EU horizontal sanctions and the courts: Questions of interface

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Introduction

One of the most recent trends in the foreign policy sanctions of the European Union (EU) is the increasing adoption of 'horizontal', or 'themed', sanctions regimes.[1] Country-label sanctions regimes focus on a specific country, representing the traditional form of sanctions. Horizontal sanctions regimes, by contrast, address a specific norm violation without circumscribing its scope to geographical limitations, allowing for the listing of individuals and entities irrespective of their location or national affiliation. From 2018 to 2020, the EU consecutively adopted three thematic sanctions regimes, in a departure from the longstanding country-label preference that characterized its sanctions record.[2] These regimes concerned three distinct challenges: cyberattacks, the use of chemical weapons, and human rights abuses.

For decades, horizontal sanctions regimes remained typical for U.S. practice, where they co-existed with country-label regimes. The first transfer occurred from the United States to the United Nations (UN). In the aftermath of the September 11 attacks, the UN Security Council (UNSC) set up its first themed regime in the framework of its 1276 sanctions regime of 1999, which was later split into two, one sanctions regime focused on Afghanistan and a terrorism blacklist.[3] The terrorism blacklist remains the only thematic sanctions regime within UN practice to our days. By contrast, the horizontal organizational logic has found some adepts among Washington's allies, who recently started adopting themed sanctions regimes, on a national level or collectively in the framework of the EU.[4]

This chapter analyses the trend towards the 'horizontalization' of sanctions and identifies the challenges it presents in terms of interface management. A first section briefly presents horizontal sanctions regimes, differentiating them from geographic sanctions and illuminating the drivers of their introduction to the EU. A second section focuses on the EU's experience with horizontal sanctions, focusing on its most recent addition, the human rights sanctions regime partly modelled on the U.S. Global Magnitsky Act of 2016.[5] Some key implementation and interface challenges that lie ahead for this tool, as well as their political implications, are discussed in a final section, followed by a conclusion.

From targeted to horizontal sanctions

The introduction of targeted sanctions considerably enlarged the options available to policy-makers.[6] Firstly, they admit various types of targets, including rebel groups, economic

[1] Clara Portela, "The Spread of Horizontal Sanctions", *CEPS Commentary* (Brussels, 2019).

[2] Basten Nivet, "Les sanctions internationales de l'Union Européenne: soft power, hard power ou puissance symbolique?", *Revue Internationale et Stratégique* 97 (2015): 129-38; Niklas Helwig, Juha Jokela and Clara Portela, "EU Sanktionspolitik in geopolitischen Zeiten", *Integration* 4 (2020): 278-294.

[3] Charlotte Beaucillon, "Opening up the horizon: The ECJ's new take on country sanctions", *Common Market Law Review* 55, no. 1 (2018): 387-416.

[4] Clara Portela, "Horizontal sanctions regimes: Targeted sanctions reconfigured?", in *Research Handbook on Unilateral and Extraterritorial Sanctions*, ed. Charlotte Beaucillon (Cheltenham, 2021).

[5] U.S. Congress, Global Magnitsky Human Rights Accountability Act, Public Law 114-328, 130 Stat, 2533.

[6] Margaret Doxey, "Reflections on the sanctions decade and beyond", *International Journal* 64, no. 2 (2009): 539-549.

sectors, banks, state and private companies, harbors, vessels and private individuals. Importantly, targeted sanctions can affect both private and public actors, depending on whether the sender aims at a government or not. In addition, sanctions can be targeted at specific territories within a state, such as a province under the control of a rebel faction. While targeted sanctions are not entirely unproblematic in terms of humanitarian effect,[7] negative consequences on the populations are mitigated by focusing on certain segments of the economy only. In addition, targeted sanctions are valued by practitioners and scholars alike for their 'scalability', as they allow senders to adjust to changing circumstances and modifications in target behavior.

