, where the Directorate-General for Development raised several concerns over the large amounts of development aid offered to Zimbabwe despite the country still being subject to Article 96 suspensions.<sup>138</sup>

The requirement of internal coherence was not satisfied in this case, although by the end of the sanctions regime the member states moved towards greater coherence and a more pragmatic approach, realising its crucial importance for reaching the primary foreign policy objective.<sup>139</sup>

The decision-making process throughout the duration of the regime of aid suspensions under Article 96 against Zimbabwe was undeniably democratic, yet the EU did not demonstrate clear internal coherence (both among member states and within institutions). Therefore the democracy criterion of the sanctions regime in question will be deemed only partially fulfilled.

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*Dimensions and effects*. European Integration online Papers (EIoP), Special issue 1, Vol. 19 (2015), Article 3, pp. 1-22. <<http://eiop.or.at/eiop/pdf/2015-003.pdf>> (accessed 15 April 2016).

<sup>136</sup> PORTELA, Clara. *European Union Sanctions and Foreign Policy: When and why do they work?* London: Routledge, 2010. p. 140.

<sup>137</sup> PORTELA, Clara. *The EU's Use of 'Targeted' Sanctions: Evaluating effectiveness*. Brussels: Centre for European Policy Studies. CEPS Working Document No. 391, March 2014. p. 16. <<https://www.ceps.eu/system/files/WD391%20Portela%20EU%20Targeted%20Sanctions.pdf>> (accessed 15 May 2015).

<sup>138</sup> MARANGONI, Anne-Claire, VANHOONACKER, Sophie. *The consistency of EU external action post-Lisbon: Renewing appropriate measures against Zimbabwe in 2012*. p. 17. In NEUHOLD, Christine, VANHOONACKER, Sophie (eds). *Dynamics of institutional cooperation in the European Union: Dimensions and effects*. European Integration online Papers (EIoP), Special issue 1, Vol. 19 (2015), Article 3, pp. 1-22. <<http://eiop.or.at/eiop/pdf/2015-003.pdf>> (accessed 15 April 2016).

<sup>139</sup> Ibid.

### 3.2.2 Transparency of the decision-making process and the process of implementation

The basis for launching consultations and eventually adopting sanctions as a measure of last resort is a breach of the essential element laid down in the ACP Partnership Agreement (i.e., respect for human rights, democratic principles and the rule of law to which all signatories have committed themselves). The situation in Zimbabwe deteriorated since President Mugabe's land reform, which aimed to settle the unresolved question of land redistribution through expropriation of white farmers' properties, ultimately in order to expand his power base before the next parliamentary elections.<sup>140</sup> This campaign resulted in a wave of violence, suppression of the political opposition, and the ensuing undemocratic elections. The EU proceeded to aid suspension as Zimbabwe obstructed the operation of the EU electoral observation mission in the country in 2002. The essential element of the contractual relationship was violated and thus the imposition of sanctions was justifiable.

In this regard, however, Eriksson (although referring to CFSP sanctions) underscores the importance of the popular perception of sanctions, as conveyed by the local media in Zimbabwe: "Unless the people of Zimbabwe are convinced that there is a resolve in the policy, i.e. that targeted sanctions actually stand for and mean something, the sender's strategy will become an empty shelf and lose its authenticity. Thus, the perception of the target and the Zimbabwean population needs to be clear on what EU is trying to accomplish with its signal."<sup>141</sup> He points to the information battle between media supported by the government or those run by government sympathizers, and "opposition newspapers" and the EU's information dissemination strategy in the country (seminars or support programs, aimed at promoting dialogue and informing the population about aims of the restrictive measures), which present two different narratives of sanctions, and concludes that the "EU needs to pay much more attention to the role of this dynamic, and needs to create a local platform for its policies; this will enhance legitimacy."<sup>142</sup>

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<sup>140</sup> PORTELA, Clara. *The EU's Use of 'Targeted' Sanctions: Evaluating effectiveness*. Brussels: Centre for European Policy Studies. CEPS Working Document No. 391, March 2014. p. 15. <<https://www.ceps.eu/system/files/WD391%20Portela%20EU%20Targeted%20Sanctions.pdf>> (accessed 15 May 2015).

<sup>141</sup> ERIKSSON, Mikael. *Targeting the Leadership of Zimbabwe: A Path to Democracy and Normalization?* Uppsala: Uppsala University, Department of Peace and Conflict Research, 2007. p. 45. <[http://pcr.uu.se/digitalAssets/165/165538\\_1innehall\\_071212.pdf](http://pcr.uu.se/digitalAssets/165/165538_1innehall_071212.pdf)> (accessed 10 April 2016).

<sup>142</sup> Ibid. p. 46.

The process leading to the adoption of “appropriate measures” under Article 96 of the Cotonou Agreement is highly institutionalized, consisting of several gradual steps that precede the actual implementation of “sanctions”. Following unsuccessful “intense political efforts to safeguard a political culture in Zimbabwe that would allow for free and fair elections,”<sup>143</sup> including Article 8 dialogue (where the EU interpreted the lengthy agenda-setting as a sign of Zimbabwe’s unwillingness to cooperate),<sup>144</sup> the EU moved to Article 96 consultations. Their transparency is provided for in the Cotonou Agreement, Article 3 of Annex VII, as follows:

*“1. The Parties shall strive to promote equality in the level of representation during consultations under Article 96 of the Agreement.*

*2. The Parties are committed to transparent interaction before, during and after the formal consultations, bearing in mind the specific benchmarks and targets referred to in Article 2(2) of this Annex.”<sup>145</sup>*

The EU is represented in the consultations by the Commission, the High Representative and the Council Presidency, while the country in question attends the meetings together with representatives of the ACP Secretariat as well as of other ACP countries of its choice, and eventually even those of regional organisations such as the African Union.<sup>146</sup>

The country in question is therefore involved in the decision-making process from the outset, able to react, discuss, and eventually remedy the essential element violations at every stage of the process leading to the imposition of sanctions (which are also subject to continual review). The demands and conditions for the renewal of development cooperation are known and discussed by all stakeholders in the political

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<sup>143</sup> Ibid. p. 18.

<sup>144</sup> LAAKSO, Liisa, KIVIMÄKI, Timo, SEPPÄNEN, Maaria. *Evaluation of Coordination and Coherence in the Application of Article 96 of the Cotonou Partnership Agreement*. Evaluation Services of the European Union, Studies in European Development Co-operation Evaluation No 6, April 2007. p. 69. <<http://ecdpm.org/wp-content/uploads/2013/11/2007-evaluation-coordination-coherence-CPA-article-96.pdf>> (accessed 20 April 2016).

<sup>145</sup> European Commission. *The Cotonou Agreement and multiannual financial framework 2014-20*. Development and Cooperation — EuropeAid, 2014. Annex VII, Article 3, p. 174.

<[http://www.europarl.europa.eu/intcoop/acp/03\\_01/pdf/mn3012634\\_en.pdf](http://www.europarl.europa.eu/intcoop/acp/03_01/pdf/mn3012634_en.pdf)> (accessed 20 April 2016).

