

What is the Added Value of the EU Global Human Rights Sanctions Regime?

Nathanael Tilahun*

[Published in *European Foreign Affairs Review*, vol 26, issue 3 (2021)]

Abstract

The European Union's Global Human Rights Sanctions Regime (EUGHRSR) adopted in December 2020 is expected to augment the Union's role in global normative diplomacy. Although the Council has a long history of responding to human rights violations through geographic sanctions regimes, the EUGHRSR is the first thematic sanctions regime on the topic with a general scope of applicability. This article investigates what distinctive added value the thematic design of the EUGHRSR brings compared to the longstanding geographic approach. The EUGHRSR is envisaged as a more legalized accountability mechanism and its added value is presumed to lie in helping depoliticize and fasten sanctions decision-making by shifting the target focus away from states. The article shows that this presumption can be unattainable or undesirable as the successful implementation of the EUGHRSR necessitates bringing the state into the centre of analysis. The paper in particular shows that in order to successfully deploy the EUGHRSR as an integral part of the EU common foreign and security policy, the Council has to (i) align the designation of targets with the EU's foreign policy strategies, and (ii) take pro-human rights reforms in third countries as a ground for de-listing, even in the absence of individual accountability. Taking these positions, however, blurs the line between the EUGHRSR and geographic sanctions, therefore requires careful coordination and trade-off.

Key words: Sanctions, European Union, Human Rights, Foreign Policy, Accountability

1. Introduction

The European Union (EU) has adopted its much-anticipated global human rights sanctions regime (EUGHRSR) on 7 December 2020.¹ The regime targets state and non-state actors around the world who bear direct or indirect responsibility for human rights (and humanitarian law) violations or abuse. The specific violations covered by the regime are: genocide, crimes against humanity, torture, slavery, extrajudicial killings, enforced disappearances, arbitrary arrests & detention, human trafficking, sexual and gender-based violence, violation or abuses of freedom of peaceful assembly & association, freedom of opinion and expression, and freedom of religion or belief.²

The adoption of the EUGHRSR represents a new milestone for the EU in its less charted path of *thematic* sanctions. The only other thematic sanctions adopted prior to the EUGHRSR are

* Assistant professor of law, Centre for Financial and Corporate Integrity, Coventry University. Email: nathanael.tilahun@coventry.ac.uk

¹ Formally titled 'restrictive measures against serious human rights violations and abuses', Council Decision (CFSP) 2020/1999 and Council Regulation (EU) 2020/1998.

² Council Decision (CFSP) 2020/1999, article 1(1); Regulation 2000/1998, article 2.

those concerning terrorist actors,³ chemical weapons,⁴ and cyber-crimes.⁵ Much of the extant EU sanctions practice (44 regimes as of June 2021) trails the opposite path, i.e. so-called *geographic* or country sanctions. These are sanctions regimes that entertain issues within a specific country or defined geographic region. The thematic approach reflected in the EUGHRSR cross-cuts geography, or supposedly simply disregards it, and responds to events falling under that thematic domain throughout the world.

The novelty of this sanctions regime indeed lies in its character as a thematic sanction, not in its human rights content. The EU has a long track-record of using sanctions in response to human rights violations or abuses around the world. In fact, much of the EU sanctions historically concerned human rights issues, often in tandem with democracy promotion and other liberal democratic objectives.⁶ In these instances, human rights was part of geographic sanctions circumscribed to specific locations and established on a case-by-case basis. This tells us that, theoretically, the human rights objectives of the EUGHRSR could have also been achieved within geographic sanctions by addressing the necessary substantive concerns in each location and instance as they arise. Furthermore, even if the novelty of the EUGHRSR lies in the type of human rights concerns it covers, the same substance could have been accommodated within geographic sanctions as the factual circumstances of a case allow.

What is then the added value of designing a thematic human rights sanctions regime while geographic sanctions regimes could address the same issues? There are some procedural reasons that necessitated the thematic approach, chief among these being the need to reduce the cumbersome decision-making process at the Council.⁷ As the thematic EUGHRSR has a general scope, the designation of each target name would become a faster and simpler process of implementation, hence eliminating the need for negotiation and establishment of separate geographic sanctions in each case of human rights violation or abuse. But the main substantive objective behind the choice for the thematic approach is the need for depoliticizing the EUGHRSR. It is believed that the thematic approach helps depoliticize sanctions by de-linking it from the states the targeted individuals and entities belong to.⁸ As such, the idea is to utilize the regime in a manner that does not send the message that the state the designated individuals and entities belong to is being singled out for targeting.

The aim of this paper is to interrogate whether the implementation of the EUGHRSR in fact allows the attainment of this depoliticization objective. It will show that this objective can be unattainable or undesirable if the success of the EUGHRSR is to be ensured. This is because the success of the EUGHRSR is measured based on the extent to which it is effectively integrated within the EU's broader foreign and security policy orientations and arsenal, and not in isolation.

The paper is structured as follows. Section 2 of the paper will further elaborate the depoliticization thesis and its construction during the preparation of the GHRS. It shows that the thematic EUGHRSR was envisioned as a legalized norm-enforcement mechanism inoculated from inter-governmental politics. Section 3 shows that extant EU geographic sanctions relating

³ Council Decision 2001/931/CFSP.

⁴ Council Decision (CFSP) 2018/1544.

⁵ Council Decision (CFSP) 2019/797.

⁶ *Targeted sanctions against individuals on grounds of grave human rights violations – impact, trends and prospects at EU level*, EU Parliament, April 2018, at 13.

⁷ Tom Ruys, *Introductory Note to the European Union Global Human Rights Sanctions Regime* 60(2) *International Legal Materials* 298 (2021), p299; Richard Youngs, *The New EU Global Human Rights Sanctions Regime: Breakthrough or Distraction?*, Carnegie Europe (14 December 2020), <https://carnegieeurope.eu/2020/12/14/new-eu-global-human-rights-sanctions-regime-breakthrough-or-distraction-pub-83415>

⁸ Christina Eckes, *EU Human Rights Sanctions Regime: Striving for Utopia Backed by Sovereign Power?*, 26(2) *European Foreign Affairs Review* 219 (2021).

to human rights, in contrast, embrace politicization. This is demonstrated by the fact that under such sanctions the state occupies the centre of attention, and targets are designated due to their embodiment of, or association with, the state. The claim underpinning the depoliticization thesis is that thematic sanctions shift the focus away from the state, making particular individuals and entities the only unit of analysis. However, Section 4 shows that the link with the state necessarily creeps into the thematic EUGHRSR as well. This section will show that in order to successfully deploy the EUGHRSR as an integral EU foreign policy instrument, the Council has to (section 4.1.) align the designation of targets with the EU's foreign policy strategies, and (section 4.2.) take pro-human rights reforms in third countries as a ground for de-listing, even in the absence of individual accountability. Taking these positions, however, risks eroding the legal quality of the thematic EUGHRSR and making it indistinguishable from geographic sanctions regimes, hence raises a crisis of purpose. Successfully utilizing the EUGHRSR, therefore, requires careful coordination and trade-off with geographic sanctions. Section 5 concludes the paper by highlighting the key dilemmas the Council faces in search of such coordination and trade-off.

