EU Sanctioning Behavior in the Post-Lisbon Era: The European Parliament's role in EU external relations in the Magnitsky case

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EU SANCTIONING BEHAVIOR IN THE POST-LISBON ERA

The European Parliament's role in EU external relations in the Magnitsky case

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Abstract

Despite a long history of scholarship about economic sanctions, research about European Union sanctions, specifically EU sanction threats, is more nascent. The institutional changes in the EU changes since the Treaty of Lisbon in 2009, which gave the European Parliament some increased powers whilst maintaining an intergovernmental Common Foreign and Security Policy, add to this research gap. This thesis thus attempts to answer the question, "What are the effects of the Treaty of Lisbon on the European Parliament's role in sanctions decision-making?" Due to the EP's significant role in the Magnitsky case and its high salience and implications for EU relations with third countries, this study uses the Magnitsky case in the EU to answer this question. It uses an explaining-outcome process-tracing method and finds that some legal changes did *not* make the EP more assertive in sanctions policy in the Magnitsky case. It does find that the EP 'tested the waters' by forging a greater connection between human rights and external relations. It also finds that the augmentation of the HRVP role led to a more difficult relationship between the EP and the Council in the Magnitsky case.

Keywords: sanctions, Magnitsky, European Parliament, EU external relations, Treaty of Lisbon, EU decision-making, High Representative.

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List of Abbreviations

AFSJ	Area of freedom, justice and security
ALDE	Alliance of Liberals and Democrats (EP political group 2004–2019; now Renew Europe)
CFSP	Common Foreign and Security Policy
CSDP	Common Security and Defense Policy
COREPER II	Committee of the Permanent Representatives of the Governments of the Member States to the European Union
Council	Council of the European Union
EC, Commission	European Commission
ECJ	European Court of Justice
ECR	European Conservatives and Reformists (EP political group)
EEAS	European External Action Service
EP	European Parliament
EPP	European People's Party (EP political group)
EPRS	European Parliamentary Research Service
EU	European Union
EUSANCT	Sanctions dataset by Weber and Schneider (2022)
EUSD	EU Sanctions Database by Giumelli et al. (2021)
HRVP	High Representative of the Union for Foreign Affairs and Security Policy and Vice President of the European Commission
HSE	Sanctions dataset by Hufbauer et al. (1990, 2007)
JCPOA	Joint Comprehensive Plan of Action
MGJC	Magnitsky Global Justice Campaign
MEP	Member of the European Parliament
OLP	Ordinary legislative procedure
PES	Party of European Socialists (European political party; part of EP group Progressive Alliance of Socialists & Democrats/S&D)
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TIES	Threat and Imposition of Economic Sanctions dataset by Morgan, Bapat and Kobayashi (2014)
S&D	Progressive Alliance of Socialists & Democrats (EP political group)
UN	United Nations
US	United States of America

Chapter 1: Introduction

Foreign policy decision-making in the European Union (EU) is experiencing a defining moment. Russia's full-scale invasion of Ukraine in February 2022 paved the way for exceptional solidarity that may well have implications beyond the war. In May 2023, nine EU member states called for qualified majority voting (QMV) in matters related to Common Foreign & Security Policy (CFSP), a significant change from the existing unanimity (German Federal Foreign Office 2023).[1] Adopting QMV on some matters would also be a step that would put the Council in line with the European Commission and European Parliament (EP), who have called for a shift towards QMV, particularly relating to sanctions, for several years (von der Leyen 2020; European Parliament 2022). These proposed changes, if they gain enough momentum amongst member states, could have a significant impact on the way the EU behaves as a sanctioning actor.

Economic sanctions are an increasingly important and applied foreign policy tool. The definition of sanctions has changed as the nature and goals of sanctions have evolved. Hufbauer et al. (1990, 2007, 3) defined economic sanctions as "the deliberate, government inspired withdrawal, or threat of withdrawal, of customary trade or financial relations." Bapat, and Kobayashi defined them as "actions that one or more countries take to limit or end their economic relations with a target country in an effort to persuade that country to change its policies" (2014, 5). Giumelli, who has focused on sanctions in the EU, notes that sanctions have historically been "seen as a way to impose economic penalties as a means of extracting political concessions from targets," but that EU sanctions do not always fit into this mold (Giumelli 2013, 7). While the second definition mandates that the target be a *state*, the first

[1] The "The Group of Friends on Qualified Majority Voting in Common Foreign and Security Policy" includes Belgium, Finland, France, Germany, Italy, Luxembourg, Netherlands, Slovenia, and Spain.

and third do not specify this. With the rise of non-state actors such as terrorist groups, as well as the desire of senders not to impose undue costs on the entirety of another country, sanctions are not always imposed on states, but often individuals.