<sup>146</sup> LAAKSO, Liisa, KIVIMÄKI, Timo, SEPPÄNEN, Maaria. *Evaluation of Coordination and Coherence in the Application of Article 96 of the Cotonou Partnership Agreement*. Evaluation Services of the European Union, Studies in European Development Co-operation Evaluation No 6, April 2007. p. 27. <<http://ecdpm.org/wp-content/uploads/2013/11/2007-evaluation-coordination-coherence-CPA-article-96.pdf>> (accessed 20 April 2016).

dialogue from the beginning. The criterion of transparency has thus proved satisfied in the case of Zimbabwe.

### 3.2.3 Efficiency - adequate design of the sanctions regime

Concerning the third criterion, the efficiency of sanctions design needs to be examined from the input perspective. Within the ACP Partnership Agreement context, sanctions design is more or less pre-given, since the “appropriate measures” consist of a limited repertoire of tools (aid suspension and redirection). They are always justified on grounds of the breach of the “essential element” of the Cotonou Agreement (as already described in detail) with concrete justification provided in every particular case, including the formulation of their goals. Council Common Position concerning restrictive measures against Zimbabwe provides the following reasoning:

*“(1) On 28 January 2002, the Council expressed its serious concern about the situation in Zimbabwe, in particular **the recent escalation of violence and intimidation of political opponents and the harassment of the independent press.** It noted that the Government of Zimbabwe has not taken effective measures to improve the situation as called for by the European Council in Laeken last December.*

*(2) The Council further expressed serious concern about recent legislation in Zimbabwe which, if enforced, would seriously infringe on **the right to freedom of speech, assembly and association**, mainly the Public Order and Security Act and the General Laws Amendment Act (both of which violate the norms and standards for free and fair elections as agreed by SADC Parliamentarians in March 2001) and the proposed legislation to regulate the media.*

*(3) Therefore, the EU decided it will close the consultations conducted under Article 96 of the ACP-EC Partnership Agreement and implement targeted sanctions if:*

- the Government of Zimbabwe prevents the deployment of an EU election observation mission starting by 3 February 2002, or if it later prevents the mission from operating effectively, or*
- the Government of Zimbabwe prevents the international media from having free access to cover the election, or*
- there is a serious deterioration on the ground, in terms of a worsening of the human rights' situation or attacks on the opposition, or*
- the election is assessed as not being free and fair.*

*(4) The Council has assessed that the Government of Zimbabwe continues to engage in **serious violations of human rights and of the freedom of opinion, of association and of peaceful assembly.** Therefore, for as long as the violations occur, the Council deems it necessary to introduce restrictive*

*measures against the Government of Zimbabwe and those who bear a wide responsibility for such violations.*"<sup>147</sup>

As described earlier, measures had been kept in place until 2014, while some adjustments have been made since 2009, to support the implementation of the Global Political Agreement (an inter-party agreement concluded between the three main political parties in Zimbabwe, two of which are in the opposition).<sup>148</sup> In February 2012 the Council announced their reassessment "in light of concrete progress in the implementation of the Global Political Agreement and the preparation of peaceful and credible elections",<sup>149</sup> only extended them for 6 more months, and suspended their application later that year.

The reasoning behind the imposition of measures, their goals and conditions for their lifting were spelled out and their attainment was under regular review. The EU also set a timeframe, which was extended yearly, while only after the sanctions regime had been in place for several years did the (albeit rather slow) progress observed (as well as the EU's aim to improve the situation in Zimbabwe through new development programmes) induce the EU to stipulate a shorter one. Judged by the factor of the goals' and conditions' formulation, the appropriate measures were legitimate.

Regarding the design of the sanctions regime, in view of the nature of the target (a developing country, dependent on foreign aid), humanitarian considerations need to be taken into account. While Article 96 suspensions froze development and budgetary support, the EU kept financing projects in direct support of the population, and redirected funds to these ends.<sup>150</sup> As cited by Eriksson in his research on sanctions in

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<sup>147</sup> Official Journal of the European Communities. *Council Common Position of 18 February 2002 concerning restrictive measures against Zimbabwe*. 21 February 2002. <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002E0145&qid=1461522237688&from=EN>> (accessed 20 April 2016). (emphasis added).

<sup>148</sup> MATYSZAK, Derek, REELER, Tony. *Articles of Faith: Assessing Zimbabwe's „GPA” as a Mechanism for Change – A Legal Perspective*. Research and Advocacy Unit, Harare. May 2011. <<http://www.zimbabwesituation.com/old/GPA%20audit%20final.pdf>> (accessed 23 April 2016).

<sup>149</sup> Official Journal of the European Union. *Council Decision of 17 February 2012 adapting and extending the period of application of the appropriate measures first established by Decision 2002/148/EC concluding consultations with Zimbabwe under Article 96 of the ACP-EC Partnership Agreement*. 18 February 2012. <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012D0096>> (accessed 23 April 2016).

<sup>150</sup> MARANGONI, Anne-Claire, VANHOONACKER, Sophie. *The consistency of EU external action post-Lisbon: Renewing appropriate measures against Zimbabwe in 2012*. p. 35. In NEUHOLD, Christine, VANHOONACKER, Sophie (eds). *Dynamics of institutional cooperation in the European Union: Dimensions and effects*. European Integration online Papers (EIoP), Special issue 1, Vol. 19 (2015), Article 3, pp. 1-22. <<http://eiop.or.at/eiop/pdf/2015-003.pdf>> (accessed 15 April 2016).

Zimbabwe in 2007, “one interviewee at the EU delegation in Harare described the following: “Article 96 in the Cotonou Agreement suspends the development fund with about 108 million Euros. But we still use the fund for humanitarian purposes. There is no direct budget support to the government. It is a re-structuring of how we spend our money. We continue to support the people of Zimbabwe. For instance, there are several technical cooperation programs. Hence, there are several national cooperation programs, not only NGO cooperation. This is to encounter the argument that sanctions stopped the aid to Zimbabwe. The restrictive measures are not an argument for having budget support restrictions.”<sup>151</sup>

After the 2008 elections in Zimbabwe, where the three main parties formed a government under the Global Political Agreement and in recognition of several positive developments, the EU began a re-engagement process. A Commission press release in February 2011 reported that “the Commission informed Zimbabwe in September 2010 of €130 million that could become available under the main EU financial instrument for development, 10th European Development Fund.”<sup>152</sup> As mentioned earlier, the high levels of aid at the time when Article 96 suspensions still applied to Zimbabwe even raised concerns in the Directorate-General for Development.

Parallel to the political turmoil that impelled the measures’ imposition, a profound economic crisis hit Zimbabwe, which had already been plagued by corruption and mismanagement of funds. Zimbabwe experienced the highest annual inflation rate in the world for several years, up to the point where it had to abandon its currency and replace it with the US dollar in 2009.<sup>153</sup> The economy deteriorated and production levels shrank, which led to severe shortages of energy, water and the supply of basic commodities, aggravated by drought and an outbreak of cholera.<sup>154</sup> The country had

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<sup>151</sup> Interviewee at the EU Delegation in Harare In: ERIKSSON, Mikael. *Targeting the Leadership of Zimbabwe: A Path to Democracy and Normalization?* Uppsala: Uppsala University, Department of Peace and Conflict Research, 2007. p. 35-36.

