TRANSATLANTIC ECONOMIC STATECRAFT

The Challenge to Building a Balanced Transatlantic Sanctions Policy between the United States and the European Union

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About the Author

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Acknowledgements

The author would like to thank Elizabeth Rosenberg and Zachary Goldman for their help and contribution to this project, as well as Francesco Fini, Manuel Lafont Rapnouil, Richard Nephew, and Jeff Rathke for their review of earlier drafts of this report.

Economic Statecraft Series

This policy brief if the fourth in a CNAS series on the coercive tools of economic statecraft and the first in this series to be published jointly with the Center for Strategic and International Studies.

Cover Photo
Limits to EU sanctions policy and U.S. sanctions overreach contribute to an imbalance in the transatlantic relationship on sanctions policy. This imbalance may ultimately undermine the ability of the United States and the European Union to use and coordinate sanctions as a security tool.

Executive Summary

Transatlantic cooperation on sanctions is much better today than it was 20 years ago. In 1982 and in 1996, political disputes over sanctions issues saw European countries legislate to block U.S. attempts to extend restrictions against Russia and Iran to European companies. Overcoming this negative historical experience, both sides of the Atlantic have closely coordinated in recent years to tackle common threats, including nuclear proliferation in Iran and Russia's military intervention in Ukraine. European sanctions played a central role in bringing Iran's government to serious negotiations that led to the July 2015 Joint Comprehensive Plan of Action. Despite the recent progress on transatlantic sanctions cooperation, however, the U.S.-EU partnership still faces significant challenges.

- On the European side, the complex architecture of EU sanctions policy, which features sanctions adopted at the EU level but implemented and enforced at the member-state level, creates inefficiency and confusion. Gaps in intelligence sharing among member states and with the EU itself create legal challenges to the sustainability of sanctions against individuals and entities. Interaction with the private sector is also complicated by different approaches at the EU and national levels.

- Meanwhile, on the U.S. side, the tendency of the United States to overreach with sanctions that impact the private sector in Europe creates transatlantic friction. This overreach is sometimes deliberate and sometimes the product of misunderstanding about U.S. sanctions on the part of the private sector. The European Union's limitations described previously do not help it to efficiently push back on the United States or to encourage and induce Washington to exercise more restraint. Sanctions overreach risks diminishing political support in Europe for sanctions, as recently acknowledged by U.S. Secretary of the Treasury Jack Lew.

Going forward, both the United States and the European Union would benefit from tackling those challenges through cooperation rather than competition.

- Cooperation, a preferable and more likely scenario, would involve the U.S. agencies in charge of sanctions policy to show increasing transparency about their enforcement strategies. Cooperative mechanisms such as a mutual license recognition system would go a long way to reduce legal hazards for EU exporters and banks. Cooperation would also involve restraint in the U.S. deployment of secondary sanctions, particularly in instances where EU sanctions already exist.

- In the absence of such a cooperative approach, competition could see Europeans opposing the effect of U.S. sanctions on EU companies and banks, for instance, by adopting their own secondary sanctions to target U.S. interests.

EU policymakers must make sanctions policy changes in order to facilitate cooperation with the United States. These policy changes may include further harmonization of licensing mechanisms among member states, more flexible tools for sanctions enforcement (and a more aggressive approach to enforcement generally), and further intelligence sharing. In addition, EU mechanisms to support and assist companies struggling to cope with market opportunities lost because of sanctions should be created to increase the political sustainability of the sanctions policy. Lastly, Europeans should tighten their control on transactions between entities under EU sanctions and entities outside of the EU when they occur in euros or other European currencies, such as the pound, in particular when such transactions are forbidden by EU laws.

Expanding constructive cooperation will enable transatlantic partners to preserve the integrity of the sanctions tool and will ultimately benefit the broader political and security partnership. Specifically, it will help to address common challenges: managing policy adaptation to address evolving threats and the circumvention of sanctions; contingency planning regarding the use of sanctions to address emerging security threats; and countersanctions strategies to protect U.S. and EU interests from the use of sanctions by non-Western powers.

Introduction

Economic sanctions[1] (referred to as "sanctions" in this report) have become a tool of choice for the United States and the European Union to advance their security interests and to uphold a rules-based global order. U.S. and European financial and economic power gives both players a competitive advantage in economic warfare and significant clout over state and non-state actors that pose challenges to their interests and values, as well as challenges to international peace and security.

An increasingly unstable security environment, the continuing decline of European defense spending, and resulting limited power-projection capabilities have convinced Europeans of the strong contribution that sanctions can make to their security. The emergence of an EU common foreign and security policy (CFSP) in the aftermath of the Cold War helped member states to create the collective framework for a united sanctions policy. The European willingness and institutional ability to adopt sanctions have served U.S. security interests well, considering Europe's status as one of the world's premier trade and financial markets.

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Still, Europeans and Americans see important differences in the utility of sanctions as a coercive tool, as well as in their respective sanctions policies. Sanctions in the European Union come with limits related to both European institutions and member states. Meanwhile, increasingly sophisticated American sanctions have created concerns among European policymakers and private-sector representatives about the coercive and overreaching impact of U.S. sanctions on European companies and banks. "U.S. sanctions overreach" refers to the outsized effects that U.S. sanctions have on the private sector outside of U.S. jurisdiction, for instance in Europe or Asia. This impact limits the autonomy of the European Union to design sanctions policies to meet European strategic objectives. These factors contribute to a structural imbalance that may ultimately undermine the United States' and the European Union's ability to use sanctions as well as to coordinate their sanctions policies.

This report does not elaborate on the effectiveness of sanctions; that issue has been well documented over the years by authors who have identified conditions for maximum effectiveness.[2] It assumes that sanctions have been, and can be, an effective tool when used strategically. Instead, this report identifies trends and issues that will determine the transatlantic community's ability to use sanctions jointly and with great impact in the future. It explores the European "conversion" to sanctions, the residual limits to the EU's approach, and the resulting imbalance that still exists in European cooperation with the United States. It advocates for several steps to help balance the transatlantic partnership and sustain a cooperative relationship on issues of economic statecraft. Finally, it offers steps to secure long-term political support for sanctions.

The European Conversion To Sanctions

The Age of Transatlantic Tensions

No country in recent history has used sanctions more than the United States.[3] But Europeans are no strangers to sanctions either. Their history is full of episodes of economic warfare, from the French Emperor Napoléon's failed attempt in 1806 to put in place a European-wide economic embargo against British products, to the Franco-British-led League of Nations' sanctions punishing Italy over its military campaign in Abyssinia in 1935. Nevertheless, since 1945 European countries have been more reluctant, as well as less able than the United States, to use sanctions.

The absence of a unified political and legal European sanctions framework until the early 1990s made it very challenging for European nations to agree on a common approach to sanctions. It was up to individual states to determine the need for restrictions to their national trade and financial relations with foreign countries. They were understandably reluctant to restrain their economic exchanges unilaterally in a way that would benefit their European competitors. This, as well as Europe's preference for a multilateral approach to foreign and defense policy generally, led Europeans to favor the adoption of sanctions through the U.N. Security Council. European governments were willing to enforce some targeted sanctions through the European Political Cooperation (EPC), the predecessor of the CFSP. They did so against Argentina in 1982, for instance, during the Falklands war, and against China with the arms embargo enacted in 1989 after the Tiananmen Square protests.

Beyond the limited few examples of European coordination on sanctions policy, Europeans were also skeptical that broad embargo-like sanctions used by the United States against countries like Cuba or Iran would be effective tools in these situations. Many Europeans did not think sanctions should or could be used to promote regime change in the way the United States seemed to believe they could. Many EU governments were also wary about the humanitarian impact of broad embargos, such as the Iraq model in the 1990s, which is why many European governments opposed it. The combination of these factors made the transatlantic dialogue on sanctions tense, particularly at times when the United States was intent on extending the reach of its sanctions, as the two following examples demonstrate.