2. Thematic Sanctions as Depoliticization

The EU's thematic sanctions are presumed to de-politicize coercive measures by delinking targeted individuals and entities from the states they belong to.⁹ Referred to in EU parlance as 'horizontal' sanctions, targeted thematic sanctions are portrayed as operating just below the governmental level.¹⁰ This does not mean state officials or entities are not targeted under such sanctions. But such officials are targeted as though they were rogue actors, and their targeting is not meant to directly signal targeting of the states they belong to. This political fiction is constructed to enable distinguishing between maintaining relationship with a third country and holding specific actors within the third country accountable. Thematic sanctions supposedly offer 'discretion and ambiguity' for maintaining this fiction as they enable targeting actors from a third country without directly 'pointing the finger' at the regime of that state.¹¹

Thematic sanctions are meant to minimize the diplomatic challenges associated with geographical sanctions, and enable the Council to react to global events in a 'more nimble' manner.¹² Although geographic sanctions also increasingly target specific individuals within governments, they are explicit responses to, and are meant to affect, governmental behaviour. The character of geographic sanctions as a tool of pressuring other governments often generates diplomatic rupture with the targeted third country, other concerned states, or even within the Member States of the EU. The adoption of geographic sanctions, therefore, sometimes involves intense diplomatic wrangling and various compromises among Member States.¹³ The diplomatic

⁹ Nienke van der Have, *The Proposed EU Human Rights Sanctions Regime*, 30 Security and Human Rights 1, (2019).

¹⁰ *Outcome of the 3738th Council Meeting*, doc 14949/19, EU Council, 9 December 2019, at 6; Clara Portela, *The Spread of Horizontal Sanctions*, Centre for European Policy Studies (7 March 2019).

¹¹ Clara Portela, *The Spread of Horizontal Sanctions*, Centre for European Policy Studies (7 March 2019).

¹² Niklas Helwig, Juha Jokela, Clara Portela, *Sharpening EU Sanctions Policy for a Geopolitical Era*, Prime Minister's Office Helsinki (27 May 2020) at 112,

https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/162257/VNTEAS_2020_31.pdf.

¹³ E.g. most recently, Jennifer Rankin, *EU fails to Agree on Belarus Sanctions after Cyprus Blocks Plan*, *The Guardian* (21 September 2020), <https://www.theguardian.com/world/2020/sep/21/eu-fails-agree-belarus-sanctions-cyprus-blocks-plan>.

sensitivity of adopting sanctions against a third country easily frustrates EU action, particularly given that sanctions are adopted by the Council through unanimous voting.¹⁴

By adopting a thematic angle, the EUGHRSR seems designed to steer clear of this intergovernmental diplomatic friction and minimize damage to the EU's relations with third countries.¹⁵ Officials involved in the preparation of the EUGHRSR have commented that the idea is to target individuals 'without sending the message that you don't want to deal with that country.'¹⁶ It is also in this spirit that the proposal for the title of the sanctions regime to bear the name of Sergei Magnitsky, as was the case with the US 'Global Magnitsky Act' that inspired it, was rejected. It was feared that invoking Magnitsky would make the sanction appear targeted towards Russia.¹⁷ In the same vein, there was a proposal to have a committee of experts (composed of former judges and human rights practitioners) designate targets of the sanction, instead of governments of Member States, and thereby appear less political and more technical.¹⁸ The Commission also proposed to incorporate the travel bans in the Regulation implementing the EUGHRSR, and thereby oversee its implementation by Member States.¹⁹ There were also strong calls, albeit unsuccessful, for changing the Council's decision-making process for human rights sanctions from unanimity to qualified majority voting.²⁰ This move would have positioned the sanctions regime further into the supranational administrative domain, away from what Piet Eeckhout calls the 'no-man's land' between supranational and intergovernmental decision-making that sanctions currently occupy.²¹ These indicators in combination hint that the idea behind the EUGHRSR was establishment of a more legalized process that holds individuals and entities accountable with relative detachment from intergovernmental diplomatic quagmire.

When considering the political usefulness of the EUGHRSR within the broader EU foreign policy, however, the depoliticization objective becomes a challenging and at times undesirable departure from the established EU geographic sanctions practice. The later centres the state in its analysis and embraces politicization. Before discussing why depoliticization threatens the political usefulness of the EUGHRSR in section 4, the following section briefly shows the manifestations of the established state-centric (hence, politicized) approach in EU geographic sanctions practice.

3. Centrality of the State in Geographic Sanctions

¹⁴ For overview of sanctions decision-making in the EU, see Marco Gestri, *Sanctions Imposed by the European Union: Legal and Institutional Aspects* § 4, 70-102 (Natalino Ronzitti ed., Brill Nijhoff 2016).

¹⁵ Martin Russell, *An EU Human Rights Sanctions Regime?*, EU Parliamentary Research Service, PE 637.892 (April 2019).

¹⁶ Jacopo Barigazzi, *EU to Prepare Magnitsky-style Human Rights Sanctions Regime*, Politico (12 September 2019).

¹⁷ *Ibid*, Andrew Rettman, *Dutch Flesh Out Proposal for EU Human Rights Sanctions*, EU Observer (19 November 2018).

¹⁸ *The Power of Focus: Proposal for a European Human Rights Entry Ban Commission*, Norwegian Helsinki Committee, European Stability Initiative, and Dutch members of parliament (14 November 2018), available at <https://www.esiweb.org/pdf/Appeal%20-%20For%20a%20European%20Human%20Rights%20Entry%20Ban%20Commission%20-%202014%20Nov%202018.pdf>.