<[http://pcr.uu.se/digitalAssets/165/165538\\_1innehall\\_071212.pdf](http://pcr.uu.se/digitalAssets/165/165538_1innehall_071212.pdf)> (accessed 10 April 2016).

<sup>152</sup> Official website of the European Commission, Press Release Database. *Zimbabwe: Commission supports the Council decision*. Brussels, 15 February 2011. <[http://europa.eu/rapid/press-release\\_IP-11-190\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-11-190_en.htm?locale=en)> (accessed 10 April 2016).

<sup>153</sup> International Crisis Group. *Zimbabwe: Engaging the Inclusive Government*. Crisis Group Africa Briefing N°59, 20 April 2009. p. 8. <<http://www.crisisgroup.org/en/regions/africa/southern-africa/zimbabwe/B059-zimbabwe-engaging-the-inclusive-government.aspx>> (accessed 20 April 2016); BBC News. *Zimbabwe abandons its currency*. 29 January 2009.

<<http://news.bbc.co.uk/2/hi/7859033.stm>> (accessed 23 April 2016).

<sup>154</sup> PORTELA, Clara. *The EU’s Use of ‘Targeted’ Sanctions: Evaluating effectiveness*. Brussels: Centre for European Policy Studies. CEPS Working Document No. 391, March 2014. p. 15-16. <<https://www.ceps.eu/system/files/WD391%20Portela%20EU%20Targeted%20Sanctions.pdf>> (accessed 15 May 2015);

thus not merely faced grave economic crisis for years, but a humanitarian one as well. However, it is needed to note that the crisis emerged before the imposition of appropriate measures under Article 96, and was not a consequence of development aid suspension. On the contrary, it was the increased level of humanitarian aid that mitigated the plight of the Zimbabwean population.

The EU sanctions regime (comprising CFSP sanctions and Article 96 suspensions) together with US sanctions “have long been credited with bringing about the fragmentation of the ruling party.”<sup>155</sup> According to the International Crisis Group report from 2007: “Targeted EU and US sanctions on senior regime figures are working. ZANU-PF leaders cite their personal financial situations as motivation for wanting Mugabe out.”<sup>156</sup> The protracted duration of the sanctions regime might be explained by its coincidence with the economic crisis, which consequently forced the EU to increase its aid, and by the diverging positions of the EU and South Africa, the key regional player, regarding the Zimbabwean question during the first half of the sanctions regime.<sup>157</sup>

It is difficult if not impossible to differentiate between the economic impact and political efficacy of Article 96 suspensions vis-a-vis CFSP measures, and this thesis does not even purport to do so, since it focuses on the input and procedural dimension of legitimacy and on the stage of decision-making and implementation. It is relevant to conclude, though, that the design of the sanctions regime has generally proved efficient, although its results were delivered only after a lengthy period, while the humanitarian aid and redirection of funds that accompanied Article 96 suspensions constituted a crucial element of the sanctions’ design from the legitimacy perspective.

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International Crisis Group. *Zimbabwe: Engaging the Inclusive Government*. Crisis Group Africa Briefing N°59, 20 April 2009. p. 8. <<http://www.crisisgroup.org/en/regions/africa/southern-africa/zimbabwe/B059-zimbabwe-engaging-the-inclusive-government.aspx>> (accessed 20 April 2016).

<sup>155</sup> PORTELA, Clara. *The EU’s Use of ‘Targeted’ Sanctions: Evaluating effectiveness*. Brussels: Centre for European Policy Studies. CEPS Working Document No. 391, March 2014. p. 18. <<https://www.ceps.eu/system/files/WD391%20Portela%20EU%20Targeted%20Sanctions.pdf>> (accessed 15 May 2015).

<sup>156</sup> International Crisis Group. *Zimbabwe: An End to the Stalemate?* Africa Report N°122, 5 March 2007. p. 15. <<http://www.crisisgroup.org/en/regions/africa/southern-africa/zimbabwe/122-zimbabwe-an-end-to-the-stalemate.aspx>>

<sup>157</sup> PORTELA, Clara. *The EU’s Use of ‘Targeted’ Sanctions: Evaluating effectiveness*. Brussels: Centre for European Policy Studies. CEPS Working Document No. 391, March 2014. p. 18. <<https://www.ceps.eu/system/files/WD391%20Portela%20EU%20Targeted%20Sanctions.pdf>> (accessed 15 May 2015).

Appropriate measures under Article 96 served as a coercive tool yet at the same time sought to cushion the humanitarian impact since their imposition, and were based on political conditionality (the very substance of the human rights clause in the ACP Partnership Agreement) and a gradualist approach, reflecting the target's concessions. From the point of view of sanctions design, the regime in question took account of humanitarian concerns and during its second half strove to make the imposed measures flexible and responsive. This substantiates its legitimacy.

The following table outlines the analysed criteria of legitimacy of sanctions against Zimbabwe.

Criterion	Indicator 1	Indicator 2	Outcome
1. DEMOCRACY	Democratic Consent	Internal Coherence	partially
	yes	no	
2. TRANSPARENCY	Visibility, Transparent Communication	Fair Design	yes
	yes	yes	
3. EFFICIENCY	Formulation of Goals and Conditions	Sanctions Design	yes
	yes	yes	
LEGITIMACY			yes

Table 2: Legitimacy criteria evaluation, Case 2 – aid suspensions under Art. 96 of the Cotonou Agreement aimed at Zimbabwe

#### 4. CASE 3 – EU ARMS EMBARGO ON CHINA

The informally imposed EU arms embargo on China will be the subject matter of the third case study of sanctions legitimacy. Informal sanctions constitute a specific tool within the EU's sanctions policy, since they are adopted outside of CFSP or any bilateral framework and are therefore only politically, not legally binding. Informal sanctions compass a broad range of instruments, from diplomatic sanctions to aid redirection. Their notion is not an established category in mainstream sanctions research, nor in the EU's legal terminology.<sup>158</sup> The practice of informal measures used to be commonplace during the period of informal European Political Cooperation (EPC), prior to the establishment of CFSP under the Maastricht Treaty in 1993 when the existing measures were formalized and took the form of the new instrument of CFSP Common Positions. The arms embargo on China is still, as the only exception to this development, based on the Joint Statement which originally imposed it in 1989.<sup>159</sup>

The embargo bears similarities to the first case of sanctions against Russia: albeit the measures were imposed informally, they too could belong to the "heavy" arsenal of CFSP sanctions; furthermore, they are also aimed at a major international actor which necessarily influences the EU's decision-making and its economic and political repercussions. The arms embargo was imposed as a part of the set of measures reacting to the violent suppression of pro-democracy protests at Tiananmen Square in Beijing in 1989, and the following mass arrests and executions. The then 12 member states of the EC decided to signal its condemnation of the Chinese government's actions and its lack of respect for human rights.<sup>160</sup> While the other six measures were lifted within a year,<sup>161</sup> the arms embargo has been kept in place until today.