On June 22, 1982, President Ronald Reagan decided to extend U.S. secondary sanctions, or sanctions imposed against non-U.S. companies conducting business with the USSR for the construction of a gas pipeline between the USSR and Europe.[4] U.S. sanctions targeting U.S. bilateral trade with the USSR had been initially put in place on December 30, 1981, in an attempt to reverse the state of martial law instituted by the Polish army earlier that month. The backlash to Reagan's decision in Europe was immediate. European foreign affairs ministers denounced "an extraterritorial extension of U.S. jurisdiction, which in the circumstances is contrary to the principles of international law."[5] European governments instructed companies not to comply with U.S. sanctions. Against such opposition, the Reagan administration had no choice but to abandon the pipeline sanctions altogether in mid-November 1982.

On August 5, 1996, President Bill Clinton signed into law the "Iran and Libya Sanctions Act" (ILSA) authorizing the imposition of sanctions on foreign companies making significant investments in Iran's energy sector.[6] These secondary sanctions, as well as those enacted under the Helms-Burton Act against Cuba, were rejected by the European Union and its member states. Once again, Europeans contested American claims of authority to impose "extraterritorial" measures on European companies. They not only brought the dispute over secondary sanctions to the World Trade Organization (WTO) but also put in place a regulation prohibiting European companies from abiding by U.S. sanctions in November 1996.[7] This regulation permitted the imposition of countersanctions against U.S. interests and assets under European jurisdiction. President Clinton negotiated a settlement to the political standoff by granting waivers to European companies.[8]

The EU Conversion On Sector-Wide Sanctions

In 2016, 20 years after the ILSA transatlantic crisis, the nature and intensity of the transatlantic partnership on sanctions has changed. Along with an increasing number of sanctions regimes targeting individuals and entities,[9] the European Union has slowly moved away from its suspicion of broader trade and financial sanctions. The evolution is the product of the creation of the CFSP, enabled by the inception of the European Union with the Maastricht Treaty in 1993. The CFSP provides the EU the authority to adopt, with unanimity, sanctions directly implementable across the EU.

The CFSP has been instrumental in fostering EU sanctions and has given EU sanctions much of their

substance. It has forced Europeans to craft common foreign policy instruments, and sanctions have been one of the most effective among them. In many instances, sanctions have been foundational in helping to create a common approach to challenges represented by countries like Iran or Syria. Not only did sanctions help Europeans shape such countries' behavior, but they also contributed to creating a common EU view toward each threat. This evolution has been simultaneous with the expansion of United Nations sanctions in the post-Cold War environment. This, in turn, led to the EU implementing U.N. sanctions and building upon them by creating additional autonomous sanctions.

The Kosovo crisis, which began in 1998, marked a significant step in expanding the European Union's use of sanctions, as the EU was confronted with a security crisis in its neighborhood. It reacted by adopting ambitious trade and financial measures against Serbia, even in the absence of U.N. sanctions. Sanctions alone did not deter Serbia's President Slobodan Milosevic from escalating the crisis, nor did they convince him to look for a diplomatic way out. Ultimately, NATO had to resort to the use of force to achieve those ends. However, EU sanctions against Serbia over the Kosovo crisis played an important role in creating the view in the EU that broad sanctions could be efficient. This, in turn, revealed the inevitable economic costs associated with sanctions that are borne by individual EU nations.

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This evolution has played out more strikingly in the 2010s. Interestingly, from 2004 onward, the enlargement of the European Union to include 13 additional member states did not slow down the intensification of the EU sanctions policy. The creation of a European External Action Service (EEAS) in 2010 has reinforced European institutions in their ability to create and leverage a technical expertise that has helped bring together member states' national security and economic interests. EU sanctions have increasingly consisted of broad trade and financial restrictions such as those enforced against the Ivory Coast in 2010, Iran since 2010, Syria since 2011, and Russia since 2014. In terms of economic costs, it is worth noting that EU-wide sanctions have helped to distribute the costs across a wider swath of Europeans: the Iran sanctions hurt Greek shippers, German exporters, French carmakers, and British banks, making it more difficult for one country to complain about unbalanced burden sharing.

The Iran and Syria sanctions regimes demonstrate the transformation in the EU's willingness to adopt the kind of broader sanctions that they rejected in the past, rather than implement more targeted sanctions. In particular, the Syria sanctions, reinforced several times from 2011 onward, confirm that after the Kosovo crisis there was a European willingness to take autonomous action even in the absence of U.N. sanctions. By contrast, in the case of Iran, U.N. sanctions provided a political framework for wider EU sanctions. Specific motivations behind both sanctions regimes can explain this evolution in the EU's approach, including concerns for the risk of military escalation in the case of Iran, and concerns for the risk of a humanitarian tragedy in Syria. But this reversal can only be understood if put in perspective of the wider evolution of Europe's security environment.

Explaining Europe's New Willingness To Impose Sanctions

Beyond institutional factors such as the emergence of the CFSP and, later, the EEAS, the EU's greater willingness to use economic sanctions is related to the need for Europeans to come up with a toolbox of instruments capable of responding to an unstable security environment. In that context, the European Union has tried to expand the options available to its member states, through the use of either economic coercion or military options under the form of common security and defense policy (CSDP) operations. To be sure, the relative demilitarization of European nations in the aftermath of the Cold War has caused different European constituencies to hold divergent views on the use of military force. In that sense, European divisions over the use of military force, for instance during the crisis leading to the Iraq War in 2003, may have reinforced the relative added value of sanctions as a tool for conflict prevention. This is true particularly in the case of Iran sanctions, where the fear of Israeli military strikes against Iran's nuclear facilities fueled support for sanctions.

Relatedly, the United States played a role in pushing, if not coercing in some instances, the European Union to endorse the greater use of sanctions. Globalization and the increasing strength of financial markets since the 1980s reinforced the need for European businesses, and in particular the banking industry, to maintain access to

U.S. financial networks. This evolution has offered the United States more options to leverage such access to advance its foreign policy goals. It has notably done so by increasing its direct outreach to the global banking industry to circumvent European governments' traditional reservations about the "extraterritorial" effect of U.S. sanctions. Several European governments initially criticized this approach. Over time, though, they chose not to oppose such outreach. Instead, many of them joined in using their own unique economic leverage to the benefit of both EU and U.S. security interests.[10] The transition in the mid-2000s to more U.S.-friendly governments in parts of Europe traditionally skeptical of sanctions may have contributed to the trend.

Fostered by U.S. encouragement and greater pro-U.S. political sentiment, European policymakers have been inclined to facilitate EU-U.S. cooperation on multiple issues over the last decade, notably among the "P3," the United States, France, and the United Kingdom, joined by Germany, on the Iran negotiation. This cooperation, along with reduced obstructionism from Russia and China in the U.N. Security Council, has been instrumental in the rise of sanctions adopted by the United Nations. When it comes to the sanctions adopted against Russia for its destabilizing role in Ukraine, the existing transatlantic partnership on sanctions was able to produce a strategy at a time of crisis, and targeted creative restrictions on credit financing that hurt Russia while avoiding a massive economic impact on the European economy.[11]

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While U.S. audiences are keen to focus on the U.S.-Iran bilateral nature of the Joint Comprehensive Plan of Action (JCPOA), the role played by European sanctions in bringing Iran back to the negotiating table is often lost. The European Union was Iran's first trade partner through the 2000s, giving Europeans leverage over Iran's behavior that few other players had. The shift in the European approach from 2010 and 2011 toward sector-wide trade and financial sanctions against the Iranian economy sent a political signal to Iran's leadership that it could no longer count on its trade relations with Europe to generate objections to Western demands for concessions on the nuclear dossier. From an economic standpoint, the EU oil embargo implemented in July 2012 dramatically reduced oil resources available to Iran's government. Financial restrictions, such as the freeze of many Iranian banks' assets in the European Union or the prohibition on financial payment messaging services by the Society for Worldwide Interbank Financial Telecommunication (SWIFT) services, limited the amount of trade in which Iran could engage.

Those factors significantly limited Iran's economic room to maneuver, creating concerns that economic struggles might fuel social and political instability. Iranians engaged in genuine negotiations starting in 2013, in large part to ensure the lifting of European sanctions, although they saw the U.S.-Iran bilateral track as the best way to achieve that objective. This was not a contradiction: Iranians were always convinced – mistakenly – that Washington "controlled" European sanctions, rejecting the notion that Europeans were imposing sanctions from a genuine concern about the threat presented by Iran's nuclear program. Iran was therefore convinced that finding resolution with the United States would be the most efficient way to "deliver" European sanctions relief.