¹⁹ Cedric Ryngaert, *The EU Global Human Rights Sanctions Regime: How to Enforce Member States' Compliance with Travel Bans*, RENFORCE Blog (10 May 2021).

²⁰ *State of the Union*, Ursula von der Leyen, President of the EU Commission, (16 September 2020); Jean-, *State of the Union*, Claude Juncker, President of the Commission (12 September 2018); *EU Action Plan on Human Rights and Democracy 2020-2024*, joint communication of the European Commission and the High Representative to EU Parliament and the Council (25 March 2020); EU Parliament Resolution 2019/2580(RSP) of 14 March 2019, para 6.

²¹ Piet Eeckhout, *EU External Relations Law* 502 (OUP 2012).

Much of the EU's sanctions practice relating to human rights is antithetical to the idea of legalized non-state-focused targeting. This is because the extant practice is mostly grounded on geographic sanctions that are explicitly aimed to shape the behaviour of third country governments. Geographic sanctions target actors, mainly individuals, that are presumed to dictate or influence the behaviour of third country governments. The main groups of individuals falling within this logic are those occupying government positions and others that are 'associated with' the regime in various ways. As such, geographic sanctions are targeted towards a category of individuals, and not necessarily based on defined personal conduct.

It is not controversial that most EU sanctions adopted in response to human rights violations designate government officials. In fact, human rights being by definition state obligations, their violation or abuse often involves governmental conduct or complicity. Under the geographic sanctions logic, however, designated government officials need not have direct personal responsibility for acts undermining human rights. It suffices that the Council demonstrate the officials belong in a category of decision-makers that could theoretically have influence on or contribution to events that led to the human rights violations. As such, the interpretation of the notion of 'responsibility' that the Council operates with is not legal culpability, but a loose administrative or political one. At times, individuals that are no longer in government position are also targeted in their value as pressure points for the third country's government.

The EU sanctions on Zimbabwe adopted following alleged election-related violations of the right to freedom of speech, association and peaceful assembly by the Mugabe government provide a good illustration. The Council Common Position imposing assets-freeze and travel ban targeted 'members of the government of Zimbabwe' and persons 'who bear a wide responsibility for serious violations of human rights',²² which was translated in the implementing Regulation into 'any natural or legal persons, entities or bodies associated with [members of the government]'.²³ The targeted Zimbabwean officials argued for their de-listing before the EU General Court by bringing evidence that they were not actually involved in the policies and actions undermining human rights in Zimbabwe. The Court, however, rejected their pleas and underscored that specific evidence of personal conduct violating human rights is not needed to subject the applicant to the sanctions regime.²⁴ Instead, it was sufficient that the applicants held a status as members of the government of Zimbabwe. In *Luyoyo v Council*, the General Court stated that the Council need not show the 'personal involvement' of the targeted individual in the human rights violation in question. Instead, the Court stated, it suffices to demonstrate the 'important responsibilities exercised' by the targeted individual to 'legitimately consider that he was one of those responsible' for the human rights violation.²⁵ The Court added that by targeting a category of individuals as such, the Council is trying to send a message of condemnation to the government the individuals serve.²⁶

The Zimbabwe sanctions also did not target defined unlawful conduct or a 'crime or offence' in the ordinary sense of criminal law. Instead, it sufficed that designated individuals' role form 'part of a strategy of intimidation and systemic violation of fundamental rights of Zimbabwean people' pursued by the government in power.²⁷ The systemic violation of rights meant the

²² Council Common Position 2002/145/CFSP, recital 4.

²³ Council Regulation (EC) No 314/2004, article 6.

²⁴ *Tomana and others v Council and Commission*, Case T-190/12, para 173.

²⁵ *Ilunga Luyoyo v Council*, [2020] EUECJ T-166/18, para 132.

²⁶ *Idem*, para 178.

²⁷ Case T-190/12 *Tomana and others*, above n. 24, para 105.

gradual narrowing of the political space and erosion of democracy, which is not the same thing as defined human rights violation. The designated Zimbabwean officials sought to leverage precisely this conceptual distinction in challenging their designation before the Court. In *Tomana et al. v Council & Commission*, a group of 121 applicants argued that their designation no longer serves the EU's CFSP objective of consolidating and supporting democracy under article 21(2)(b) of TEU, which the Zimbabwe sanctions regime was established to serve.²⁸ The applicants claimed that because they were no longer holding government positions, the EU sanctions imposed on them cannot '...achieve any legitimate objective.'²⁹ They argued that their alleged conduct could at most only constitute ordinary crime and as far as the EU is concerned, such conduct should be entertained within the framework of judicial cooperation in criminal matters, not under the CFSP. The Court rejected this plea in fact, but it did so precisely by invoking the political backdrop against which the applicants' alleged activities took place. It reasoned that the applicants' conduct seriously undermines 'democracy, respect for human rights and the rule of law in Zimbabwe' and in that sense falls under the EU's CFSP scope.³⁰

In another EU sanctions regime imposed in connection with the violation of the right to peaceful assembly in the Democratic Republic of Congo (DRC) in 2016, targeted officials remained on the list even after their departure from governmental posts.³¹ The Council deemed that the continuous existence of the same governing regime in DRC to which the targets formerly belonged meant that the association between those former officials and the regime would continue in a different capacity. In the Zimbabwe case, the governing regime was changed and a new government of national unity was established by a power-sharing deal between the governing party and the opposition. However, just as in the DRC case, the Council determined that although the Zimbabwean individuals were targeted for their role in the previous government, they would remain targeted as the political party they belong to still exists in the governing coalition.³² While the government had obviously changed, and the previous ruling party ZANU-PF no longer singularly dictated policy and action, this was not enough – a 'radical and comprehensive' change in government was demanded to satisfy EU foreign policy objectives with respect to Zimbabwe.³³

The EU's geographic sanctions target not only current and former government officials, but also actors that support or benefit from repressive regimes. In the Zimbabwe sanctions, for example, the Council targeted a white businessperson, John Arnold Bredenkamp, and his companies on the ground of providing financial support to the government.³⁴ In human rights sanctions against Myanmar, Mr Pye Phyo Tay Za, the sixteen year old son of a renowned business person with close ties to the government, was briefly subjected to an assets freeze on the presumption that he benefited from 'government economic policies.'³⁵ Christina Eckes shows that the Council has successfully argued before the General Court that even individuals that are simply 'economically active' in the targeted country can legitimately be targeted on the presumption that

²⁸ *Ibid.*

²⁹ *Idem*, para 91

³⁰ *Idem*, para 94.