By contrast, horizontal sanctions are not a new type of measures, but rather an organizational principle for the establishment of blacklisting. Blacklists are routinely employed by those issuing targeted sanctions. The themed organizing logic displays certain advantages compared to country regimes. Horizontal blacklists can be employed to target individuals and entities beyond the reach of country sanctions regimes. While most country sanctions address specific crises – such as electoral violence, armed conflict, the assembling of a nuclear bomb or the spoiling of a peace process – global, horizontal blacklists enjoy the flexibility of accommodating different situations which may not be linked to a specific crisis. This may include practices by local, foreign or multinational enterprises in conflict zones or areas of limited statehood, such as the exploitation of natural resources contributing to grand corruption or gross human rights violations. A global horizontal list may be used to address transnational organized criminality or illicit networks trafficking in arms or military technology.[8] Global Magnitsky designations include the Gupta brothers who, according to the U.S. Treasury, 'leveraged [their] political connections to engage in widespread corruption and bribery, capture government contracts, and misappropriate state assets' in South Africa.[9] Thus, a global horizontal list is suitable to tackle transnational challenges.

The EU horizontal sanctions regimes

While the EU's embrace of targeted sanctions has a long tradition,[10] themed blacklists are unusual in Brussels' practice.[11] Until 2017, the EU only operated one thematic sanctions regime: the terrorism list. All remaining sanctions regimes were country-focused. This started to change in 2018, when the EU adopted a sanctions instrument to address the use of chemical weapons, allowing it to target those "involved in the development and use of chemical weapons anywhere".[12] A second horizontal blacklist against cyber-attacks saw the light of the day in 2019.[13] Invariably, their adoption responded to foreign policy crises.

[7] Erica S. Moret, "Humanitarian impacts of economic sanctions on Iran and Syria", *European Security* 24, no. 1 (2015): 1-21.

[8] Peter Wallensteen and Helena Grusell, "Targeting the right targets? The UN use of individual sanctions", *Global Governance* 18, no. 2 (2012): 207-230.

[9] U.S. Department of the Treasury, "Treasury sanctions members of a significant corruption network in South Africa", Press Release (Washington, D.C., 10 October 2019), https://home.treasury.gov/news/press-releases/sm789 (accessed 3 May 2021).

[10] Anthonius de Vries and Hadewych Hazelzet, "The EU as a new actor on the sanctions scene", in *International Sanctions: Between words and wars in the global system*, eds. Peter Wallensteen and Carina Staibano (Frank Cass, 2005): 95-106.

[11] The official 'Principles for the use of restrictive measures' do not mention the notion of horizontal regimes. Council of the European Union, "Basic Principles on the use of restrictive measures (Sanctions)", Brussels, 7 June 2004.

[12] Council Decision (CFSP) 2018/1544 concerning restrictive measures against the proliferation and use of chemical weapons OJ L259 (Brussels, 15 October 2018).

[13] Council Decision (CFSP) 2019/797 concerning restrictive measures against cyber-attacks threatening the Union or its Member States OJ LI 129/13 (Brussels, 17 May 2019).