The Limits Of European Economic Statecraft Without A Federal European Government

In light of past tension related to sanctions against Iran and Russia (among others), the recent transatlantic coordination on sanctioning those two countries has been remarkable. Nevertheless, EU sanctions policy remains less sophisticated than U.S. sanctions policy due to the limitations of the hybrid political nature of the European Union.[12] This creates a situation of imbalance by making it harder for the European Union to deploy the tools of economic statecraft in the same way as the United States.

The Implementation Gap

European sanctions are negotiated and adopted unanimously at the EU level, but they are implemented and enforced by member states at the national level. In the course of negotiating and adopting sanctions, the hard task for Europeans is to reconcile their respective economic interests with the goal of adopting sanctions capable of achieving their political objective. These often contradictory economic and political considerations are at play among European states, and also at the national level between and even within national agencies interested in sanctions policy. Within member states, security-related agencies are usually interested in maximizing the political effect of sanctions, while economic and trade-related agencies want to minimize the economic effects on their national companies. In that context, the political decision to resort to sanctions against a third country matters as much as the negotiation over their precise legal scope. Member states can often bridge differences when they compromise on technical definitions outlined in sanctions policy.

The details of sanctions policy matter because individual member states retain exclusive authority to implement the sanctions. Thus, for instance, when a Russian entity is designated by the European Union, the freeze of its assets must be implemented at the national level by each member state depending on the geographic location of the sanctioned entity's bank accounts. Likewise, national authorities are in charge of delivering licenses when required, to permit otherwise prohibited activities. Although European sanctions regulations are drafted with precision so as to avoid implementation gaps, member states always retain room for interpreting those regulations. Differences in interpretation can lead to slightly stricter or looser practices in various jurisdictions. To address this, EU institutions have led efforts to better harmonize implementation doctrines.[13] But there are limits to the degree of coordination that the human resources of the office of the European External Action Service in charge of sanctions policy can provide, whether on issues like enforcement and compliance, or on evaluation of the political and economic effects of EU sanctions policies on the countries, entities, or individuals they target.

There are also limitations on the ability of EU states to coordinate when it comes to enforcement mechanisms against potential violations. Member states are better positioned than EU institutions to identify violations, considering both their direct relations with the private sector and their intelligence resources. But little information is publicly available about how violations are addressed once they are identified. The lack of publicly available information on violations makes it unclear whether member states are able to bring violators back into compliance or to punish them when they violate sanctions. Member states are usually reluctant to raise cases of violations at the EU level because it exposes their own inability to enforce sanctions in their jurisdiction. Additionally, intelligence sensitivities make it harder to engage in diplomacy about compliance issues: it is hard for one member state to publicize a sanctions-violation case taking place in another member state when such information has been obtained clandestinely by the first country's national intelligence apparatus. Discreet collaboration among member states about violations cases is common, but EU institutions are not necessarily informed.

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Even when information about sanctions violations is made available at the EU level, the European Union itself has limited options to address violations. It can theoretically take action against member states if they do not uphold their obligations to enforce sanctions, but such a move seems politically unlikely. More realistically, the

EU can take action against the violators themselves, by freezing their financial assets held across the European Union. However, the number of EU companies sanctioned for non-compliance has been very limited over the years, setting aside European subsidiaries of non-EU companies. Here again, the lack of standardized enforcement raises questions. The fact that European violators could be identified by enforcement officials in the United States before the European Union takes action itself[14] only reinforces this perception and highlights the need for more effective ways to address such situations on both sides of the Atlantic.

The Intelligence Gap

Intelligence is a critical resource for an efficient sanctions policy and, beyond sanctions, it is crucial in the fight against the financing of security threats such as those posed by terrorist networks. The U.S. Treasury has dramatically enhanced its cooperation with U.S. intelligence agencies and since 2004 has been a member of the U.S. intelligence community, after the creation of the Treasury's Office of Intelligence and Analysis.[15] In the European Union, intelligence remains the purview of member states. In some states, like France and the United Kingdom, a similar intensification of cooperation between finance ministries and intelligence agencies has taken place. But intelligence cooperation among European states remains limited. Member states – especially those that allocate significant resources to intelligence – are interested in retaining absolute control over intelligence matters at the national level. This is one reason for the absence of common data-protection laws and the lack of substantial information-sharing channels, beyond bilateral channels, between members states themselves. This situation creates two main complications.

First, Europeans struggle to build individual sanctions designations that can withstand legal challenge, a source of real concern in Brussels, in European capitals, and in Washington.[16] Since the European Union started to significantly expand the number of entities and individuals designated under EU sanctions in the early 2010s, EU courts as well as the European Court of Human Rights have overturned many designations for lack of sufficient publicly disclosed information on the defendant. EU judges systematically request that more detailed evidence of the behavior justifying the enactment of individual sanctions be communicated both to the courts and to the lawyers of those challenging the designations. The Council of the European Union can rarely provide this evidence, for it usually remains in the hands of the member states that obtained it through covert means and therefore cannot or will not declassify it in order to admit it in court. Given this situation, there have been more than 70 rulings in the past few years cancelling the designations of Iranian, Tunisian, Belarusian, Libyan, and Syrian entities and individuals.[17] Preserving the EU's long-term ability to impose individual sanctions is critical because they are uniquely flexible tools to target specific interests and assets when sectoral and trade sanctions are excessively general instruments to use. Therefore, the inability to admit classified evidence in court is a real threat to the use of sanctions in the EU.

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The European Union has been exploring an array of solutions to address these problems.[18] One would be the creation of a dedicated channel facilitating the transfer of classified information to EU judges without circulation to the challenging parties. Another would consist of using wider designations criteria by basing sanctions on status rather than behavior (for instance, individuals who work in a specific economic sector, rather than those engaged in an instance of trafficking nuclear-sensitive equipment). The latter solution has been employed in the Russia sanctions program but has yet to be considered by EU judges. However, it has been explicitly deemed legal in the context of the Iran sanctions program by a recent ruling of the Court of Justice, the EU Supreme Court, for the designation of the National Iranian Oil Company (NIOC).[19] Paradoxically, such requirements by EU judges run the risk of making sanctions less targeted and broader in scope than initially desired, something that may end up making it harder to garner support for imposition of new sanctions within the EU. Lastly, resorting to publicly available evidence may be the most accessible option, but such information may be less incriminating. All options require additional financial and human resources to assemble evidence that will stand up in court.

Second, the intelligence gap limits the ability of the European Union to efficiently counter the financing of security threats, particularly terrorism. Although Europeans remain skeptical of sanctioning "state sponsors of terrorism," they have made strides since the 9/11 attacks in sanctioning terrorist networks.[20] However, there are significant shortfalls in the EU's

ability to counter terrorism financing, even while terrorist networks take advantage of the EU's free flow of individuals and capital, as once again demonstrated by the recent wave of attacks in France in January and November 2015 and Belgium in March 2016.

EU policymakers are considering additional steps, in the context of the threat posed by the Islamic State, to better trace and prevent the movement of funds and to disrupt sources of revenues used by terrorist organizations. In May 2015, the European Union adopted a Directive on preventing the use of the financial system for money laundering or terrorist financing (the so-called "4th Anti-Money Laundering" Directive), which member states are now starting to translate into national legislation. In addition, the European Commission announced on February 2, 2016, a new action plan to strengthen the fight against terrorist financing.[21] Further steps to trace and disrupt illicit funding flows could include the reinforcement of information sharing and cooperation among EU "Financial Intelligence Units," and each member state's public officials responsible for gathering and investigating suspicious financial transactions.

The Private-Sector Gap

The hybrid nature of the European sanctions policy architecture creates constraints and opportunities for the private sector. Each member state will always be interested in restrictive measures that most minimally affect its national interests and companies. While lobbies and large transnational companies maintain a direct presence in Brussels to reach out directly to EU institutions, it is usually at the national level that the private sector can best ensure that its interests are embedded in member states' national positions on the early definition of sanctions and then on their implementation and enforcement.