³¹ Council Decision (CFSP) 2016/2231.

³² Preambles of Council Common Position 2009/68/CFSP and Council Decision 2010/92

³³ Case T-190/12 *Tomana and others*, above n. 24, para 109-10.

³⁴ *John Arnold Bredenkamp and others v Council and Commission*, Case T-66/14, judgment of the General Court, 21 July 2016.

³⁵ Luca Pantaleo, *Case C-376/10 P, Pye Phyo Tay Za v Council*, 49 *Common Market Law Review* 1769, n. 5 (2012).

they ‘must be connected’ with the government in that country for their business to be successful.³⁶

An even more expansive version of this logic was used in human rights sanctions relating to the Syrian regime. Individuals considered ‘prominent businesspersons operating in the country’ were targeted as such, without the need to demonstrate their support to or benefit from the regime.³⁷ Given the level of control the Syrian government had on the economy, the Council reasoned, successful businesspersons operating in Syria are categorically presumed to have close association with and ‘exercise influence over’ the government.³⁸ The Council has defended this generic targeting by arguing that it is necessary due to the difficulty of ‘obtaining precise evidence in a state in civil war with a regime authoritarian in nature’ to establish defined responsibility of actors.³⁹

The above-discussed modalities of categorical targeting of a range of individuals with ties to third country governments, at times based on circumstantial reasoning, are a step removed from holding the direct or indirect perpetrators of human rights violations based on personal conduct. But this tendency to cast the sanctions net widely makes sense when we appreciate that the targets of the Council are not just perpetrators of human rights violations or abuse, but also actors behind third country regimes who hold real levers of power and ideas that could not really be captured through a legal definition of culpability.

The EUGHRSR, as discussed in the preceding section, is designed to depart from such state-centric sanctions practice that targets actors categorically due to their position within or association with governments. De-linking the state from the EUGHRSR, however, is challenging due to the need to retain the political usefulness of the sanctions regime within the broader EU foreign policy. The following section details why this is the case.

4. Dilemmas of De-linking the State from the EUGHRSR

The thematic EUGHRSR represents a departure from prior EU human rights-related geographic sanctions in its norm enforcement character. As opposed to the attainment of loose political objectives, such as peace or democracy, the EUGHRSR is designed to uphold a legal notion of responsibility or obligation for human rights.⁴⁰ The Preamble of Decision 2020/1999 establishing the EUGHRSR frames human rights as not only a political value, but as an international legal obligation of states. Article 2(6) of the Decision refers to the policy objective of the regime as ‘the ending of serious human rights violations and abuses and the furthering of human rights.’ The listing criteria contained in the Decision, as mentioned at the beginning, exclusively consists of international human rights and humanitarian norms that are well established erga omnes obligations under customary international law, several among them even regarded as preemptory (*jus cogens*) norms.⁴¹

³⁶ Christina Eckes, *EU Restrictive Measures against Natural and Legal Persons: From Counterterrorist to Third Country Sanctions*, 51 *Common Market Law Review* 869, 888 n. 3 (2014).

³⁷ *Sourub SA v. Council*, Case C-350/19 P, para 80. Compare with *Eyad Makhlouf v Council* Case T-383/11 and *Issam Anbouba v Council* Cases T-563/11 and T-592/11.

³⁸ Council Decision 2015/1836.

³⁹ *Sourub SA* case, above n. 37, para 90.

⁴⁰ *Sergei Magnitsky and beyond: Fighting Impunity by Targeted Sanctions*, Parliamentary Assembly of the Council of Europe, Resolution 2252 (2019).

⁴¹ Text accompanying n. 5 above.

The Regulation implementing Decision 2020/1999 further underscores ‘the importance of international human rights law’ and its interaction with humanitarian law in operationalizing the sanctions.⁴² In a departure from other sanctions regimes, article 1(2) of the Decision requires that when interpreting the designation criteria for the sanctions, ‘regard should be had to customary international law and widely accepted instruments of international law.’ The International Covenant on Civil and Political Rights, the International Covenant on Economic Social and Cultural Rights, the Genocide Convention, the Statute of the International Criminal Court, and eight other human rights treaties are explicitly mentioned as constituting the set of international treaties to be used for interpreting the human rights sanctions.⁴³ No other EU sanctions regime so clearly frames its scope within international legal rules, except the regime concerning chemical weapons proliferation, which also refers to an international treaty only to define the term “chemical weapons” and not to define the prohibited acts themselves or in any other operative way.⁴⁴

We also observe the legal overtone of the EUGHRSR when, during its preparatory work, the Dutch initiators of the legislative proposal remarked that the purpose of the sanctions regime is to bring ‘accountability for perpetrators and justice for victims’.⁴⁵ Correspondingly, the EU 2020-2024 Action Plan on Human Rights and Democracy categorized the proposal as part of the goals aimed at ‘closing the accountability gap, fighting impunity and supporting transitional justice’.⁴⁶

The above indications suggest the design of, to borrow Paul Cardwell’s phrase, a ‘legalized’⁴⁷ sanctions regime that is more akin to a supranational treaty monitoring mechanism, than a political foreign policy instrument. This design appears to accommodate the depoliticization objective by functioning as a horizontal accountability mechanism that focuses on individuals and entities, and not states as such. However, operationalizing such sanctions regime, which essentially treats its targets as though they do not embody the politics or governments of the states they belong to is a precarious endeavour. This is because this approach can be practically unattainable or undesirable for the success of the sanctions regime as EU’s foreign policy instrument.

From the point of view of the Council, the success of sanctions regimes, including the GHRS, is to be measured in terms of their effective integration within the EU’s broader foreign and security policy, and not in isolation. That is to say, a successful sanctions regime is one that meets the specific objectives it is established to address while cohesively advancing the EU’s foreign and security policy with respect to the specific third countries it deals with. The EU *Global Strategy* document affirms that sanctions are to be used within the broader agenda of ‘integrated approach to conflicts and crises’.⁴⁸ This entails using sanctions as tools of bringing about peaceful change, conflict prevention and resolution. Solving conflicts and crises, the *Global Strategy* further states, requires a joined-up approach to interrelated issues such as ‘human rights’,

⁴² Council Regulation 2020/1998, recital 1 of Preamble.