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<sup>158</sup> PORTELA, Clara. *European Union Sanctions and Foreign Policy: When and why do they work?* London: Routledge, 2010, p. 102.

<sup>159</sup> KREUTZ, Joakim. *Reviewing the EU Arms Embargo on China: the Clash between Value and Rationale in the European Security Strategy*. Perspectives: The Central European Review of International Affairs 22, Summer 2004, pp. 43-58.

<[http://www.pcr.uu.se/digitalAssets/67/67097\\_1reviewing\\_eu\\_\\_arms\\_\\_embargo\\_china\\_kreutz060130.pdf](http://www.pcr.uu.se/digitalAssets/67/67097_1reviewing_eu__arms__embargo_china_kreutz060130.pdf)> (accessed 1 February 2016).

<sup>160</sup> Ibid.

<sup>161</sup> BRÄUNER, Oliver. *Beyond the Arms Embargo: EU Transfers of Defense and Dual-Use Technologies to China*. Journal of East Asian Studies, Sep-Dec2013, Vol. 13 Issue 3, pp. 457-482. Academic Search Complete, EBSCOhost (accessed May 5, 2016).

## 4.1 Criteria

The informal arms embargo will be analysed on the basis of the three research criteria in the next section. The section will also provide an overview of the various stages of decision-making and of developments related to the embargo.

### 4.1 Democratic consent of the member states and internal coherence

There is no established procedure to impose informal sanctions. They may be announced in Presidency statements, European Council conclusions, formerly also in conclusions of the General Affairs and External Relations Council, while in some cases the only evidence of the decision to impose measures was a letter.<sup>162</sup> The arms embargo on China was imposed in Annex II (Declaration on China) to Presidency Conclusions SN 254/2/89 at the European Council meeting in Madrid on 26-27 June 1989.<sup>163</sup> It was adopted unanimously, as a declaration in the context of European Political Cooperation (EPC), an informal political process of “information, consultation and common action among the 12 Member States of the European Community („the Twelve“) in the field of foreign policy”, aiming „to maximize the Twelve's influence in international affairs through a single coherent European approach,”<sup>164</sup> which was superseded by CFSP in the Maastricht Treaty. Later on in the CFSP context decisions on sanctions contained more detailed information on goods covered by a specific sanctions regime, while the declaration to impose the arms embargo on China (among a set of other measures) specifies no details in this regard.

Considering its sensitive character, the arms embargo represents an exception in the process of sanctions implementation similarly to restrictions on admission. Even in the CFSP framework the Council's decision on its imposition is implemented by the member states via national legislations.<sup>165</sup> Secondly, due to the lack of a legally binding

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<sup>162</sup> PORTELA, Clara. *European Union Sanctions and Foreign Policy: When and why do they work?* London: Routledge, 2010. p. 102.

<sup>163</sup> European Council. *Presidency Conclusions SN 254/2/89*. Madrid, 26 and 27 June 1989. <<http://www.consilium.europa.eu/en/european-council/conclusions/1992-1975/>> (accessed 1 May 2016).

<sup>164</sup> Office for Official Publications of the European Communities. *European Political Cooperation*. Luxembourg, April 1988. <<http://aei.pitt.edu/45409/1/European.Political.Cooperation.pdf>> (accessed 1 May 2016).

<sup>165</sup> Official website of the European Council and the Council of the European Union. *Adoption procedure of EU restrictive measures*. 18 October 2015. <<http://www.consilium.europa.eu/en/policies/sanctions/adoption-procedure/>> (accessed 10 April 2016).

character of the arms embargo on China, a set of national arms embargoes is in place in effect, rather than one imposed by the EU.<sup>166</sup> This means that “the decision to maintain or lift the embargo as well as the decision about how to interpret its scope is a national decision for each of the EU Member States.”<sup>167</sup> On the other hand, as will be discussed below, the eventual lifting of the embargo has been approached as a common EU-wide action, requiring unanimous approval of the member states, despite the strong incentives they have to deviate from the common agreement.<sup>168</sup>

This leads to the conclusion that in spite of an unclear or totally absent legal basis of the arms embargo, its adoption was the result of a unanimous democratic decision of the member states, and it is taken for granted that such a decision would be needed for its lifting as well. That very attitude was reflected in the decision-making process when the EU was close to the removal of the embargo around 2004. While this sanctions regime is informal, the EU member states have been de facto committed to consensus in the related decision-making. Therefore, the criterion of democratic consent has been met.

Moving on to the factor of internal coherence, in the absence of a legal basis the member states are in a different position than with respect to formal sanctions regimes. In addition, as no common list of sanctioned items was compiled, the implementation of the arms embargo on China has not been coherent, especially due to pre-existing arms export agreements.<sup>169</sup> Within a few years, relations with China were normalised, trade and investment prospered, and China became an important economic partner to the EU. Following this development, China stepped up its diplomatic efforts to lift the embargo

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<sup>166</sup> KREUTZ, Joakim. *Reviewing the EU Arms Embargo on China: the Clash between Value and Rationale in the European Security Strategy*. Perspectives: The Central European Review of International Affairs 22, Summer 2004, pp. 43-58.

<[http://www.pcr.uu.se/digitalAssets/67/67097\\_1reviewing\\_eu\\_\\_arms\\_\\_embargo\\_china\\_kreutz060130.pdf](http://www.pcr.uu.se/digitalAssets/67/67097_1reviewing_eu__arms__embargo_china_kreutz060130.pdf)> (accessed 1 February 2016).

<sup>167</sup> ANTHONY, Ian. *Militarily relevant EU–China trade and technology transfers: Issues and problems*. Paper presented at the conference Chinese Military Modernization: East Asian Political, Economic, and Defense Industrial Responses, organized by the Freeman Chair in China Studies and the Pacific Forum, both of the Center for Strategic and International Studies, 19–20 May 2005.

<[http://www.sipri.org/research/disarmament/dualuse/researchissues/resultoutput/papers\\_publications/2005-0601chitechtransfer](http://www.sipri.org/research/disarmament/dualuse/researchissues/resultoutput/papers_publications/2005-0601chitechtransfer)> (accessed 1 May 2016).

<sup>168</sup> KREUTZ, Joakim. *Reviewing the EU Arms Embargo on China: the Clash between Value and Rationale in the European Security Strategy*. Perspectives: The Central European Review of International Affairs 22, Summer 2004, pp. 43-58.

<[http://www.pcr.uu.se/digitalAssets/67/67097\\_1reviewing\\_eu\\_\\_arms\\_\\_embargo\\_china\\_kreutz060130.pdf](http://www.pcr.uu.se/digitalAssets/67/67097_1reviewing_eu__arms__embargo_china_kreutz060130.pdf)> (accessed 1 February 2016).

<sup>169</sup> Ibid.

since 1997,<sup>170</sup> feeling humiliated and placed on a level with other targets of sanctions, such as Burma, Sudan or Zimbabwe. It expressed this demand in its first and up to this date the only EU Policy White Paper in 2003, insisting on an early lifting of the embargo, “so as to remove barriers to greater bilateral cooperation on defence industry and technologies.”<sup>171</sup> This political lobbying was backed by impressive numbers: By that time, boosted by its WTO membership in 2001, China had become the third biggest trading partner of the EU (it is now the second one, after the US, and number one with respect to the EU’s imports).<sup>172</sup> According to Kreutz, the very issue that brought the embargo back to the agenda was China’s involvement in the development of Galileo, the EU’s global navigation satellite system, announcing its contribution of 300 million Euro to the project in September 2003.<sup>173</sup> The arms embargo was viewed as an eventual obstacle to transfers of specific technologies among partners in the Galileo project.