But the impact of sanctions is not necessarily easy to forecast for either governments or the private sector, particularly when it comes to financial restrictions. The potential impact of a sector-wide trade embargo can be deduced from trade data, even if its impact on small subcontractors can be more difficult to predict. The impact of a financial restriction is trickier to predict: it is hard to have full clarity on the amount of legal trade transactions that may not be processed for lack of financing or financial channels available to process payments. The banking industry itself can be keen to put in place stricter restrictions than EU regulations require to hedge against legal risks arising from the uncertain environment or from the fear that tougher sanctions may be coming in the future. While those "over-compliance" challenges are not specific to Europe, they are made more complex for European businesses by the need for European companies exposed to U.S. markets to comply with both EU and U.S. sanctions.

When it comes to sanctions implementation and enforcement, stronger coordination among member states' doctrines is obviously important for EU governments. To a certain extent, it matters to the private sector, too, but the picture can be murkier. Some companies can theoretically benefit from weak harmonization of sanctions between member state governments by choosing to do business with a sanctioned country from a member state that has weak enforcement practices. A competition among member states to attract businesses by implementing sanctions less strictly should be avoided.

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Transparency and outreach, both by national agencies and by EU institutions, are critical to increase the private sector's awareness of possible changes to the sanctions legal environment and to strengthen compliance and due diligence practices. This is especially relevant among smaller companies that do not have resources for in-house compliance mechanisms. Dialogue with the private sector at both the national and EU levels can also help to identify either loopholes or implementation challenges that may require adaptations to EU decisions and regulations. Finally, the total absence of EU solidarity mechanisms[22] with sectors or with companies impacted by sanctions leaves the need for assisting companies particularly hard-hit by sanctions to the member states, while the EU itself would sometimes be better placed to manage such assistance.

The Transatlantic Imbalance

Despite more fruitful transatlantic cooperation on sanctions in the relatively recent past, the challenges faced by EU sanctions policy architects, as well as the relative European willingness to adopt sanctions, contribute to a situation of imbalance between the European Union and the United States. U.S. sanctions overreach is a particularly significant manifestation of this imbalance. Sanctions overreach has encouraged de-risking strategies by financial institutions, thereby limiting the flow of transactions with countries under sanctions even when such transactions were legal from the standpoint of both U.S. and EU sanctions. This overreach is the product of intent on the part of the U.S. government, as well as that of a misunderstanding of U.S. sanctions on the part of the European or Asian private sectors. So far, the European Union has not been able to address this problem effectively, either by pushing back on the United States or by inducing it toward a more restrained use of its far-reaching sanctions.

Different Views On The Role Of Sanctions in National Security Strategies

Economic sanctions are an integral part of U.S. national security doctrine. The U.S. Department of the Treasury's economic sanctions policies have received an increasing share of attention in official American national security documents over the past decade,[23] thus making the Treasury a legitimate member of the U.S. national security apparatus in the eyes of many. According to the U.S. 2015 *National Security Strategy*, sanctions are used to address a wide array of threats as forms of punishment, policing, or deterrence. They are integrated into a continuum of options and tools to advance U.S. national security interests through influence, diplomacy, or coercion.

The European Union's latest attempt at drafting a common security strategy dates back to 2003. But neither this document[24] nor its 2008 update[25] mentioned economic sanctions. Member states' views on this topic are diverse. France's 2013 *White Book of Defense and National Security* mentions sanctions only once,[26] reflecting the traditionally low strategic conceptualization of sanctions in the French military-dominated security apparatus. By contrast, the United Kingdom's 2015 *National Security Strategy and Strategic Defense and Security Review* mentions sanctions no fewer than fifteen times.[27] Germany is due to publish a white paper on security and the future of the armed forces in 2016, but it has yet to elaborate on the role it sees sanctions playing in its national security strategy. In the absence of a clear conceptualization of the role played by sanctions in its security strategy, the European Union can be tempted (and pressed) to embed its own sanctions into a wider political strategy led and defined by the United States.

This is problematic for two reasons. First, Washington does not always have a strategy of its own. For example, increasingly harsh sanctions against Syria since 2011 have not translated into a broader strategy to shape the outcome of an ever-deteriorating situation on the ground. Second, Europeans do not always share the U.S. strategic vision of sanctions. Americans tend to see sanctions as a step that may ultimately lead to the use of military force, in the same manner as covert operations such as those the United States carried out against Iran's nuclear facilities.[28] Ultimately, backing sanctions with a credible threat of military action is supposed to give them more strength and credibility, but it can also weaken their case in the eyes of international partners that see sanctions as a "bridge" to military action and reject them for that very reason. Rather than serving as a step in an escalation ladder, Europeans tend to see sanctions as a flexible instrument that can be either an alternative to the use of military force, such as against Iran and Russia, or in some instances a complement to it, such as those targeting Mali, the Central African Republic, or the Islamic State.

The "Extraterritorial" Sanctions Issue

In recent years, the United States has maintained and extended its ability to impose secondary sanctions against European companies and individuals. This has been particularly relevant in the case of Iran sanctions. One good example was the June 2013 U.S. Executive Order 13645, which extended secondary sanctions against companies doing business with Iran's automotive sector.[29] Quickly suspended after the November 2013 Joint Plan of Action, the executive order compelled the European (and Asian) automotive industries to reduce their business with Iran. Although this did not provoke a formal, diplomatic response from Europe, the initiative created difficulties for some European governments criticized at home for not defending the interests of their national industries. Interestingly, the overuse of U.S. secondary sanctions is becoming a concern of the U.S. government itself. As explained recently by U.S. Secretary of the Treasury Lew, "they are viewed, even by some of our closest allies as extra-territorial attempts to apply U.S. foreign policy to the rest of the world.

If foreign jurisdictions and companies feel that we will deploy sanctions without sufficient justification or for inappropriate reasons – secondary sanctions in particular – we should not be surprised if they look for ways to avoid doing business in the United States or in U.S. dollars. Such outcomes would not be in the best interest of the United States."[30]

Skepticism about secondary sanctions is made worse by the fear that the United States enacts secondary sanctions in order to take advantage of foreign countries' private-sector competitors. This is a popular idea in Europe. In the case of the aforementioned Executive Order 13645, European carmakers were concerned that U.S. companies might gain an advantage from expelling them from the Iranian automotive market if it were eventually to be reopened. The JCPOA's preservation of the U.S. unilateral embargo demonstrates, in fact, that in the case of Iran the reverse is true. Still, private industries – sometimes supported by political leaders as well – are keen to blame EU governments for their alleged naiveté about the true objectives of U.S. sanctions policy, and in turn for their support for European sanctions that they see as aligning with Washington.

> **Skepticism about secondary sanctions is made worse by the fear that the United States enacts secondary sanctions in order to take advantage of foreign countries' private-sector competitors.**

Surprisingly, the European pushback against U.S. secondary sanctions has not been uniform. The more Europeans have been willing to adopt sanctions of their own, the less they deny the United States the authority to put European companies under the threat of secondary sanctions penalties. The fact is that secondary sanctions have, at times, helped some pro-sanctions EU member states to convince their more reluctant EU counterparts to adopt measures that may not otherwise have been put in place without such pressure. On March 15, 2012, the European Union prohibited the provision of financial messaging services provided by SWIFT to designated Iranian banks. For almost two years, EU member states had been discretely but unsuccessfully discussing the issue when the U.S. Congress – made aware of the European internal discussion – contemplated secondary sanctions against SWIFT. Rather than opposing the move, Europeans finally moved forward with the SWIFT prohibition.[31]

The Broad Impact of U.S. Primary Sanctions

Another point of contention between the United States and the European Union on sanctions is the view in Europe that the United States imposes overreaching primary sanctions, that is, measures focused on activities of U.S. individuals and companies. As acknowledged by U.S. Treasury Secretary Lew, "given the volume of trade in the U.S. dollar, even our ordinary, or primary, sanctions carry enormous weight and influence beyond our borders." European concerns focus in particular on the definition of who or what is a U.S. individual or company. The extent to which a given transaction made outside of the United States could fall under U.S. primary, rather than secondary, sanctions depends on a variety of criteria and on enforcement strategies about which U.S. leaders have offered little clarity.