⁴³ The remaining treaties are: the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child; the International Convention for the Protection of All Persons from Enforced Disappearances; the Convention on the Rights of Persons with Disabilities; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

⁴⁴ Council Decision (CFSP) 2018/1544, article 1.

⁴⁵ Rettman, above n. 17.

⁴⁶ *EU Action Plan*, above n. 20, at 5.

⁴⁷ Paul James Cardwell, ‘The Legalisation of European Union Foreign Policy and the Use of Sanctions’ 17 *Cambridge Yearbook of European Legal Studies* (2015), 287-310.

⁴⁸ *A Global Strategy for the European Union’s Foreign and Security Policy*, June 2016, p. 28, https://ec.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf.

‘crisis response’, and ‘pre-emptive peace’.⁴⁹ In addition to the peace agenda, sanctions, in particular human rights sanctions, are also tied to the political objective of democracy promotion.⁵⁰ In sum, from the perspective of the Council, the success of the EUGHRSR is measured in how well it helps advance peace and democracy within third countries, in addition to the specific objectives of legalized accountability for human rights violations.

In this light, the Council will be faced with important dilemmas in the processes of designating and de-listing targets, making depoliticization unattainable or undesirable. In the designation of targets, de-linking the state from sanctions stands in tension with the need to integrate the EUGHRSR into broader EU foreign policy strategy toward third countries. In de-listing processes, the GHRS’s purpose of ensuring legalized accountability could be difficult to consistently maintain in the face of changing political developments on the ground in the third country concerned. The following discussion elaborates these two points.

4.1. Designations: Integration with Broader Foreign Policy

In terms of the designation of targets, the character of the EUGHRSR as a legalized human rights accountability mechanism stands in tension with the EU’s foreign policy strategies towards the third countries concerned. The tension arises from the fact that EU foreign policy imperatives might require broader targeting, not targeting, or ‘mistargeting’ actors in third countries, creating contradiction or disillusionment with the norm-enforcement purpose of the GHRS.

The norm-enforcement character entails relative independence from political instrumentality and operating a sanctions regime more like a regular criminal or administrative law-enforcement system. This means that targets should be designated subject to direct personal conduct implicating them in human rights violations, and not merely for holding a relevant position in or being associated with a government. The EU terrorist sanctions regime, which is also a thematic regime, targets actors based on such personal conduct approach.⁵¹ Its listing criteria requires a decision by a judicial or equivalent competent authority to (i) investigate or prosecute the targets for terrorist acts or attempts or (ii) condemn the targets for such conduct.⁵²

A similar sentiment seems to be reflected in the European Parliament’s draft proposal of the EUGHRSR, which contained the idea that the later must target ‘individuals reasonably believed to be personally responsible for serious human rights violations’.⁵³ This echoes a notion of individual accountability closer to international criminal justice. The objective of accountability would require that the designation criteria be ideally centered around legal modes of liability for human rights violations, and not wide notions of administrative or political responsibility. Such definition of accountability means that those to be designated must be actors that perpetrate rights violations, the secondary group of participants/accessories in the violation, and those that block subsequent processes of accountability.

The EUGHRSR seems to reflect this approach. Its designation criteria only cover actors that (i) perpetrate human rights violations or abuse, (ii) financially, materially or technically support, or

⁴⁹ *Ibid*, p. 32 & 51.

⁵⁰ *EU Action Plan*, above n. 20.

⁵¹ Council Common Position 2001/931/CFSP and Council Regulation 2580/2001. See also, Council Decision (CFSP) 2016/1693 and Council Regulation (EU) 2016/1686.

⁵² See further, website of EU Council, <https://www.consilium.europa.eu/en/policies/fight-against-terrorism/terrorist-list/>.

⁵³ *Sergei Magnitsky and beyond*, above n. 40.

are otherwise involved in “planning, directing, ordering, assisting, preparing, facilitating, or encouraging”⁵⁴ the perpetration, or (iii) are associated with any of the above two categories. These criteria revolve around the perpetration of human rights violations, and do not include the broader circle of actors that benefit from the outcomes of those violations, as is common in geographic sanctions. They also do not cover, as in the case of Zimbabwe sanctions for example, an undefined or vague mode of responsibility for human rights violations (e.g. actors “whose activities seriously undermine”⁵⁵ human rights); nor do they include, as in the case of DRC sanctions, a compounded criteria that connects the human rights violation in question with the political end result it produces (e.g. “obstructing a consensual and peaceful solution towards elections...by acts of repression”⁵⁶).

In practice, however, sanctions are an integral part of the EU’s comprehensive foreign policy instruments, and are to be deployed within a holistic approach.⁵⁷ The EU’s *Basic Principles and Guidelines* on sanctions stipulate that sanctions are used ‘as part of an integrated, comprehensive policy approach which should include political dialogue, incentives, [and] conditionality...’⁵⁸ The EUGHRSR forms part of the EU’s broader policy on human rights and democratization, which advocates a contextual approach ‘...carefully designed for the circumstances of each country, not least through the development of country human rights strategies.’⁵⁹

From this broader foreign policy perspective, the Council should not respond to specific human rights violations in isolation, but within the EU’s broader approach towards the third country in question. With respect to some third countries, particularly those with notoriously repressive regimes, the EU foreign policy might be driven by a strategy of exerting heightened pressure for radical political change, if not regime change. This might involve, in instances of serious human rights violations, targeting a wider set of actors that constitute pressure points for the third country’s regime, not just those with direct involvement in the human rights violations. This could include targeting the highest political leadership, the main behind-the-scenes actors supporting or benefiting from the government, or a category of government officials without each individual official or the governmental body as such being implicated in any of the modes of liability established under Decision 2020/1999, i.e. perpetrating, supporting, planning, directing, assisting, preparing, facilitating, or encouraging.⁶⁰

In such cases, to capture the actors that do not fall under the EUGHRSR, the Council would have to adopt concomitant geographic sanctions with respect to that third country. This means that the same human rights violation could lead to the adoption of measures under both thematic and geographic sanctions regimes. This would be counter-productive to the purpose of procedural efficiency, i.e. difficulty of unanimity to adopt geographic sanctions, which is one of the very reasons that prompted the thematic sanction, as discussed earlier. Furthermore, if there is enough consensus at the Council to adopt geographic sanctions with respect to the human rights violation in question, then there is technically no need for the thematic sanction altogether

⁵⁴ Council Decision 2020/1999, article 2(1)(b), 3(1)(b).