Presumably in light of the actions which were prompted by the Chinese mission to the EU in Brussels,<sup>174</sup> as well as economic figures, several EU leaders supported the review of the arms embargo, subsequently announced by the European Council on 12-13 December 2003.<sup>175</sup> This decision “was followed by a heated debate involving disagreements at the EU intra- and inter-institutional level”<sup>176</sup> in the upcoming months and years.

Just a few days after the Council’s meeting, on 18 December 2003, the European Parliament responded to the announcement of the embargo review with a position supporting its continuing effect on grounds of China’s human rights record, backed by “the overwhelming vote of 373 to 32 (29 abstentions) and including members of all

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<sup>170</sup> Ibid.

<sup>171</sup> Information Office of the State Council of the People's Republic of China. *China's EU Policy Paper*. Beijing, October 2003. <<http://china.org.cn/e-white/20050817/index.htm>> (accessed 1 May 2016).

<sup>172</sup> European Commission, Directorate General for Trade. *Client and Supplier Countries of the EU28 in Merchandise Trade (value %)*. Eurostat, 14 April 2016.

<[http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc\\_122530.pdf](http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_122530.pdf)> (accessed 1 May 2016).

<sup>173</sup> KREUTZ, Joakim. *Reviewing the EU Arms Embargo on China: the Clash between Value and Rationale in the European Security Strategy*. Perspectives: The Central European Review of International Affairs 22, Summer 2004, pp. 43-58.

<[http://www.pcr.uu.se/digitalAssets/67/67097\\_1reviewing\\_eu\\_\\_arms\\_\\_embargo\\_china\\_kreutz060130.pdf](http://www.pcr.uu.se/digitalAssets/67/67097_1reviewing_eu__arms__embargo_china_kreutz060130.pdf)> (accessed 1 February 2016).

<sup>174</sup> PORTELA, Clara. *European Union Sanctions and Foreign Policy: When and why do they work?* London: Routledge, 2010. p. 105.

<sup>175</sup> BRÄUNER, Oliver. *Beyond the Arms Embargo: EU Transfers of Defense and Dual-Use Technologies to China*. Journal of East Asian Studies, Sep-Dec2013, Vol. 13 Issue 3, pp. 457-482. Academic Search Complete, EBSCOhost (accessed May 5, 2016).

<sup>176</sup> PORTELA, Clara. *European Union Sanctions and Foreign Policy: When and why do they work?* London: Routledge, 2010. p. 105-106.

party groups".<sup>177</sup> A similar outcome (of 431 to 85 voting against the lifting) was reached in April 2005.<sup>178</sup> Although the EP only held an advisory position in CFSP, it made a very clear and from the perspective of legitimacy important statement, accompanied by fierce opposition to the possible lifting of the embargo from the side of civil society organisations and even national parliaments. Furthermore, the European Commission appeared divided over the arms embargo issue, with the office of Commission President Romano Prodi officially supporting its review, while Chris Patten, the Commissioner for External Relations, stated that the embargo would only be lifted if very clear progress in terms of human rights were demonstrated on China's part.<sup>179</sup> In addition, the High Representative for CFSP, Javier Solana, who had participated in several diplomatic talks with China that preceded the decision to reconsider the embargo, supported the review, in consideration of a strategic partnership with China.<sup>180</sup>

Disputes among and inside the member states were even more apparent than inter-institutional ones. France and Germany, with cautious support from the UK, became the most vocal proponents of lifting the arms embargo. French President Jacques Chirac and German Chancellor Gerhard Schröder embarked on an active campaign, arguing that the embargo was outdated and discriminatory, and emphasizing the importance of partnership with China. Further argument often expressed in support of the lifting was that the EU Code of Conduct on Arms Exports from 1998, which contains a criterion related to the respect of human rights in the buying country, would be relied upon to restrict arms exports to China instead of the embargo.<sup>181</sup> However, both Chirac and

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<sup>177</sup> KREUTZ, Joakim. *Reviewing the EU Arms Embargo on China: the Clash between Value and Rationale in the European Security Strategy*. Perspectives: The Central European Review of International Affairs 22, Summer 2004, pp. 43-58.  
<[http://www.pcr.uu.se/digitalAssets/67/67097\\_1reviewing\\_eu\\_\\_arms\\_\\_embargo\\_china\\_kreutz060130.pdf](http://www.pcr.uu.se/digitalAssets/67/67097_1reviewing_eu__arms__embargo_china_kreutz060130.pdf)> (accessed 1 February 2016).

<sup>178</sup> BRÄUNER, Oliver. *Beyond the Arms Embargo: EU Transfers of Defense and Dual-Use Technologies to China*. Journal of East Asian Studies, Sep-Dec2013, Vol. 13 Issue 3, pp. 457-482. Academic Search Complete, EBSCOhost (accessed May 5, 2016).

<sup>179</sup> AFP. *European Parliament opposes lifting arms embargo against China*. Asia News, 20 December 2003. <<http://www.asianews.it/news-en/European-Parliament-opposes-lifting-arms-embargo-against-China-177.html>> (accessed 3 May 2016).

<sup>180</sup> KREUTZ, Joakim. *Reviewing the EU Arms Embargo on China: the Clash between Value and Rationale in the European Security Strategy*. Perspectives: The Central European Review of International Affairs 22, Summer 2004, pp. 43-58.  
<[http://www.pcr.uu.se/digitalAssets/67/67097\\_1reviewing\\_eu\\_\\_arms\\_\\_embargo\\_china\\_kreutz060130.pdf](http://www.pcr.uu.se/digitalAssets/67/67097_1reviewing_eu__arms__embargo_china_kreutz060130.pdf)> (accessed 1 February 2016).

<sup>181</sup> DAI, Xiudian. *Understanding EU-China Relations: An Uncertain Partnership in the Making*. The University of Hull, Centre for European Union Studies, Research Paper 1/2006. p. 16.  
<<http://www2.hull.ac.uk/fass/pdf/Politics-Daipaper.pdf>> (accessed 3 May 2016).

Schröder faced strong domestic criticism in both French and German national parliaments and public spheres.