The emergence of the anti-terrorism list at the beginning of the century implemented a UN mandate following the September 11 attacks.[14] Brussels then added its own entries, thereby giving rise to the EU's terrorism blacklist. By contrast, the impulse for the most recent thematic regimes came directly from the European Council.[15] They followed, respectively, toxic attacks in Syria and Southern England, and a series of cyberattacks launched from outside the EU. Out of the 40 EU sanctions regimes currently in force, only the four abovementioned examples lack a country connection, while the remaining 36 focus on countries, either autonomously, supplementing or implementing UN measures.[16]
The sanctions regime against the use and proliferation of chemical weapons constituted the second horizontal sanctions regime of the EU.[17] It represents its first coercive instrument against chemical weapons.[18] Previous EU non-proliferation sanctions on Pyongyang and Tehran had been agreed against the background of a pre-existing UNSC mandate.[19] By contrast, the EU sanctions regime against chemical weapons is not based on a UNSC mandate. This regime originated from toxic attacks against civilians detected in the Syrian civil war since 2012, most of them by the armed forces. Efforts to attribute responsibility failed due to polarization at the UNSC, which encouraged a coalition of countries to rally behind the 'Partnership against Impunity', a French initiative launched to promote accountability.[20] Shortly after, the Salisbury incident galvanized British activism favoring a strong reaction, which combined with the French initiative to bring about a list dedicated to tackle chemical weapons attacks. Consequently, the listings featured officials from a Syrian laboratory, alongside Russians suspected of plotting the Salisbury attack.
The third horizontal sanctions regime, adopted in May 2019, addresses cyberattacks.[21] The enactment of this sanctions regime followed a mandate by the European Council from October 2018, which called for a sanctions regime to respond to and deter cyber-attacks. The resulting sanctions regime only considers cyber-attacks with a 'significant effect'. It addresses cyber-attacks against the Union and its members, third states or international organizations. The cyber-attack sanctions regime explicitly dissociates the attribution of responsibility from blacklisting: "Targeted restrictive measures should be differentiated from the attribution of responsibility for cyber-attacks to a third state. The application of targeted restrictive measures does not amount to such attribution, which is a sovereign political decision".[22]
The fourth EU sanctions regime is the human rights sanctions regime. The inspiration came from the US. Horizontal sanctions regimes are typical for the U.S. sanctions system. The U.S. Global Magnitsky Act has a direct predecessor in the 'Sergei Magnitsky Rule of Law Accountability', enacted in 2012 in reaction to the torture and murder of the Moscow accountant Sergej Magnitsky, who allegedly uncovered a large-scale corruption scheme. The legislation only listed individuals implicated in the incident. In 2016, following intense lobbying by Magnitsky's employer, British-American Bill Browder, Congress

[14] Beaucillon, 2018 (see footnote 3).
[15] Viktor Szép, "New intergovernmentalism meets EU sanctions policy", *Journal of European Integration* 42, no. 6 (2020): 855-871.
[16] This count includes EU autonomous measures and EU sanctions supplementing UN regimes. See EU sanctions map, https://www.sanctionsmap.eu/#/main (accessed 28 April 2021).
[17] See footnote 12.
[18] Clara Portela and Erica S. Moret, *The EU sanctions regime against chemical weapons: Upholding a taboo under attack*, EUISS Brief 17, (Paris: EUISS, 2020).
[19] Brendan Taylor, *Sanctions as grand strategy* (London: IISS, 2010).
[20] Ministry of Foreign Affairs of France, "International Partnership against Impunity for the Use of Chemical Weapons: Declaration of Principles" (Paris, 23 January 2018).
[21] Council Decision (CFSP) 2019/797 concerning restrictive measures against cyber-attacks threatening the Union or its Member States OJ LI 129/13 (Brussels, 17 May 2019).
[22] Ibid.

adopted new legislation titled 'Global Magnitsky Human Rights Accountability Act' to address grave human rights violations and corruption worldwide.[23] The key innovations with respect to the 2012 act are its universal reach and the inclusion of the fight against corruption, which was absent from its precursor.[24] The first round of listings, published the following year, featured a mix of thirteen designees spanning Africa, America, Asia and Europe. Following the Global Magnitsky model, Canada passed the 'Justice for Victims of Corrupt Foreign Officials Act' in 2017, blacklisting individuals from Myanmar, Russia, Saudi Arabia, South Sudan and Venezuela in several sanctions waves.[25] The Baltic republics replicated Magnitsky legislation, emulating the original Magnitsky model rather than the global iteration.

The transfer of a global human rights blacklist from Washington to Brussels did not only follow Mr. Browder's lobbying, but was also promoted by the U.S. State Department, who conducted an active campaign in Europe and enjoyed the endorsement of the European Parliament.[26] The Netherlands officially proposed the establishment of an EU human rights sanctions regime in November 2018,[27] earning the applause of European civil society organizations.[28] In December 2020, the EU approved its horizontal sanctions regime to address serious human rights violations.[29] While the U.S. and Canadian Acts explicitly cover corruption, this feature remains absent from the EU regime.