Using the dollar is the most obvious form of exposure to primary sanctions, but it is not the only one. Being a foreign entity owned or controlled by a U.S. person, even outside of the United States is another example, as is having a U.S. person involved in a given transaction (for instance, the nature of the control that person has on the company's operations). Establishing a clear distinction between primary and secondary sanctions is critical for the private sector's risk assessment. Consequences of violating U.S. primary sanctions, which can entail financial penalties, are potentially much more problematic that those of violating secondary measures that may "only" close U.S. markets to the violator.

The imposition of large fines on European banks for violations of U.S. primary sanctions has fueled European confusion. On November 6, 2008, the U.S. Treasury announced that U.S. banks would no longer be authorized to handle indirect transactions (also known as "U-turn transactions") involving Iranian banks.[32] The measure effectively prevented European banks from conducting dollar transactions with Iranian banks, and in turn would potentially bring dramatic legal consequences and financial penalties against violators.[33] In a number of instances, European banks have been fined over either a lack of due diligence in their compliance with sanctions regulations, or repeated and intentional violations of U.S. sanctions laws. This has been made worse by the fact that the legal process for imposing penalties is so complicated and time-consuming that some penalties imposed in 2014 were for activities dating from 2008.

Although justified by U.S. law, the fines have fueled the perception in Europe that European cooperation with the United States on sanctions has only invited ever more stringent U.S. punishments for European banks. This perception can be explained, at least according to public opinion, by the hybrid nature of U.S. sanctions policy. Many executive agencies within the federal administration, including the White House, as well as Congress, along with state regulators, such as the New York State Department of Financial Services, compete for influence in the creation and enforcement of U.S. sanctions policy, often pushing it beyond expected boundaries. Internal competition among the U.S. sanctions policy architects is one of many factors explaining the overreach phenomenon.

Another manifestation of the imbalance between U.S. and European approaches to sanctions is the need that European companies feel, from a compliance standpoint, to request and receive U.S. licenses to do business with sanctioned parties. The U.S. unwillingness to provide such licenses for non-U.S. companies has left many EU (and likely other) companies frustrated and with their hands tied. This reluctance on the part of the United States might derive from the fear of appearing to encourage transactions that, even when legal, would benefit the sanctioned country. It may also derive from the fact that U.S. agencies are sensitive to the charge that U.S. sanctions are "extraterritorial"; providing licenses to foreign companies in the manner they are provided for U.S. companies would only reinforce this charge.

Internal competition among the U.S. sanctions policy architects is one of many factors explaining the overreach phenomenon.

Beyond ambiguity about when U.S. sanctions apply to foreign companies operating in U.S. jurisdiction, U.S. sanctions affect the behavior of companies operating outside of U.S. jurisdiction. This reality should be acknowledged because it engenders fear and uncertainty, which subsequently discourages transactions. Apart from being unfair, this U.S. overreach is detrimental to long-term adherence to sanctions, and it may provoke humanitarian problems. It can also become problematic if companies and banks decline business with, or struggle to re-establish commercial ties with, previously sanctioned countries.[34] Those countries expect to benefit from the lifting of sanctions after having changed their problematic or destabilizing behavior.

It is notable that U.S. officials were criticized for years by European counterparts for allegedly permitting foreign-incorporated U.S. subsidiaries to do business that U.S.-incorporated companies could not do. Building on the popular misconception that U.S. sanctions are merely a tool of economic warfare against Europe, this claim often focused on the presence of U.S. goods in sanctioned countries as evidence of either hypocrisy or an outright attempt to build market share using sanctions. Closing the foreign-incorporated subsidiary gap in 2012 for the Iran sanctions program may have created compliance burdens abroad, but it also enabled U.S. officials to demonstrate that U.S. sanctions enforcement targeted the support of, and trade with, sanctioned parties, not the trade relations of U.S. partners.

Overreach and overuse of U.S. sanctions policy risks weakening public support for sanctions and, in turn, the ability of European governments to support existing and new sanctions programs in the future. There is a risk of undermining the transatlantic ability to use sanctions cohesively, as well as pushing third countries to use countersanctions against the United States and the European Union.[35]

Toward A More Balanced Transatlantic Relationship On Sanctions

What can be done realistically to restore more balance in the transatlantic relationship on sanctions, bearing in mind that neither the European Union will turn into a full-fledged federation in the foreseeable future, nor will the United States be likely to dramatically restrain its use of sanctions? The European Union needs to retain its specific strategic approach to sanctions but strengthen the resources and the architecture of its sanctions policy. The United States has choices to make about what steps it is willing to take to accommodate European concerns. Finally, both sides of the Atlantic have to come together to tackle larger challenges to their sanctions policies, which will be easier to do if the previous issues can be settled.

Settling The "Overreach" Issue: Cooperation or Competition?

The level of transparency shown recently on Iran sanctions through the series of documents published since the JCPOA entered into force on January 16[36] is a positive step in an effort to bring about greater clarity in U.S. sanctions implementation. But because this effort was dictated by a temporary political imperative, i.e., making sure that the Iran deal is sustainable by creating real opportunities for the Iranian economy, as well as strong demands from the private sector on both sides of the Atlantic, it is unlikely to become a norm across U.S. sanctions regimes. This is true despite progress made on other sanctions programs, such as Myanmar. Although coordination on crafting a political strategy for sanctions has made strides in recent programs such as Russia, Europeans – at both the governmental and private-sector levels – still expect more transparency from the United States on implementation, enforcement mechanisms, and strategy.

On the issue of secondary sanctions, U.S. agencies do not acknowledge that U.S. sanctions are "extraterritorial" measures, insisting in particular that U.S. sanctions do not prohibit foreign-country business with other foreigners but instead impose costs by way of access to U.S. markets. At the end of the day, this semantic disagreement should be left aside on both sides of the Atlantic in favor of more pragmatic political considerations. It is counterproductive for the United States to pursue sanctions policy in a manner that will cause Europeans to cooperate less and increase de-risking practices – namely by using currencies other than dollars every time they do business with countries under sanctions. Additionally, countries under sanctions may eventually use secondary sanctions themselves, creating exposure for U.S. companies in case Europe abandons the United States on sanctions policy. In truth, and to the extent that the European Union is willing to spend political capital to address the situation, both parties are faced with two options:

Cooperation: Europeans and Americans would benefit from establishing a shared strategic approach to sanctions implementation, ameliorating what has been a series of problems in the transatlantic partnership for too many decades. It would make sense, for instance, that U.S. secondary sanctions targeting a third country do not apply to entities and individuals under EU jurisdiction when the European Union is enforcing its own sanctions against that same country. Nothing would legally prevent U.S. authorities from waiving secondary sanctions on a specific group of countries, although other U.S. allies – Japan in particular – are likely to request the same treatment. While the U.S. Congress might be reluctant to adopt such a commitment toward the European Union, the administration could commit to it to the extent that its constitutional prerogatives allow.

U.S. Treasury Secretary Lew's recent acknowledgement that "secondary sanctions should be used only in the most exceptional circumstances, where the threat is severe, where we have international consensus, and when ordinary sanctions have fallen short of their mark" may indicate that the U.S. administration is keen to observe such self-restraint. The United States has already proceeded with greater caution in the use of secondary sanctions in its Russia program. The Ukraine Freedom Support Act of 2014 created the option to impose secondary sanctions, but the administration chose not to exercise this option, considering that EU sanctions were close to U.S. ones.

Adversity: In the case where a transatlantic compromise is not achievable, Europeans may not have any choice other than to return to less cooperative approaches. Europeans could respond in kind to U.S. potential secondary measures by using legal instruments at their disposal, such as the 1996 regulation to prevent EU companies from complying with U.S. sanctions – still in force to this day. They would thereby deny the effect of U.S. "extraterritorial" measures on companies and individuals under EU jurisdiction. They might also be tempted to create secondary sanctions of their

own, both to better advance their interests in case of policy divergence with Washington and to convince the United States that self-restraint on the use of secondary sanctions might be a better outcome. Nothing in the EU treaties prevents the European Union from enforcing such far-reaching sanctions insofar as they target entities or individuals that have assets or business under EU jurisdiction.