On the other hand, Scandinavian countries and the Netherlands have spoken out in strong opposition to the proposed review, which Kreutz explains by a long-standing tradition of “strong anti-China and pro-human rights attitudes” in these countries.<sup>182</sup> The ten new member states that joined the EU in 2004 did not take an explicit stance on the issue and were widely considered sensitive to US interests (see below) in foreign policy decision-making.<sup>183</sup>

The motivation of the advocates against the embargo was clearly economic, as mentioned above, as well as strategic. Its lifting would enable European military industries to expand to the Chinese market en masse and cater to its growing military procurement without political interference. As Dai points out, “it is an open secret that the Franco-German plan of lifting the embargo would open the way for, and legitimise the selling of, such items as French Mirage fighter jets and German missiles by the European arms industry to China.”<sup>184</sup> France has been steadily exporting significant amounts of military goods to China, with a high point in 2004 (\$264 million at 1990 constant prices, compared to \$78 - 113 million in the four years after the imposition of the embargo), and amounting to \$173 million in 2015, which represents about 14% of total arms exports to China.<sup>185</sup> For comparison, the UK exported \$40 million worth of arms yearly between 2005 and 2015, and German figures have been even lower (\$12 million in 2015 at 1990 constant prices).<sup>186</sup>

Furthermore, the symbolic act of lifting the embargo would also create more favourable conditions and investment opportunities for European businesses in general, the French and German interests in this being apparent. During a period of most heated debate on the potential lifting of the arms embargo, French Prime Minister Jean-Pierre

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<sup>182</sup> KREUTZ, Joakim. *Reviewing the EU Arms Embargo on China: the Clash between Value and Rationale in the European Security Strategy*. Perspectives: The Central European Review of International Affairs 22, Summer 2004, pp. 43-58.  
<[http://www.pcr.uu.se/digitalAssets/67/67097\\_1reviewing\\_eu\\_\\_arms\\_\\_embargo\\_china\\_kreutz060130.pdf](http://www.pcr.uu.se/digitalAssets/67/67097_1reviewing_eu__arms__embargo_china_kreutz060130.pdf)> (accessed 1 February 2016).

<sup>183</sup> Ibid.

<sup>184</sup> DAI, Xiudian. *Understanding EU-China Relations: An Uncertain Partnership in the Making*. The University of Hull, Centre for European Union Studies, Research Paper 1/2006.  
<<http://www2.hull.ac.uk/fass/pdf/Politics-Daipaper.pdf>> (accessed 3 May 2016).

<sup>185</sup> SIPRI Arms Transfers Database. <<http://www.sipri.org/databases/armstransfers>> (accessed 3 May 2016).

<sup>186</sup> Ibid.

Raffarin expressed an adamant stance against it during his visit to China, where he also attended a ceremony at which Chinese airline companies signed a \$3.2 billion business deal with Airbus.<sup>187</sup> German companies such as Siemens or Volkswagen have a very strong presence on the Chinese market as well. Economic concerns became more acute again in the course of the Eurozone debt crisis.

Concerning strategic aspects, the support from China as a permanent member of the UN Security Council would be crucial for Germany which has long been interested in getting a permanent chair in the principal UN body.<sup>188</sup> This aspect is related to the EU's desire to contain the US hegemony, as Gedmin comments: "On a broader level, the EU arms embargo issue transcends mere economic self-interest and predictably appeals to the "soft power" approach of Europe. China regularly makes noises about wanting to build a multipolar world, in which US power could be more easily restrained. This sounds very French. At times it seems to fit with the EU's vision of a multilateral, United Nations-centric world."<sup>189</sup>

EU-China relations have long been strongly influenced by the USA and it was in the end US pressure which played a decisive role in preventing the lifting of the embargo. Apart from direct lobbying by US officials and diplomats, the US Congress passed a bill in 2005 to restrict "military exports and technology sharing with those European countries selling arms to China,"<sup>190</sup> by which it effectively threatened the EU with a retaliatory arms embargo. This strong pressure is still present and based on the US's geopolitical strategy to contain the growing China, especially in the Asian Pacific region which has become the USA's top priority under the Obama administration.<sup>191</sup> According to Carl Bildt, the former Swedish Prime Minister and Minister for Foreign Affairs, the EU's handling of the embargo had been a major failure: "Whether one blames it all on the leaders of France and Germany – as Chris Patten does - or on

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<sup>187</sup> BBC News. *Paris urges end to China arms ban*. 21 April 2005. <<http://news.bbc.co.uk/2/hi/asia-pacific/4468773.stm>> (accessed 5 May 2016).

<sup>188</sup> DAI, Xiudian. *Understanding EU-China Relations: An Uncertain Partnership in the Making*. The University of Hull, Centre for European Union Studies, Research Paper 1/2006. <<http://www2.hull.ac.uk/fass/pdf/Politics-Daipaper.pdf>> (accessed 3 May 2016).

<sup>189</sup> GEDMIN, Jeffrey. *The great European kowtow and what it means*. Financial Times, 7 December 2004. <<http://www.ft.com/cms/s/1/c8be6514-4886-11d9-9162-00000e2511c8.html#axzz47nWOJ6hx>> (accessed 5 May 2016).

<sup>190</sup> PORTELA, Clara. *European Union Sanctions and Foreign Policy: When and why do they work?* London: Routledge, 2010. p. 106.

<sup>191</sup> BBC News. *Barack Obama says Asia-Pacific is 'top US priority'*. 17 November 2011. <<http://www.bbc.com/news/world-asia-15715446>> (accessed 5 May 2016).

something else it is difficult to avoid the conclusion that the result has been that we have lost credibility in Washington and face in Beijing.”<sup>192</sup>

The issue of the arms embargo remains highly controversial and when High Representative Catherine Ashton presented a strategy paper at the EU summit in December 2010, describing the embargo as “a major impediment for developing stronger EU-China co-operation on foreign policy and security matters”<sup>193</sup> and urging the EU leaders to lift it, it was rejected.

The arms embargo on China has been a matter of contention among the member states for many years. The EU has been heavily influenced by US pressure and lacked internal coherence concerning the sanctions regime, both among the positions of different member states as well as in inter- and intra-institutional disputes. While decision-making connected with the embargo has been democratic, the EU has demonstrated poor internal coherence, which seriously harmed the legitimacy of the measure. The criterion of democracy and internal coherence will be marked as partially fulfilled.

## **4.2 Transparency of the decision-making process and the process of implementation**

As previously discussed, informal sanctions create a situation of legal uncertainty, since their imposition and management cannot be derived from any legal basis. Compared to precise listings of sanctioned goods and persons in the CFSP framework or the highly institutionalized procedure that precedes the imposition of sanctions such as that in the ACP Partnership context, informal sanctions regimes are not elaborate. Their motives, objectives and conditions for lifting are often vague, and the target may not be clear about how to remedy the breach. Accordingly, there is no possibility for target actors to appeal and, as we might have seen above, related negotiations (or lobbying) often take place outside of a formal setting.

Annex II (Declaration on China) to Presidency Conclusions SN 254/2/89, which imposed the arms embargo, provides only the following brief justification:

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<sup>192</sup> BILDT, Carl. *Can we overcome the European crisis?* Annual Conference of the EU Institute for Security Studies, Paris, 26 September, 2005. <<http://www.iss.europa.eu/uploads/media/speech18.pdf>> (accessed 5 May 2016).

<sup>193</sup> RETTMAN, Andrew. *Ashton pragmatic on China in EU foreign policy blueprint*. EU Observer, 17 December 2010. <<https://euobserver.com/china/31538>> (accessed 5 May 2016).