Interface challenges

When implementing horizontal sanctions listings, various challenges can be anticipated in the interface with different judicial or semi-judicial bodies at different levels: national courts, European courts, and international courts.

The interface between due process guarantees at the UN and the EU

The most visible instance of interface between EU autonomous sanctions and UN sanctions can be found in the area of due process guarantees. Its connection resulted from European Court of Justice jurisprudence, unsuspectedly unleashed by litigation initiated by a designated individual. The claimant, Mr. Kadi, was designated under a UN resolution implemented by the EU in its anti-terrorism blacklist. After the Court of Justice of the EU ruled in favor of the claimant in what became the landmark 'Kadi' judgement of 2008, numerous individuals challenged their designations, which led to frequent annulments.[30] By 2017, cases regarding restrictive measures ranked second amongst those most often

[23] The White House, Executive Order 13818, "Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption" (Washington, D.C., 21 December 2017). Built upon the U.S. Congress 'Global Magnitsky Human Rights Accountability Act' of 2016.

[24] Francisco Javier Zamora and Maria Chiara Marullo, "La *Global Magnitsky Act* de los Estados Unidos: Sanciones internacionales contra corrupción y violaciones graves de los derechos humanos", *Ordine Internazionale e Diritti Umani* (2019): 535-549.

[25] 'Justice for Victims of Corrupt Foreign Officials Act' (Statues of Canada, 18 October 2017).

[26] European Parliament resolution on a European human rights violations sanctions regime 2019/2580(RSP), (Strasbourg, 14 March 2019).

[27] Stef Blok, "Closing remarks at a meeting on the EU global human rights sanction regime" (The Hague, 20 November 2018).

[28] Open letter from non-governmental organisations in support of a targeted, global EU human rights sanctions regime, 5 December 2018.

[29] 3738th Council meeting Foreign Affairs, *Doc. 14949/19* (Brussels, 9 December 2019): 6.

[30] Clara Portela, "National implementation of United Nations Security Council sanctions: Towards fragmentation", *International Journal* (Canada) 65, no. 1 (2009): 13-30.

heard by the Court.[31] This particular interface challenge led to a highly unusual situation: the EU, traditionally a fierce supporter of multilateralism and of UN authority, was failing to give effect to UN listings because of the lack of due process guarantees at the UN, causing a great deal of uneasiness among members of the UNSC. The "due process crisis" induced a crisis of confidence at the UN whose magnitude has been compared to that unleashed by the 1990 Iraqi embargo.[32]

The crisis could be resolved with the establishment of a focal point that eventually evolved, in 2009, into the Ombudsperson to the ISIL (Da'esh) and Al-Qaida Sanctions Committee. Her role is to independently review requests from individuals, groups and entities seeking to be removed from the list. Although the role is not judicial in nature, all of the appointees so far have been former judges. While the figure of the Ombudsperson has been criticized as insufficiently guaranteeing due process rights due to her non-judicial nature, her recommendations on de-listings have been invariably accepted by the UNSC. Regardless of debates about the adequacy of the role of the Ombudsperson and her office, the arrangement put in place as a result of the interface challenge described remains peculiar: a fully-fledged judicial review at the European level co-exists with a non-judicial or quasi-judicial review at the UN level. Despite the discrepancy in the status of both reviews, their co-existence has managed to de-conflict a potentially difficult interface challenge.

Other than the terrorism blacklist, there are no horizontal lists at the UN. Further interface challenges may arise with other senders, in particular the US. Despite close coordination with Washington in sanctions policies, full alignment is inviable on account of the due process *problematique* outlined above. This difference in approach became most evident in the EU's response to calls for the imposition of sanctions on senior Russian business and political figures by Russian opposition members following the jailing of opposition leader Alexei Navalny in January 2021. A diplomat from an EU member state confirmed this approach: "If we go after oligarchs, we need to make sure that we have a sound legal basis, so that they are not overturned by a court challenge later down the line".[33] Illustratively, after the EU announced the listing of four Russian officials in response to the detention of Navalny and the repression of peaceful protests that ensued as the inaugural blacklist of its human rights sanctions regime, the United States followed with the listing of seven individuals and more than ten companies.[34]