⁵⁵ Council Decision 2011/101/CFSP, article 4(1).

⁵⁶ Council Decision 2010/788/CFSP, article 3(2)(a).

⁵⁷ *EU Action Plan*, above n. 20; *EU Annual Report on Human Rights and Democracy in the World 2018*, EU Council (13 May 2019); Mikael Eriksson, *Targeting Peace: Understanding UN and EU Targeted Sanctions* 5 (Routledge 2011).

⁵⁸ *Basic Principles on the Use of Restrictive Measures*, EU Council (7 June 2004), para 5; *Sanctions Guidelines*, EU Council (4 May 2018) at 46.

⁵⁹ *EU Strategic Framework on Human Rights and Democracy*, EU Council (25 June 2012); see also, *EU Action Plan*, above n. 20.

⁶⁰ Text accompanying n. 47 above.

as the geographic sanction could capture all desired targets and address any of the substantive human rights violations stipulated under the GHRS.

In the alternative, the Council may apply the EUGHRSR very elastically, designating entire sectors, organs or personnel of government as responsible under any of the above-mentioned specific modes of liability. The Council has already adopted some designations along this vein under the EUGHRSR, notably targeting the North Korean Central Public Prosecutor's Office and Eritrea's National Security Office (NSO) wholly.⁶¹ These are certainly large national governmental organs. By the Council's own admission, for example, the Eritrean NSO has six departments, each with three sub-departments. Such broad designations might reduce the need for concomitant geographic sanctions, but contradict with the legal notion of responsibility and accountability that should guide the interpretation of the EUGHRSR. This means that designations have to be traceable to relatively particular actors that author the conduct defined under the sanctions regime. Broad designations also render the idea of 'targeted' sanctions meaningless.

In other instances, the EU foreign policy position towards a third country could be guided by the premise that sanctions are an undesirable response to human rights violations, or that a strategic 'mismatching' might be necessary. Policy makers typically take the sanctioned state's 'wider political problems' into account in weighing the role of sanctions.⁶² The EU also asserts that sanctions work when they 'dovetail with other foreign policy measures'.⁶³ When rights violations fitting the EUGHRSR designation criteria occur, the Council could choose not to escalate its response in light of its overall engagement with the third country in question. This would be reflected by not applying sanctions to the incident altogether, or by applying it to individuals and entities that are far lower or removed from those responsible for the rights violations in question, hence deliberately mismatching.

Such an approach enables the EU to signal its condemnation of the human rights violations while maintaining its positive engagement with the third country at a governmental level. A cynical take would be that this approach enables the EU to maintain friendly relations with repressive regimes by exercising strategic (mis)targeting. Such instrumentalization of the EUGHRSR creates public disillusionment by eroding the rationale that propelled this sanctions regime, i.e. the idea of a legalized human rights accountability regime. Civil society groups and the Parliament have been driving the establishment of the EUGHRSR by envisioning a less politically motivated tool of accountability.⁶⁴ Consequently, in instances of serious human rights violations, there would be a wide expectation and build-up of pressure, particularly from civil society organizations, for consistent activation of the EUGHRSR.⁶⁵ Therefore, when the targeting of this sanctions regime appears to reflect political instrumentality, its qualitative distinction with the more decidedly political geographic sanctions would be lost.

Going ahead, the dilemma the Council faces in the designation of targets under the EUGHRSR would be, therefore, between applying the regime as a narrowly-focused enforcement mechanism

⁶¹ Council Implementing Regulation (EU) 2021/478.

⁶² Richard Youngs, *The New EU Global Human Rights Sanctions Regime: Breakthrough or Distraction?*, Carnegie Europe (14 December 2020), <https://carnegieeurope.eu/2020/12/14/new-eu-global-human-rights-sanctions-regime-breakthrough-or-distraction-pub-83415>.

⁶³ *Ibid.*

⁶⁴ EU Parliament Resolution 2019/2580(RSP); *EU Sanctions: A Key Foreign and Security Policy Instrument*, EU Parliamentary Research Service (May 2018).

⁶⁵ Clara Portela, *A Blacklist is (Almost) Born*, EU Institute for Security Studies (17 March 2020) at 4.

for international human rights (and humanitarian) norms and using it as a broad and elastic instrument of foreign policy. The first approach would strengthen its normative quality but make the regime inadequately responsive to foreign policy imperatives. The second approach would improve the regime's responsiveness to foreign policy needs but erodes its added value compared to geographic sanctions.

4.2. De-listing: Responding to States' Change of Behaviour

A similar dilemma emerges in decision-making for the de-listing of targets from the EUGHRSR. The character of the EUGHRSR as a legalized accountability mechanism constrains the room for flexibility in the effective delivery of EU foreign policy objectives. Foreign policy effectiveness demands utilizing sanctions as both a coercion and incentive tool, tightening and relaxing them as necessary.⁶⁶ That is, the Council utilizes sanctions in so far as, and for as long as the effective attainment of the EU's strategic objectives with respect to the third country in question requires it.⁶⁷ Flexibility in de-listing helps the Council address the bigger political or security crisis that gave rise to the human rights violation in question, for example by utilizing de-listing of targets as part of incentives for political reform even when legal accountability has not taken place, or to accelerate progress when the situation in the target country improves. It is not uncommon, for example in the context of peace negotiations, to defer or forgo the legal accountability of political leaders for the sake of peaceful reconciliation and stability.

Geographic sanctions facilitate this flexibility by integrating the EU's foreign policy objectives into the sanctions regime itself. Geographic sanctions, including those imposed in response to human rights violations, often contain broad political objectives and not only accountability for specified incidents. Furthermore, the Council amends those objectives subsequently as it deems necessary. In the Congo and Zimbabwe sanctions cases mentioned earlier, the objectives were political stabilization and political reform, respectively. In Congo, the designation of human rights violators was tied to the objectives of ensuring peaceful national dialogue and presidential election in the country.⁶⁸ The purposes of peace and human rights were wielded together and designated individuals were de-listed or kept on the list subject to the Council's subsequent assessment of the changing security dynamics in Congo.⁶⁹ Over the years, the designations are renewed on grounds of evolving demands such as reform of national institutions in Congo, including the Constitutional Court and the Electoral Commission, and security sector reform.⁷⁰ In Zimbabwe the rights violations were tied to demands for free elections and formation of multiparty government. Accordingly, continued designation of targets was justified by the Council on grounds of electoral irregularities, and 'blocking of' or 'lack of progress' in implementation of the political agreement between the government and political opponents.⁷¹

⁶⁶ *Sanctions Guidelines*, above n. 58, para 4.