Foster A Cooperative Framework

The cooperation scenario is obviously preferable, but it involves a willingness for change on both sides of the Atlantic. It is essential that Europeans efficiently strengthen their implementation policy to make the case that U.S. secondary sanctions are unnecessary to compel compliance in Europe. In particular, Europeans need to explore ideas that can strengthen implementation and enforcement practices.

One option could be to create a small European agency, under the model of the U.S. Office of Foreign Assets Control (OFAC), which is in charge of administering sanctions programs implementation and enforcement. Such evolution could be useful insofar as the agency is granted sufficient power on enforcement and compliance issues, as well as access to relevant intelligence. The political strains on the EU at the moment do not seem very favorable either to a significant transfer of authority from the national to the European level or to complex institutional changes. Progress could still be made through the allocation of increased resources to the European External Action Service. For now, realistic improvements to the efficiency and credibility of EU sanctions would require greater effort in five main domains:

Further harmonization of authorization mechanisms: The private sector would benefit from more harmonized procedures of authorization for financial transactions with countries under sanctions, when such authorization is required. Ideally, such harmonization could include a dialogue with U.S. authorities so as to create a potential mutual recognition of sanctions license systems between OFAC and counterpart EU authorities in the case where both U.S. and EU sanctions cover the same kinds of transactions and prohibitions.

More flexible tools for enforcement: Efficiently deterring sanctions violations requires both sufficient information provision to the private sector and credible punishment mechanisms when sanctions are violated. Freezing the assets of EU companies or nationals responsible for sanctions violations is rarely practical because it amounts to a "death penalty" for the companies or nationals that are targeted. EU sanctions regulations could expand the types of penalties used to respond to such violations, including by putting in place pecuniary penalties related to the amount of funds involved in the violations.

Intelligence and information-sharing among member states: Intelligence sharing should also be enhanced, if not through EU institutions, at least among member states. Many ideas contemplated today to strengthen the EU strategy against terrorism financing, such as reinforced information-sharing and cooperation practices between EU Financial Intelligence Units, could be extended to other activities of concern, including sanctions non-compliance. In addition, the European Union should create independent panels of experts, comparable to those of the United Nations, in order to better monitor implementation, as well as to offer a platform for member states to share information about violations and entities involved in them.[37]

Compensation mechanisms for the private sector: After the European Union adopted its sanctions against Russia over the Ukraine crisis, Moscow put in place countersanctions targeting the EU's agricultural products. The European Union has been able to assist financially the agricultural sector in member states impacted by Russian countersanctions since 2014, with subsidies to companies in disarray due to the Russian countersanctions. There is no reason why such assistance could not be replicated when companies are able to prove that their activity has been severely reduced by EU sanctions. Small to medium-sized businesses can indeed be much more heavily dependent on a single market, and therefore more exposed if that market is targeted by sanctions, than larger ones. To strengthen its resilience, the EU needs to better identify its potential vulnerabilities and potential contingency measures to reduce them before adopting sanctions.

Restrictions to the use of EU currencies to finance prohibited transactions outside of Europe: Transactions with countries under sanctions involving European currencies, but occurring outside of the European Union, are common even when such transactions are theoretically prohibited by the EU. As in the United States for dollar transactions, most euro transactions worldwide end up cleared through European banks, within the Eurozone. Compensation mechanisms indirectly make them fall under EU jurisdiction and regulations. Thus, an Asian company should not be able to use euros for a transaction that is prohibited or involves an entity designated by the European Union. Controlling the nature of, or the parties involved in, all European

currencies-denominated transactions made outside of the European Union is a technical challenge. But as long as the European Union is able to provide sufficient transparency to those that are willing to use its currencies, there is no reason why those currencies should be able to finance *out* of the European Union transactions that they would not be able to finance *in* the European Union.

Tackle Common Challenges Together

Last but not least, Europeans' and Americans' respective sanctions policies are currently facing common challenges that the transatlantic community ought to address together. Those challenges are related to three specific issues:

Adapt sanctions to evolving threats: Sanctions must be adapted to counter circumvention efforts. Europeans and Americans share an interest in updating their sanctions in coordination, although their political cycles are not necessarily aligned. U.S. administrations usually struggle to limit congressional aspirations for dramatic sanctions, and similarly struggle to work with Congress to lift sanctions authorities that no longer advance administration policies. European sanctions, when in place, appear to be more flexible than U.S. sanctions as they are more easily adaptable – a paradox considering that such decisions involve consensus of 28 nation states – to changes in the sanctioned country's behavior.[38]

Both Washington and European capitals are faced with the question of how to fine-tune the level of economic pressure they impose on a third country when the situation becomes slightly better or slightly worse. A "slightly better" scenario may deserve some sanctions relief, while keeping sufficient pressure in place is key to compel a resolution of the situation altogether. A "slightly worse" scenario could justify reinforcing sanctions but also creates escalation risks on the part of the sanctioned country or offers it an excuse to escalate tensions. Should sanctions only be lifted at once when all concerns are addressed (a "big for big" approach), or should they be used more flexibly to secure incremental progress?

Alternatively, should sanctions be slowly reinforced so as to compel change in behavior even if such an approach structurally disadvantages the sanctioning country? This is as much of a debate among Europeans, as it is between Europe and the United States. There is no ideal approach in principle, and case-by-case approaches should be the rule. Furthermore, sanctions are a means rather than an end: although they can require time to have an impact, they also must be used dynamically and avoid becoming more precious to the sanctioning country than costly for the sanctioned one.

Conduct effective contingency planning: It is impossible to predict which country or situation will compel the transatlantic community to use sanctions in the future, but history suggests that threats rarely emerge as complete surprises. Therefore, Europeans and Americans could benefit from engaging early on in instances where sanctions could make a contribution so as to identify vulnerabilities to target in the sanctioned country, and vulnerabilities in Europe and the United States to protect. Sanctions are often used in a reactive mode, but threatening to use them in a more strategic manner could extend the set of options available to deter destabilizing behavior. Regular transatlantic exchanges on pre-crisis situations would be useful in this respect.

Prepare for counter-use of sanctions against transatlantic interests: Wide embargo-like sanctions regimes must remain an exception. No one should underestimate or neglect non-Western countries' perceptions of Iran-like sanctions: they have demonstrated that being integrated into the global economy, largely led by Western rules and institutions, can become a strategic vulnerability. Several counterstrategies can arise in those countries willing to limit this vulnerability, including 1) reducing the degree of their integration into the global economy, which can mean further isolation, 2) developing parallel economic institutions and financial platforms, 3) threatening countersanctions, or 4) responding to an economic threat by military means. All options can come with severe consequences, and some might be harder to mitigate than others.

Countries like Russia and China, as well as other emerging powers, have criticized the use of non-U.N. sanctions by the United States and the European Union. These countries have launched efforts to delegitimize them, for instance, by accusing them of being illegal, even when targeted, either in contravention of the United Nations Charter, WTO rules, or international human rights law. This campaign also resorts to political arguments, labeling those autonomous measures "unilateral sanctions," against which the European Union and the United States share an interest in pushing back. In addition to criticizing Western sanctions, Moscow is now resorting to sanctions against Turkey. China has used sanctions against Japan and the Philippines over maritime disputes, and it has threatened to do so against U.S. firms. The African Union is also more frequently resorting to its own sanctions regimes.

Considering such pushback against sanctions from non-western powers, Europeans and Americans also need to tread carefully in the future, choose their targets carefully, and not expect to be able to sanction every behavior they do not like with full impunity. This does not call for

abstention, but at least for self-restraint.