The enforceability of visa bans

EU sanctions legislation stipulates the conditions under which exemptions may be dispensed. The procedure for granting exemptions to private actors differs depending on whether the regime originates from the UNSC or it is an autonomous EU regime: When the EU implements UN-mandated sanctions, the authority to grant exemptions remains with the relevant UN Sanctions Committee. By contrast, exemptions from autonomous sanctions regimes are granted by national authorities. However, visa bans are implemented directly by member states. Exemptions from visa bans are contemplated under stipulated

[31] Court of Justice of the European Union, *Annual Report* (Luxembourg, 2017).

[32] Compendium of the High Level Review of United Nations Sanctions, A/69/941-S/2015/432 (New York, November 2015).

[33] Quoted in Andrew Rettman, "Pro-Kremlin oligarchs to avoid EU sanctions, for now", *EU Observer*, 19 February 2021, https://euobserver.com/foreign/150988 (accessed 3 May 2021).

[34] BBC, "Alexei Navalny: US imposes sanctions on Russians", 2 March 2021, https://www.bbc.com/news/world-us-canada-56255694 (accessed 3 May 2021).

conditions, such as humanitarian need or to allow for the attendance of designees of official meetings and dialogue process, in which case a no-objection procedure applies.[35] The exemption is granted unless a member state raises an objection within two working days. In case of objection, the Council decides whether to grant the exemption by qualified majority. By way of illustration, the EU human rights sanctions regime stipulates the following exemption procedure.

> "*A Member State wishing to grant exemptions […] shall notify the Council in writing. The exemption shall be deemed to be granted unless one or more of the Council members raises an objection in writing within two working days of receiving notification of the proposed exemption. Should one or more of the Council members raise an objection, the Council, acting by a qualified majority, may decide to grant the proposed exemption*."[36]

Enforcement of EU sanctions generally rests with member states authorities, while the Commission monitors the alignment of national law and penalties with the provisions of EU sanctions legislation. In the event of misalignment, the Commission invites member states to take corrective action, and, as a last resort, retains the power to launch an infringement procedure against member states failing to implement EU legislation.[37] Contrary to the implementation of financial and economic measures like asset freezes or selective trade embargoes, the Commission lacks oversight or enforcement powers with regard to visa bans. This interface challenge was confirmed by High Representative Josep Borrell commenting on a brief stopover of blacklisted Venezuelan Vice-President Delcy Rodríguez at Madrid airport in January 2020,

> "*[T]he Commission cannot initiate any infringement procedure regarding a possible travel ban violation. Travel bans are in practice only contained in Council Decisions. Consequently, the Commission does not play a role in monitoring the implementation and cannot initiate an infringement procedure.*"[38]

The Supreme Court of Spain, dealing with a complaint filed by a Spanish political party against a cabinet member who met Ms. Rodríguez at the airport, ruled that commitments derived from CFSP acts are political rather than legally binding, and thus, their enforcement is not subject to judicial review. Instead, the court implied that the enforcement of CFSP decisions remains in the hands of the Council of the EU.[39]
This brings to the fore the contrast between, and thus the interface challenge relating to, the enforceability of the two measures combined in horizontal sanctions regimes: asset freezes fall within the realm of Community competence, are subject to the oversight of the Commission and are fully enforceable. By contrast, visa bans falls outside the oversight and enforcement powers of the Commission, and according to the Spanish domestic

[35] Clara Portela, "Member States resistance to EU foreign policy sanctions", *European Foreign Affairs Review* 3, (2015): 39–61.
[36] Art. 2(8).
[37] 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", doc. 5664/18, (Brussels, 4 May 2018).
[38] European External Action Service, "Venezuela: Speech by HR/VP Josep Borrell at the European Parliament on sanctions' implementation", Strasbourg, 11 February 2020, https://eeas.europa.eu/headquarters/headquarters-homepage/74515/venezuela-speech-hrvp-josep-borrell-european-parliament-sanctions%E2%80%99-implementation_en (accessed 28 April 2021).
[39] Administración de Justicia, "Causa Especial No 20084/2020" (Madrid, 26 November 2020), at 3.3.2.