⁶⁷ On effectiveness in EU external action, see Anne Thies, *The Search for Effectiveness and the Need for Loyalty in EU External Action* § 11 (Marise Cremona ed., Hart 2018).

⁶⁸ Council Decision (CFSP) 2016/2231, para 3.

⁶⁹ Cases T-163/18 *Kumba v Council*; T-164/18 *Kampete v Council*; T-165/18 *Kasagwe v Council*; T-167/18 *Kanyama v Council*; T-168/18 *Numbi v Council*; T-166/18 *Luyoyo v Council*; and T-169/18 *Ngambasai v Council*, para 62 in all of the cases.

⁷⁰ *Democratic Republic of Congo- Council Conclusions*, EU Council (9 December 2019).

⁷¹ Preambles of Council Common Position 2009/68/CFSP and Council Decision 2010/92

In the Zimbabwe sanctions case in particular, several individuals were de-listed in subsequent years to ‘relax the pressure’ on the government for the purpose of acknowledging ‘the improvement in the state of the country’.⁷² The Council kept other individuals on the list based on generic political determinations such as ‘the political situation’⁷³ in Zimbabwe and, even after a change of government in 2017, ‘until the situation becomes clearer’.⁷⁴ When the individuals that were left on the list objected to the selective de-listing, the General Court concurred with the Council’s rebuttal that the dynamics of how the list is utilized to effect governmental change of behaviour is not the concern of the applicants.⁷⁵ This reaffirms the view, also noted by others,⁷⁶ that the targeted individuals are instruments through which the state is vicariously held to account, and the de-listing of targets is dependent on the Council’s assessment of the third country’s change of behaviour.

The linkage of geographic human rights sanctions with political objectives also means designated individuals can seek de-listing by showing the required progress on the ground in their states. We see an example for this in EU geographic sanctions adopted in response to political repression and human rights violations in Libya in 2011. The General Court annulled continued listing of Aisha Muammar Mohamed El-Qaddafi, the daughter of the former Libyan leader, by accepting the applicant’s argument which was grounded on factual developments in Libya.⁷⁷ The Council had designated the applicant with the simple statement of reasons ‘daughter of Muammar Qadhafi; closeness of association with regime’. The applicant argued that the statement of reasons, which was originally adopted in 2011 while the Ghadafi regime was still intact, no longer had relevance as Ghadafi was no longer in power and the political circumstances in Libya had ‘changed dramatically’.⁷⁸ The court concurred with the applicant and annulled the designation deciding that, in light of the changed political circumstances in the country, the statement of reasons did no longer indicate ‘individual, specific and concrete’ reasons for targeting the individual.

Unlike geographic sanctions, the thematic EUGHRSR does not carry country-specific or evolving objectives. Instead, as noted earlier, it has a fixed objective of general applicability, namely ensuring accountability for human rights violations.⁷⁹ As such, the regime is strictly speaking not tethered to the speed of progress in the advancement of the EU’s other foreign policy objectives in the third countries it applies. It is, instead, dedicated to responding to instances of grave human rights violations in relative isolation. This means that de-listing of targets will take place not to serve broader foreign policy imperatives (i.e. peace or democracy promotion in the third country), but to singularly realize or incentivize accountability for human rights violations.

Beyond geographic sanctions, other EU thematic sanctions regimes also have some flexibility in de-listing as their objectives are more political than legal. For example, under the terrorist sanctions regime, the Council has suspended the application of sanctions against the

⁷² Case T-190/12 *Tomana and others*, above n. 24, para 241.

⁷³ Council Decision 2019/284.

⁷⁴ Council Decision 2018/224.

⁷⁵ Case T-190/12 *Tomana and others*, above n. 24, para 246.

⁷⁶ Alexandra Hofer, *The Efficacy of Targeted Sanctions in Enforcing Compliance with International Law*, 113 AJIL Unbound 163 (2019).

⁷⁷ *Aisha Muammar Mohamed El-Qaddafi v Council*, Case T-681/14.

⁷⁸ *Idem*, para 50.

⁷⁹ Joseph Borell, *The long and complex road towards an EU Global Human Rights Sanctions Regime* (31 October 2020), https://eeas.europa.eu/headquarters/headquarters-homepage/87884/long-and-complex-road-towards-eu-global-human-rights-sanctions-regime_en.

Revolutionary Armed Forces of Columbia (FARC) as a result of the conclusion of a peace agreement with the Colombian government in 2016.⁸⁰ Although the purpose of this sanctions regime is combating terrorism, it was utilized to consolidate progress in peace making in Columbia.

Under the EUGHRSR, the objective of accountability means that the change of behavior the regime is meant to induce is the cessation of ongoing violations and an investigation or prosecution of violators at national, regional or international levels. Listed individuals should therefore ideally be able to seek de-listing on the ground that they have desisted from their conduct and/or that they been subject to investigation or prosecution with respect to the specific conduct in question.

It is, however, questionable to what extent the decision-making on de-listing under the EUGHRSR could be detached from broader political developments in third countries. Whether designated actors should be de-listed in response to pro-human rights political reform in their country of nationality – without legal accountability for their personal conduct – is a perplexing question that will play out in future practice. On the one hand, if the answer to that question will be in the positive, then the qualitative distinction between the EUGHRSR and the geographic sanctions regimes will be lost. In such cases, targets would be de-listed without necessarily facing accountability for their conduct, based on the Council's positive assessment of overall political progress in the third country concerned. Geographic sanctions, which will continue to exist, also increasingly address human rights violations and target specific individual and entities, in lieu of broad sectoral or comprehensive measures. The difference between the thematic human rights sanctions and the individual component (or what the General Court called 'personalized devices'⁸¹) of geographic sanctions would then be only one of scope not one of kind: both are targeted, pressure governments by listing, and reward them by de-listing when a desired change of behaviour is exhibited.