*“The European Council, recalling the Declaration of the Twelve of June 6, strongly condemns the brutal repression taking place in China. It expresses its dismay at the pursuit of executions in spite of all the appeals of the international community. It solemnly requests the Chinese authorities to stop the executions and to put an end to the repressive actions against those who legitimately claim their democratic rights.*

*The European Council requests the Chinese authorities to respect human rights and to take into account the hopes for freedom and democracy deeply felt by the population. It underlines that this is an essential element for the pursuit of the policy of reforms and openness that has been supported by the European Community and its Member States.”<sup>194</sup>*

No time frame or renewal date is specified for the validity of measures, they may either be explicitly lifted or revised, or simply cease to be applied.<sup>195</sup> The member states are responsible for the implementation of the arms embargo whether imposed under CFSP or informally; however, since in this case there was no list or any closer specification of goods covered, the arms embargo on China was left for their own interpretation. The sanctions design of the arms embargo on China does not fulfil the condition of transparency.

As discussed above, the arms embargo received a great deal of attention, including publicity in the media, particularly around the years 2003-2005, when the debate over its review and subsequent US pressure reached its peak, as well as later on, in connection with events that exposed China’s human rights issues (such as the aftermath of the March 2008 riots in Tibet, the persecution of dissidents or a crackdown on ethnic minority groups). However, the communication from the EU’s side has been neither sufficient nor transparent, due to the lack of coordination between the member states and the sensitivity of the issue, related to EU-China relations heavily dominated by commercial interests and intensive pressure from the US. Therefore, the criterion of visibility and transparent communication has been satisfied only partially.

From the perspective of transparency, the informal arms embargo on China cannot be evaluated as legitimate.

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<sup>194</sup> European Council. *Presidency Conclusions SN 254/2/89*. Madrid, 26 and 27 June 1989.  
<<http://www.consilium.europa.eu/en/european-council/conclusions/1992-1975/>> (accessed 1 May 2016).

<sup>195</sup> PORTELA, Clara. *European Union Sanctions and Foreign Policy: When and why do they work?* London: Routledge, 2010. p. 103-104

### 4.3 Efficiency - adequate design of the sanctions regime

The design of the arms embargo on China is de facto a set of national embargoes, left for free interpretation. It lacks specifications about its objectives, its scope and goods covered (which is usually the case with CFSP arms embargoes), and cannot be deemed efficient in this regard.

Judging by the controversies that have arisen in connection with the embargo and the great US concern for its sustenance, the embargo has been to a certain degree effective. Although it does not necessarily constitute a great economic constraint for China, lifting the embargo would open up the Chinese market for European exporters and legitimise the existing trade in arms. On the one hand, according to a US diplomatic cable leaked in 2010, EU member states sold 400 million Euro worth of „defence exports“ to China in 2003 and later approved further exports of military grade submarine and radar technology,<sup>196</sup> which raises questions about the effectiveness of the embargo itself. This was one of the reasons why the USA was not convinced of the EU’s proclamations to lift the embargo and replace its function by the Code of Conduct on Arms Exports.<sup>197</sup> However, the embargo generally restricted the conclusion of new contracts between member states and China,<sup>198</sup> and according to experts kept the exports at a relatively low level.<sup>199</sup>

While the arms embargo was not a source of economic hardship to China, it succeeded in impairing the country's international reputation. China has not felt comfortable being delegitimised and put in the same category as “rogue states” while being the EU’s strategic partner and has thus repeatedly exerted great efforts to get the embargo lifted. In the past years, the term “arms embargo” has been generally avoided in official exchanges between Chinese and EU officials.<sup>200</sup> On the one hand, China does mind the stigma created by the embargo, while on the other hand, it still cannot be

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<sup>196</sup> RETTMAN, Andrew. *Leaked cable shows fragility of EU arms ban on China*. EU Observer, 25 July 2011. <<https://euobserver.com/china/32658>> (accessed 5 May 2016).

<sup>197</sup> DAI, Xiudian. *Understanding EU-China Relations: An Uncertain Partnership in the Making*. The University of Hull, Centre for European Union Studies, Research Paper 1/2006. p. 26. <<http://www2.hull.ac.uk/fass/pdf/Politics-Daipaper.pdf>> (accessed 3 May 2016).

<sup>198</sup> PORTELA, Clara. *European Union Sanctions and Foreign Policy: When and why do they work?* London: Routledge, 2010. p. 107

<sup>199</sup> AUSTIN, Greg. *The 1989 China Arms Ban: Putting Europe’s Position to Congress*. London: The Foreign Policy Centre, 2005. p. 9. <<http://fpc.org.uk/fsblob/444.pdf>> (accessed 5 May 2016).

<sup>200</sup> BRÄUNER, Oliver. *Beyond the Arms Embargo: EU Transfers of Defense and Dual-Use Technologies to China*. Journal of East Asian Studies, Sep-Dec2013, Vol. 13 Issue 3, pp. 457-482. p. 463. Academic Search Complete, EBSCOhost (accessed May 5, 2016).

considered a democratic state in terms of its respect for human rights and the rule of law, despite several improvements. The aim of this thesis, however, is not to discuss the improvement of the human rights situation in China in the last 26 years and the eventual effect of the arms embargo on this development, as it does not focus on the output dimension. It is also difficult to judge the design of this measure, since its goals have not been fully clear, but if the aim of the embargo was to highlight China's human rights record and stigmatise it within the international community, then the imposition and maintenance of the arms embargo on China as a symbolic flag proved fruitful.

While the formulation of the measure taken was not adequate and clear, its design has been evaluated as efficient from the point of view of input and procedural legitimacy. The arms embargo on China is thus partially legitimate according to the third criterion of efficiency.

The overview of the analysed criteria of the legitimacy of the arms embargo against China is outlined below:

Criterion	Indicator 1	Indicator 2	Outcome
1. DEMOCRACY	Democratic Consent	Internal Coherence	partially
	yes	no	
2. TRANSPARENCY	Visibility, Transparent Communication	Fair Design	no
	partially	no	
3. EFFICIENCY	Formulation of Goals and Conditions	Sanctions Design	partially
	no	yes	
LEGITIMACY			no

Table 3: Legitimacy criteria evaluation, Case 3 – informally imposed arms embargo on China

## 5. CONCLUSION

Political legitimacy has often been addressed in terms of the legitimacy of actors, while the legitimacy of policies as such is relatively neglected. This thesis has claimed that an analytical distinction between the categories of the actor (institution) and its action is necessary, since an actor's legitimacy does not automatically imply the legitimacy of its behaviour; furthermore, in real social discourse, actions are not exempt from legitimacy judgments. From the theoretical point of view, the thesis seeks to be innovative in the application of legitimacy criteria to a policy, more specifically to the political instrument of sanctions.

The issue of the EU's legitimacy is mostly dealt with at the level of the EU as an international organisation, or, eventually, at the level of its institutions. The ambition of the thesis has been to make use of this gap and to examine one of the most important tools of the EU's foreign policy by means of the analytical framework of political legitimacy.