courts, are not legally binding. This creates a state of affairs prone to implementation conflicts. The question is how to ensure compliance with visa bans, as well as the respect for the exemption procedures, given that the issuing of visas remains an exclusive competence of member states. When tabling the draft text of the human rights sanctions regime, the Commission raised this issue by requesting the "oversight on the implementation of the travel bans",[40] which, however, failed to make its way into the final text as it was rejected by the Council. Member states authorities may defy the visa bans without fearing consequences other than generating political discomfort, undermining the credibility of the tool, and most centrally, of EU unity. In addition, there is a risk that, faced with legal challenges over visa ban implementation, domestic courts in other EU countries may interpret CFSP obligations as being legally binding, generating controversy over their enforceability.

The relationship between horizontal listings and judicial or semi-judicial bodies

A perennial interface challenge of horizontal sanctions regimes exists with regard to the relationship between listings and international criminal justice, as well as with processes taking place at the national level, such as criminal justice or transitional justice mechanisms.

As explained above, no mechanism disciplines the allocation of designations to country-based regimes or thematic lists. As a result, individuals and entities may be listed, indistinctively, in a country-label sanctions regime or horizontal sanctions regime for the same wrongdoing. Furthermore, there is no impediment to simultaneous listings in both of them. Illustratively, some EU designations for toxic attacks feature simultaneously on the Syria sanctions regime and the sanctions regime on chemical weapons, both of which include involvement in toxic attacks as a designation criterion. As a result, certain – but not all– actors implicated in chemical weapons use in Syria feature on both lists. Multiple listings abound in the practice of the US, which listed Iran's Islamic Revolutionary Guards under seven sanctions authorities.[41] The comparative ease of removing entries from country-labelled lists as opposed from horizontal lists is exemplified in the separation of the Afghanistan list from the general terrorism sanctions regime in 2001. This disaggregation was meant to facilitate the delisting of Taliban members at Afghan government's request, which was granted privileged access to the Sanctions Committee, with a view to promoting Afghan reconciliation.[42]

Multiple listings bear the potential of generating controversy in terms of their relationship to international criminal justice, in particular when no explicit connection has been defined. While country-label listings – or at least a majority thereof – can be expected to be lifted once the political crisis they address has been resolved, horizontal sanctions regimes do not raise such expectation since they are detached from specific crises. Since no corrective or compensatory steps leading to the de-listing of targets are suggested in the applicable legislation, the question arises of whether de-listing is possible at all. One can speculate whether listings in horizontal sanctions regimes must result in national or international prosecution before they are removed. This reading is particularly plausible since the listing criteria in many horizontal blacklists feature actions typified as criminal. The designation criteria of the chemical weapons sanctions regime refer to natural persons

[40] European Commission, "Sanctions and Human Rights: towards a European framework to address human rights violations and abuses worldwide", Press Release (Brussels, 19 October 2020), https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1939 (accessed 28 April 2021).

[41] James Gibney, "Trump's sanctions are losing their bite", *Bloomberg*, 2 April 2020.

[42] Peter Romaniuk, "Responding to terrorism", in *The UN Security Council in the 21st Century*, eds. Sebastian von Einsiedel, David M. Malone and Bruno Stano Ugarte (Boulder, Lynne Rienner, 2016): 277-298, 290.