Conclusion

Going forward, sanctions will remain a tool of choice to address a wide array of threats and challenges stemming from competition between large states, the vacuum of power created by weak states, and non-linear tactics of non-state actors. Sanctions can play a role in mitigating the risks posed by these actors insofar as their respective vulnerabilities can be identified appropriately and leveraged against them for deterrence, punishment, or diplomatic objectives. The transatlantic community therefore needs to retain the ability to use sanctions in a coordinated and flexible manner. To that purpose, both sides need to reflect on the limitations of their current sanctions policies articulated in this report, and work to minimize their differences. Expanding constructive cooperation will help to preserve the integrity of sanctions as a strong tool of statecraft. Doing so can only benefit the broader political and security transatlantic partnership between Americans and Europeans.

Endnotes

1. "Economic sanctions" are those legal measures imposed by a state or a group of states against other countries, non-state groups, companies, or individuals in order to restrain their economic interactions with the state's or the group of states' respective trade and/or financial markets. They differ from "political sanctions" such as excluding Russia from the G8 in the aftermath of the Ukraine crisis in 2014. Economic sanctions can take multiple forms: they can be massive ("embargos") or target specific assets or sectors so as to maximize effect on the country's decision-making process while minimizing the consequences for the population of that country ("targeted sanctions"); they can target a specific economic sector such as the petroleum industry ("sectoral sanctions") or simply specific companies or individuals ("individual sanctions"); and they can do so through trade restriction prohibiting the export or import of goods and equipment ("trade sanctions") or through restrictions on financial transactions ("financial sanctions").

2. There have been multiple studies made on the effectiveness of economic sanctions to achieve foreign policy goals. The following is a non-exhaustive list of works that the author has consulted in writing this report. Gary Hufbauer, Jeffrey Schott, Kimberly Eliott, Barbara Oegg, *Economic Sanctions Reconsidered*, 3rd edition (Peterson Institute for International Economics: Washington, D.C., November 2007); Thomas Biersteker, Sue E. Eckert, Marcos Tourinho, Zuzana Hudakova, "The Effectiveness of United Nations Targeted Sanctions: Findings from the Targeted Sanctions Consortium (TSC)," (The Graduate Institute Geneva, The Targeted Sanctions Consortium, Watson Institute for International Studies, November 2013); Richard N. Haass, Meghan L. O'Sullivan, *Honey and Vinegar: Incentives, Sanctions and Foreign Policy,* (Brookings Institution Press: Washington, D.C., June 2000); Iana Dreyer, José Luengo-Cabrera, "On target? EU sanctions as security policy tools," (EU Institute for Security Studies, 2015); French Ministry of the Economy, *What We Have Learned from the Past and Not So Recent Past*, Trésor-Economics No. 150 (July 2015); and Elizabeth Rosenberg, Zachary K. Goldman, Dr. Daniel Drezner, Julia Solomon-Strauss, "The New Tools of Economic Warfare," (Center for a New American Security, April 2016).

3. Between 1914 and 2000, the United States deployed sanctions, unilaterally or in coordination with partners, 109 times out of 174 cases of sanctions employment, according to the 2007 PIIE study. The United Nations comes second (20 times) and the United Kingdom third (16 times).

4. The initial U.S. sanctions were implemented through a January 5, 1982, regulation issued by the U.S. Department of Commerce about "Controls on Exports of Petroleum Transmission and Refining Equipment to the USSR." The decision fueled strong disagreements within the Reagan administration, with Secretary of Defense Weinberger arguing in favor of sanctioning Europeans, whatever short-term division it could create within the transatlantic alliance, and Secretary of State Haig arguing against such sanctions for the opposite reason. President Reagan sided with Weinberger. (See The White House, *National Security Decision, Directive Number 41*, Washington, D.C., June 22, 1982).

5. The bulk of the European reaction can be found in the June 23, 1982, Statement of the Foreign Ministers of the European Economic Community. French Foreign Affairs Minister Claude Cheysson famously warned on June 22, 1982, "This day could well go down as the beginning of the end of the Atlantic alliance." Antony J. Blinken, now U.S. deputy secretary of state, has written the most extensive recollection of the episode in 1987. See Antony J. Blinken, *Ally versus Ally: America, Europe and the Siberian Pipeline Crisis* (Westport, CT: Praeger, 1987).

6. For a comprehensive overview of the 1996 ISA, see Congressional Research Service, *The Iran Sanctions Act*, Report for Congress, RS20871 (October 12, 2007), https://www.fas.org/sgp/crs/row/RS20871.pdf.

7. Joint Action 96/668/CFSP of November 22, 1996, and Council Regulation (EC) No. 2271 of November 22, 1996, "concerning measures protecting against the effects of the extra-territorial application of legislation adopted by a third country." Of note, article 6 states that companies suffering sanctions could "recover any damages caused by the application" of U.S. "extraterritorial" sanctions. It adds that "the recovery could take the form of seizure and sale of assets held by those persons, entities, persons acting on their behalf or intermediaries within the Community."

8. On May 18, 1998, President Clinton announced at a U.S.-EU Summit in Brussels that his administration would waive ISLA sanctions on the first transaction pursued in violation, namely a $2 billion deal involving the French, Russian, and Malaysian companies Total, Gazprom, and Petronas, respectively, for the development of the South Pars gas field. Secretary of State Madeleine Albright announced that similar waivers would be granted for similar projects. While the 1996 EU regulation remains in force as of today, the implementation of the Total South Pars contract was suspended in July 2008 due to the increased geopolitical risk surrounding business in Iran. Press Conference by President Bill Clinton, Prime Minister Tony Blair, and European Commission President Jacques Santer, The White House Office of the Press Secretary, FCO London, England, May 18, 1998; Elizabeth Shogren, Robin Wright, "U.S. Waives Sanctions on Iran Gas Deal," *The Los Angeles Times*, May 19, 1998.

9. The European Union has 37 sanctions regimes currently in place, the vast majority of which were imposed in the second half of the 2000's onward. For a complete list of these regimes, see Restrictive Measures (sanctions) in force, European Commission, Service for Foreign Policy Instruments, January 15, 2016. http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf.

10. On November 21, 2011, for instance, following the publica-

tion of the International Atomic Energy Agency report on the possible military dimensions of Iran's program, former French President Nicolas Sarkozy called on the European Union, the United States, Japan, and Canada to freeze the Central Bank of Iran (CBI)'s assets and to interrupt all imports of Iranian oil. Washington did not require the European Union to take such ambitious steps at the time, although the U.S. Congress was already contemplating secondary sanctions that could have put European companies under threat had EU governments not adopted the oil embargo and the CBI designation in January 2012.

11. See Simond de Galbert, "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, October 2015).

12. Article 24 of the Treaty of the European Union establishes the Union's competence "in matters of common foreign and security policy" which should "cover all areas of foreign policy and all questions relating to the Union's security." Article 24 further states that this policy "shall be defined and implemented by the European Council [composed of member states heads of state and government] and the Council [composed of member states ministers] acting unanimously, except where the Treaties provide otherwise." Article 215 of the Treaty on the Functioning of the European Union, the legal basis for EU "restrictive measures," i.e., sanctions, establishes that "where a decision provides for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries, the Council, acting by a qualified majority on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission, shall adopt the necessary measures."

13. The Council of the European Union has enacted several documents in recent years in order to foster harmonization among member states. Those documents are discussed and negotiated among member states and therefore endorsed by their respective national authorities responsible for the implementation of sanctions. See, for instance, the update of the EU Best Practices for the effective implementation of restrictive measures, Council of the European Union, Brussels, June 24, 2015. http://data.consilium.europa.eu/doc/document/ST-10254-2015-INIT/en/pdf.

14. On March 14, 2013, the U.S. Department of the Treasury exposed an Iran oil sanctions circumvention network mainly based in Greece and built by a Greek national (see "United States Exposes Iranian Shipping Scheme," U.S. Department of the Treasury press release, March 14, 2013, https://www.treasury.gov/press-center/press-releases/Pages/jl1879.aspx). Both the individual and the network of companies were identified by the Treasury's Office of Foreign Assets Control for violating U.S. secondary sanctions (with little reaction from the European Union) enacted by Executive Order 13599 and the Iran Sanctions Act amended by the Iran Threat Reduction and Syria Human Rights Act of 2012 (TRA). But this network was also taking actions that violated European sanctions taken against Iran's oil sector, namely the prohibition to import and ship Iranian oil, and multiple Iranian entities belonging to it.