If, on the other hand, the EUGHRSR is exclusively devoted to the purpose of ensuring legal accountability for human rights violations and would not respond to political developments on the ground, then ascertaining a benchmark for de-listing becomes quite problematic. If pro-human rights political reforms in the third country are discounted, then the de-listing benchmark left for applicants to rely on will be – besides factually exculpatory evidence and miscellaneous legal errors – evidence of criminal justice accountability for the sanctionable conduct. Jurists have expressed their frustration that the factual or legal error challenges rarely succeed before EU courts – the factual defence is often inadequate given the low evidentiary threshold required for listing, and the legal defence often fails because the Council enjoys much deference from the courts regarding CFSP matters.⁸² Unless progress in terms of legal accountability, for example evidence that targeted person is under investigation or prosecution at a national or the international level, is accepted as a ground for de-listing, the human rights sanctions regime could leave targets listed indefinitely. Such eventuality reinforces the scepticism already expressed by some that the sanctions regime in reality would be a punitive measure, and not designed for deterrence or inducing positive change.⁸³

⁸⁰ Council Decision (CFSP) 2016/1711 and Council Regulation (EU) 2016/1710.

⁸¹ *Iran Liquefied Natural Gas Co v Council* Case T-5/13 R, para 5.

⁸² Maya Lester, oral and written evidence on the legality of EU sanctions for the House of Lords Select Committee on the European Union, EU Justice Sub-Committee (11 October 2016), <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/eu-justice-subcommittee/eu-sanctions/oral/41152.html#Panel2>.

⁸³ van der Have, above n. 9.

It is unclear what role proof of legal accountability will have in decision-making on de-listing under the EUGHRSR. Normally, in the absence of clearly stipulated grounds, sanctions de-listing essentially follows the logic of reverse-engineering the designations criteria – i.e. applicants are left to assume what change of behaviour is needed to secure their de-listing by reading between the lines of the grounds for their listing and the objectives of the sanctions regime.⁸⁴ In geographic sanctions this is relatively discernible as context-specific objectives are often clearly stated. To paraphrase Clara Portela, sanctions imposed for democratic backsliding can be reversed by holding of free and fair elections, sanctions imposed for waging war can be reversed by ceasing hostilities and concluding peace agreements, and so forth. The EUGHRSR, unlike for example the US Global Magnitsky Act,⁸⁵ does not stipulate clear grounds for de-listing, nor does it provide context-specific objectives. The logical assumption would be then that ending ongoing rights violations and progress in holding the responsible actors criminally accountable should constitute grounds for de-listing. But this is only an assumption that will have to be borne out by future practice. Technically, by not stipulating accountability as a ground for de-listing, the Council has retained the political possibility to prolong listings for as long as it deems it necessary, regardless of proof of legal accountability.

There is also another indicator that suggests that the Council may not be intending to relinquish this political flexibility. If we presume that the purpose of the EUGHRSR is legal accountability, then naturally actors that frustrate accountability should be covered by the sanction. Ensuring accountability is often not the responsibility of the designated actors, but the criminal justice machinery in their state of nationality or other international fora. From this perspective, the ultimate target whose behaviour the EUGHRSR aims to change should be the criminal justice system in the third country, and all other actors that have a lever on this system. Interestingly, unlike, for example, the UK human rights sanctions regime,⁸⁶ the EUGHRSR's designation criteria do not cover actors that frustrate accountability processes (i.e. those that conceal evidence, hinder investigation and/or prosecution). This raises questions as to whether this sanctions regime was built with a serious focus on accountability and to what extent criminal justice measures were envisioned as sufficient ground of de-listing. Furthermore, to reinforce the legal accountability objective, the Council needs to show consistent deference to outcomes of legitimate criminal justice processes. That is, if a designated individual is criminally prosecuted elsewhere, that should constitute a *prima facie* sufficient ground for de-listing. It remains to be seen whether the Council would submit itself to this precedent and lose the political room to use the human rights sanctions for political reforms in the third country beyond the criminal prosecution of designated actors.

5. Conclusion

The objective of the EUGHRSR as a thematic sanctions regime dedicated to advancing human rights (and humanitarian) law stands in tension with its political usefulness as a foreign policy instrument. This is manifested both in the designation and de-listing of targets. In terms of designation, a legalized norm-enforcement approach would require targeting only actors that bear direct responsibility for some form of involvement in human rights violations or abuse. However, responsiveness to the EU's foreign policy imperatives may require the opposite: targeting a broad category of actors (i.e. without direct responsibility), not targeting sanctionable actors, or mistargeting less relevant actors. That is, the regime would be deployed not to respond

⁸⁴ Portela, above n. 65, at 5.

⁸⁵ The US Magnitsky Act provides successful prosecution and 'significant change of behaviour' as possible grounds for de-listing, *see* Public Law 114-328, Subtitle F, section 1263 (g)(2-3).

⁸⁶ UK Global Human Rights Sanctions Regulations 2020, article 6(3)(g).

to human rights violations in relative isolation, but within the broader EU strategy towards the third country in question. This would require either applying the EUGHRSR expansively and elastically, hence eroding its legal quality and distinction from geographic sanctions, or simultaneously adopting geographic sanctions in response to the same human rights violations to capture actors that do not fall under the EUGHRSR, which is an inefficient approach.

A similar problem emerges in de-listing. Geographic sanctions are often tied to broad and evolving political objectives, and hence their de-listing takes place in response to whatever political progress the Council deems sufficient in the third country concerned. In other words, geographic sanctions are utilized as tools of coercing and rewarding states directly. The GHRS, as a thematic sanctions regime, is presumed to take the focus off states and pursue the advancement of human rights (and humanitarian) law as its sole objective. This presumes that progress in criminal justice accountability of human rights violators and abusers should be a sufficient benchmark for de-listing. The question is then raised whether other pro-human rights political reforms in the third country, excluding direct criminal justice accountability of designated persons, should be discounted in de-listing considerations. Holistic foreign policy approach may require de-listing in such circumstances as a reward/incentive to the third country – but the point of thematic sanctions is to de-link measures from the state. Furthermore, by not stipulating criminal justice accountability as a ground of de-listing under the GHRS, the Council could be presumed to have chosen not to be constrained by such legally definitive triggering of de-listing, despite its stated commitment to the upholding of human rights as a legal obligation.

These considerations show that a major question mark hangs over the purpose of the EUGHRSR. To realize its distinctive added value as a thematic sanction, the Council needs to designate and de-list targets narrowly guided by the purpose of bringing criminal justice accountability to violators and abusers of human rights. If, instead, the Council chooses to utilize the EUGHRSR as flexibly as geographic sanctions, then a serious rethinking is needed as to how to efficiently coordinate it with the continuing practice of geographic sanctions – or whether the human rights sanction regime is altogether necessary in the long run.