"involved in manufacturing, acquiring, possessing, developing, transporting, stockpiling or transferring chemical weapons, or using chemical weapons",[43] actions banned under the Chemical Weapons Convention. Similarly, the EU human rights sanctions regime mentions torture and slavery, criminalized under international law. Furthermore, it alludes to a number of international treaties, such as the Convention on the Rights of the Child, the Genocide Convention or the European Convention for on Human Rights, and, not least, the Statute of the International Criminal Court.[44]

The U.S. Global Magnitsky Act considers prosecution of a designee for the activity for which sanctions were imposed as a reason for delisting.[45] This corroborates the quality of designations as an ersatz for prosecution – if appropriate prosecution happens, designations become redundant. However, prosecution is not the only possible outcome from a listing, at least in theory. The Global Magnitsky legislation also foresees the termination of a listing when the designee has "credibly demonstrated" a "significant change in behavior" and "credibly committed" not to engage in similar actions in the future.[46] So far, the record does not offer a clear pattern: of the thirteen persons listed in the first round of designations in the Global Magnitsky Act, three individuals had faced charges at home.[47]

The EU has not declared any specific policy in this regard. In the past, it listed war criminals Radovan Karadžić or Ratko Mladić in a dedicated country-label sanctions regime after they had been indicted by the International Criminal Tribunal for the Former Yugoslavia (ICTY), in a bid to support the work of this ad-hoc UN body.[48] By contrast, the EU human rights regime remains silent as to whether individuals will be designated in the expectation that they will be brought to justice, and whether designees will be removed from the list following indictment. Similar considerations apply to quasi-judicial processes such as processes of transitional justice.

In the absence of guiding principles for de-listing, additional interface challenges may arise between judicial bodies or quasi-judicial processes. In one scenario, national or international courts may request the listing of indictees, following the ICTY example, to incentivize their extradition and support the international visibility of the judicial process. Another possible scenario is that quasi-judicial bodies or transitional justice bodies may request the de-listing of individuals who have been granted an amnesty. Such actions may not always be aligned with EU foreign policy considerations.

When domestic or international prosecution of designees is pursued, sanctions may be taking a step toward the judicialization of these measures.[49] Dutch Foreign Minister Stef Blok advocated an EU human rights sanctions regime as an instrument 'to supplement the criminal law'.[50] Scholars have been highly critical of this phenomenon,[51] likening blacklists

[43] Art. 2 of Council Decision (CFSP) 2018/1544.

[44] Art. 1 and 2 of Council Decision (CFSP) 2020/1999.

[45] Section 1263, at (g)(2).

[46] Global Magnitsky Human Rights Accountability Act 2015.

[47] Anton Moiseienko, *Corruption and Targeted Sanctions* (Queen Mary Studies in International Law 35, Brill, 2019).

[48] Council Common Position 2004/694/CFSP on further measures in support of the effective implementation of the mandate of the International Criminal Tribunal for the former Yugoslavia (ICTY) OJ L315/52 (Brussels, 11 October 2004).

[49] Vera Gowland-Debbas, "Security Council change: The pressure of emerging international public policy", *International Journa*l, 65, no. 1 (2009): 119-39.

[50] Blok 2019 (see footnote 27).

[51] Marieke De Goede, "Blacklisting and the ban: Contesting targeted sanctions in Europe", *Security Dialogue* 42, no. 6 (2011): 499-515.

to 'criminal procedures',[52] or as a 'mélange of politics and criminal justice'.[53] This depiction is particularly true of horizontal sanctions regimes: Because they are not linked to the resolution of any specific crisis, these tools can easily adopt an open-ended character that turns temporary freezes into de-facto confiscations and quasi-permanent bans.

Conclusion

In principle, the interface challenges concerning the implementation of horizontal EU sanctions regimes are common to all blacklists, irrespective of whether they are country-labelled or horizontal. However, these interface challenges are exacerbated in the case of horizontal sanctions regimes on account of their open-ended nature and their detachment from specific political crises. Three main interface challenges are identified: Between the UN and the EU, the key challenge is the discrepancy in due process standards, which can be successfully managed thanks to adaptation on the UN side. Between the EU and the domestic level, a potential problem relates to the 'non-enforceability' of visa bans, an anomaly that sets it apart from asset freezes. Finally, the still undefined interface between international tribunals and the domestic court systems of targets' countries of nationality or operation can be expected to become a future source of confusion – if not tensions.

[52] Wallensteen and Grusell 2012, 217 (see footnote 8).
[53] Moiseienko 2019, 5 (see footnote 46).