15. The evolution of this relationship is well documented in Juan Z. Zarate, *Treasury's War: The Unleashing of a New Era of Financial Warfare* (New York: Public Affairs, 2013).

16. For a rare public expression of those concerns by a high-level U.S. official, see U.S. Ambassador to the EU Anthony Luzzato Gardner, Mackenzie Stuart Lecture, "Facing Legal Challenges in U.S.-EU Relations," (Cambridge University, January 29, 2015), http://useu.usmission.gov/gardner_cambridge_2015-01-29.html.

17. This number is based on the author's compilation of EU court rulings.

18. Laurence Norman, "EU Governments Approve Secret Evidence in Sanctions Case," *The Wall Street Journal*, February 10, 2015, http://www.wsj.com/articles/eu-governments-approve-secret-evidence-in-sanctions-cases-1423583213.

19. Judgment of the Court (Grand Chamber), *National Iranian Oil Company v. the Council of the European Union*, March 1, 2016.

20. The European Union sanctions persons, groups, and entities involved in terrorist acts through a 2001 common position adopted in the aftermath of the 9/11 attacks to implement U.N. Security Council 1373 (2001) and freezes funds of persons and entities associated with the al Qaeda network (as well as the Islamic State now) and the Taliban and a distinct 2001 Council regulation on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, under which entities such as Hamas, the military wing of Hezbollah, or the Kurdistan Workers Party (PKK) have been designated as terrorist organizations by the European Union. Unlike the United States, the European Union does not implement large economic sanctions against state sponsors of terrorism, and historically has been reluctant to target hybrid political/military organizations such as Hezbollah. Hence the designation of only the military wing of Hezbollah in February 2014 after complex discussions within the European Union and under pressure from the United States.

21. "Commission presents Action Plan to strengthen the fight against terrorist financing," European Commission, press release, February 2, 2016, http://europa.eu/rapid/press-release_IP-16-202_en.htm.

22. A "solidarity mechanism" would consist of EU funds being allocated to EU companies or sectors placed in a difficult financial situation for contracts and trade operations lost because of sanctions. Such a mechanism would help to spread the costs created for companies by decisions taken at the governmental level. Solidarity mechanisms would address the most significant vulnerability for national policy-makers adopting sanctions at the EU level, such as

criticism at home regarding the loss of contracts, jobs, or markets.

23. The White House, *National Security Strategy*, February 2015, https://www.whitehouse.gov/sites/default/files/docs/2015_national_security_strategy_2.pdf.

24. Council of the European Union, *European Security Strategy*, December 2003, http://www.eeas.europa.eu/csdp/about-csdp/european-security-strategy/

25. Council of the European Union, *Report on the Implementation of the European Security Strategy*, December 2008, http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/EN/reports/104630.pdf.

26. The document mentions sanctions in the context of enforcing disarmament agreements. See French Presidency of the Republic, *White Paper on Defense and National Security*, Paris, 2013, http://www.defense.gouv.fr/actualites/la-reforme/livre-blanc-2013.

27. United Kingdom HM Government, *National Security Strategy and Strategic Defence and Security Review 2015: A Secure and Prosperous United Kingdom*, November 2015, https://www.gov.uk/government/publications/national-security-strategy-and-strategic-defence-and-security-review-2015.

28. David Sanger, "Diplomacy and Sanctions, Yes. Left Unspoken on Iran? Sabotage," *The New York Times*, January 19, 2016, http://www.nytimes.com/2016/01/20/world/middleeast/diplomacy-and-sanctions-yes-left-unspoken-on-iran-sabotage.html.

29. Executive Order 13645 of June 3, 2014, Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Freedom and Counter-Proliferation Act of 2012 and Additional Sanctions With Respect to Iran, *Federal Register*, Vol. 78, No. 108, (2015), https://www.treasury.gov/resource-center/sanctions/Programs/Documents/13645.pdf; Mark Felsenthal, Anna Yikhananov, Timothy Gardner, "U.S. Targets Iran with Currency, Auto-Sector Sanctions," Reuters, June 3, 2013, http://mobile.reuters.com/article/idUSBRE95213120130603.

30. "Remarks of Secretary Lew on the Evolution of Sanctions and Lessons for the Future at the Carnegie Endowment for International Peace," U.S. Department of the Treasury, press release, March 30, 2016, https://www.treasury.gov/press-center/press-releases/Pages/jl0398.aspx. In his remarks, Secretary Lew defined secondary sanctions as "measures that threaten to cut off foreign individuals or companies from the U.S. financial system if they engage in certain conduct with a sanctioned entity, even if none of that activity touches the United States directly."

31. Rick Gladstone, Stephen Castle, "Global Network Expels as Many as 30 of Iran's Banks in Move to Isolate Its Economy," *The New York Times*, March 15, 2012, http://www.nytimes.com/2012/03/16/world/middleeast/crucial-communication-network-expelling-iranian-banks.html.

32. "Treasury Revokes Iran's U-Turn License," U.S. Department of the Treasury, press release, November 6, 2008, https://www.treasury.gov/press-center/press-releases/Pages/hp1257.aspx.

33. Congressional Research Service, *Iran Sanctions*, RS20871 (May 18, 2016), 29. The report lists fines on increasing significance imposed over the years on European financial institutions: in 2004, "UBS paid a $100 million fine for the unauthorized movement of U.S. dollars to Iran and other sanctioned countries"; in 2005, ABN AMRO "paid a $80 million fine for failing to fully report the processing of financial transactions involving Iran's Bank Melli"; in 2009, Credit Suisse "paid a $536 million settlement to various U.S. regulations agencies for illicitly processing Iranian transactions with U.S. banks"; in June 2012, ING "paid a $619 million settlement for concealing the movements of billions of dollars through the U.S. financial system on behalf of Iranian and Cuban clients"; in December 2012, Standard Chartered paid a $340 million settlement for allegations that it had been processing transactions on behalf of Iran; in January 2014, Clearstream Banking "paid $152 million for helping Iran evade restrictions on dealing with US banks"; in 2014, Bank of Moscow "paid $9.5 million for illicitly moving money through the U.S. financial system on behalf of Bank Melli"; last but not least, in 2014, BNP Paribas paid $8.9 billion after having plead guilty to helping Iran, Sudan, and Cuba violate U.S. sanctions. In October 2015, Crédit Agricole agreed to pay $787 million to settle allegations of violations of U.S. sanctions. Other investigations are still ongoing.

34. See, for instance, Benoît Faucon, "U.K. Insurance Group in Talks with U.S. to Allow Insurance Coverage of Iranian Oil," *The Wall Street Journal*, February 1, 2016, http://www.wsj.com/articles/u-k-insurance-group-in-talks-with-u-s-to-allow-insurance-coverage-of-iranian-oil-1454383307.

35. On those risks, see previous reports in the Economic Statecraft Series, such as Peter Feaver and Eric Lorber, "Diminishing Returns? The Future of Economic Coercion," (Center for a New American Security, November 2015); see also Richard Nephew, "The Future of Economic Sanctions in a Global Economy," (Center on Global Energy Policy, Columbia University, May 2015).

36. U.S. Department of the Treasury, U.S. Department of State, *Guidance Relating to the Lifting of Certain Sanctions Pursuant to the Joint Comprehensive Plan of Action on Implementation Day*, (January 16, 2016); The Council of the European Union, *Council Decision (CFSP) 2015/1863 of 18 October, 2015, amending Decision 2010/413/CFSP concerning restrictive measures against Iran* (October 18, 2015); and European Commission, *Information Note on EU sanctions to be lifted under the Joint Comprehensive Plan of Action (JCPOA)*,(January 16, 2016).

37. The author is grateful to Manuel Lafont Rapnouil for this idea.

38. It is up to member states to determine whether they prefer to adopt sanctions that will not be limited in time (as they did in the Iran nuclear case, in which sanctions were open-ended, therefore requiring unanimity to lift them) or that *will* be (as they did in the Russia/Ukraine case, in which sanctions are time-bounded, therefore requiring unanimity to renew them). Whether sanctions are open-ended or time-bounded, the European Union reviews each of its sanctions regimes at least once every year.

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