The legitimacy of EU sanctions has been examined in three case studies of specific sanctions regimes, selected according to different political/legal frameworks that serve as a basis for EU sanctions imposition, namely CFSP sanctions, sanctions in the ACP Partnership context, and informal sanctions, which are adopted outside of any other framework and only politically, not legally binding. The thesis has employed a comparative method, analysing each case by a set of defined legitimacy criteria, and is based on the hypothesis that the legitimacy of EU sanctions, imposed through different political/legal frameworks, varies. The investigation attempts to substantiate this idea, explain the divergences in the legitimacy of EU sanctions, and examine the roles of particular criteria in the case of the EU's sanctions policy.

The research is based on Scharpf's model of the input and output dimension of legitimacy, complemented by the dimension of procedural legitimacy, and it aims to estimate to what extent EU sanctions are a legitimate tool from the perspective of input and procedural legitimacy. The output dimension is not dealt with substantially, due to its methodological complexity.

The selected cases are the current episode of CFSP sanctions against Russia, prompted by the escalation of the conflict in Ukraine in 2014; sanctions, or "appropriate measures" under Article 96 of the Cotonou Agreement against Zimbabwe between 2002

and 2014, which were a response to the undemocratic elections and the authoritarian rule of President Mugabe; and finally the arms embargo against China imposed informally in 1989.

The following table provides an overview of the results of three case studies documented and analysed in this thesis. Every sub-criterion was discussed and accordingly attributed a value yes, no or partially. Based on each pair of these indicators, a value was assigned to its overarching criterion (democracy, transparency or efficiency), and subsequently to the legitimacy of the selected case. Should the outcome be inconclusive, factors influencing each sub-criterion would be carefully examined and the result decided accordingly. Such a case, however, would be improbable, as a framework composed of three criteria, each of them split between two factors, provides for a clear-cut outcome.

Criterion / Case	<b>RUSSIA</b>	<b>ZIMBABWE</b>	<b>CHINA</b>
<b>1. DEMOCRACY</b>	PARTIALLY	PARTIALLY	PARTIALLY
1.1 Democratic Consent	yes	yes	yes
1.2 Internal Coherence	no	no	no
<b>2. TRANSPARENCY</b>	YES	YES	NO
2.1 Visibility, Transparent Communication	yes	yes	partially
2.2 Fair Design	yes	yes	no
<b>3. EFFICIENCY</b>	YES	YES	PARTIALLY
3.1 Formulation of Goals and Conditions	yes	yes	no
3.2 Efficient Design	partially	yes	yes
<b>LEGITIMACY</b>	<b>YES</b>	<b>YES</b>	<b>NO</b>

Table 4: An overview of legitimacy analysis of the three case studies.

The research builds on the assumption that the legitimacy of sanctions imposed under different political/legal frameworks varies. This is most evident from the disparity between the legitimacy of CFSP sanctions and Art. 96 suspensions, and the lack of legitimacy of informal measures. The selected case studies thus suggest a link between the established political/legal framework and the legitimacy of sanctions imposed under such policy, while the informal setting does not constitute a sufficient basis for the legitimacy of measures.

It is important to reiterate that the analysis is selective in its scope, limited in its sources of information and subjective in their interpretation, and focuses on the input and procedural dimension of legitimacy of EU sanctions. In addition to that, although the three cases have been selected with the aim to be most representative of the different frameworks employed by the EU to impose sanctions, and the analysis of the particular cases has sought to cover various features relevant to those political/legal frameworks in general, the results cannot be automatically applied to other sanctions regimes in the same category of restrictive measures.

The analysis demonstrates that sanctions imposed on Russia in the framework of CFSP are legitimate, since four out of six legitimacy criteria have been met. Their sanctions design and the targeting of measures, however, was not evaluated as fully efficient, although the EU has demonstrated a learning curve in this process. The internal coherence of this regime appears to be problematic, with several EU politicians undermining its legitimacy in public discourse (despite unanimity in the decision-making). Their most visible motivation is economic or strategic calculation, but such political conduct does not seem to influence the formal decision-making of the sanctions' authors.

Aid suspensions under Art. 96 of the ACP Partnership Agreement observed on the case of Zimbabwe have also been assessed legitimate, even achieving a slightly better result than that of CFSP sanctions against Russia. Their highly institutionalised mechanism, involving a fair and transparent procedure, which has evolved throughout a long period of time, significantly contributes to their legitimacy. This leads to the question whether a more elaborate political/legal framework and the influence of the process of policy learning within this framework facilitate the legitimacy of political measures. A similar observation was made in the case of sanctions against Russia in the CFSP framework, where the EU's communication related to sanctions and their

management have improved, demonstrating the EU's ability to adapt its policy to demands of efficiency and legitimacy.

A problematic element in the ACP framework is again a lack of the EU's internal coherence, reflected by stark internal disagreements, including intra-institutional tensions in the Commission and the contradictory behaviour of EU politicians. In this case the origin of such divisions may be traced primarily to the mixed political nature of the ACP Partnership framework, which involves development cooperation, foreign policy, as well as trade, and thus a higher number of stakeholders.

The analysis has not been able to substantiate the legitimacy of the informally imposed arms embargo against China. Although its design is deemed efficient, it is neither transparent nor fair and the goals of the embargo or the conditions of its lifting have not been communicated in sufficiently clear form. Especially the controversial nature and the protracted period of imposition of the arms embargo would require a very transparent and clear communication from the EU's side to back its legitimacy, which has not been the case. The EU has also demonstrated poor internal coherence, both at the inter- and intra-institutional level as well as among the member states, driven by economic interests and even by efforts to legitimise the member states' own infringements (i.e. arms exports to China), and, on top of that, it yielded to US pressure in its decision not to lift the embargo.

This thesis sought to answer the research question to what extent sanctions are a legitimate tool of the EU's foreign policy from the perspective of input and procedural legitimacy. Two out of the three cases, CFSP sanctions imposed on Russia since 2014 and aid suspensions in the ACP Partnership framework aimed at Zimbabwe between 2002 and 2014, were deemed legitimate, while the arms embargo on China imposed informally in 1989 failed to meet the legitimacy criteria. Apart from the findings on legitimacy, two major conclusions can be drawn from the analysis:

1. The lack of internal coherence, whatever its reason, is impairing the legitimacy of the EU's political measures.
2. The imposition of sanctions through an institutionalised political frameworks (such as CFSP or ACP Partnership) enhances their transparency in contrast to informal measures.

Furthermore, Portela's and Eriksson's emphasis on the importance of sanction management has been corroborated concerning the legitimacy of sanctions. Sanctions are neither isolated nor static measures and evolve over time. Interaction between the sender and the target is crucial before and throughout the imposition of a sanctions regime, as it concerns the EU's communication of the sanctions' justification, goals and conditions of their lifting, monitoring of the imposed measures, responsiveness to the target's behaviour, as well as appeals or lobbying from the target's side, all of which have been observed in this analysis and affect the legitimacy of sanctions.

The legitimacy analysis sought to assess sanctions as a political tool by criteria of legitimacy and thus prove the viability of the applying legitimacy theory to a political measure. This aim has been attained within the limited scope of the thesis. A more extensive dataset would be required in order to make a case for this analytical framework and to generate a solid hypothesis on the legitimacy of EU sanctions. What still invites further research is the empirical level of legitimacy of EU sanctions.

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