While there has been extensive academic debate on the *effectiveness* of sanctions, there has not been as keen a focus on the *decision-making* that leads senders to impose sanctions on a target. With the exception of some such as Giumelli (2013, 2016, 2021), Portela (2010), Weber and Schneider (2022), and Szép (2022), there has also been less of a focus on sanctions imposed by the EU. The number of more recent articles cited above is encouraging, but there is still a lack of understanding of the ways in which the different EU institutions play a role in sanctions policy. The Council and the High Representative of the Union for Foreign Affairs and Security Policy and Vice President of the Commission (HRVP) have the power to propose sanctions, but they must be approved with unanimity by the Council. The EP has historically had an informal advising role. While the current movement pushing for QMV could change this, some changes in EU external relations policy date back further, to the Treaty of Lisbon. The Treaty, adopted in December 2007 and entered into force in December 2009, altered the institutional competences of the EU. Prior to the Treaty, there were around 40 policy areas that followed codecision procedure, in which the European Parliament (EP) acted as co-legislator with the Council (Barley et al. 2020, 2). Now, "codecision" has become "ordinary legislative procedure" (OLP), and encompasses 85 policy areas (Barley et al. 2020, 2). This has given the EP far greater legislative power than it had prior to the Treaty of Lisbon. While CFSP matters remain with the member states and therefore in the Council, there is reason to believe that the EP has also been able to assert itself in some aspects of external relations since Lisbon (Eckes 2014).

The increasing use and prevalence of sanctions as a foreign policy tool, coupled with these institutional changes, beg the question of if, and how, the EP has acted differently as a

result of the Treaty of Lisbon. This thesis will thus pose the question: *"What are the effects of the Treaty of Lisbon on the European Parliament's role in sanctions decision-making?"*

In order to answer this question, I have chosen to focus on a single case: the Magnitsky sanctions that were called for following the death of Sergei Magnitsky, a Russian accountant who was imprisoned after allegedly uncovering vast corruption in the Russian state, who died while awaiting trial after being refused medical treatment (Bidder 2019). These sanctions were recommended by the EP to the Council as early as 2010, but not adopted until 2020. This is an apt case to study for several reasons. First, it is an example of a case in which the Council did *not* initially impose sanctions, despite progressively increasing pressure from the EP and outside actors. Second, the case occurred concurrently with the entry into force of the Treaty of Lisbon, making its timing fit for a study of the impact of the Treaty. Third, it is a highly salient issue that, thanks in part to a robust lobbying campaign, saw sanctions adopted by a number of countries, including the United States (M. Weiss 2012; Daventry 2020). Finally, while the Magnitsky sanctions target individuals rather than a country, and were widened in scope beyond those implicated in Magnitsky's death, they were, at their core, targeting human rights abuses in Russia. The calls came at a time, easy to forget given the recent EU solidarity, when member states were highly divided in their approaches to and relations with Russia. Closely studying such a case can provide further insight into EU-Russia relations. More importantly, the EU and its ally the US did not initially see eye to eye regarding the Magnitsky sanctions and Russia, and they may be at a turning point regarding how they prefer to address another country with whom both disagree on many matters: China. Studying this case thus may help to illuminate how the EU can best conduct relations with third countries under complex circumstances, and strengthen its position as a foreign policy actor.

This thesis will proceed as follows. First, Chapter 2 will outline and evaluate the existing literature on sanctions and EU foreign policy decision-making. In Chapter 3, I will

discuss the methodology and conceptual framework, which will entail explaining-outcome process-tracing. Subsequently in Chapter 4, I will provide background on the Magnitsky case in greater detail than I have in this introduction. Chapter 5 will address my hypothesis that the dual legal basis for Articles 215 and 75 TFEU after the Treaty of Lisbon made the European Parliament more assertive in the area of sanctions. Chapter 6 will examine the second hypothesis that the European Parliament's increased role in external relations post-Lisbon contributed to actors within the institution 'testing the waters' in areas where the Parliament still did not have competences. In Chapter 7, I address the third hypothesis that the augmentation of the High Representative by the Treaty of Lisbon led the European Parliament to have a more difficult relationship with the Council. I find that Article 75 TFEU did *not* make the EP more assertive, despite initial attempts to claim its newfound competences, thus rejecting H1. I also find that there were more calls from the EP to the Council to impose or expand sanctions post-Lisbon, and an increased association between CFSP and human rights, thus supporting H2's predictions that the EP 'tested the waters' in areas where it did not have competences. Finally, accept H3 after finding that in the Magnitsky case, the HRVP's greater role may have led to a more difficult relationship between the EP and the Council, but that this is highly dependent on the HRVP and other factors. These findings suggest that the EP attempted to exercise greater influence in external relations after the Treaty of Lisbon, particularly by tying human rights to CFSP. They also suggest that in the Magnitsky case, the Treaty's changes to the HRVP role led to a strained relationship between the EP and the Council. I will conclude the thesis by summarizing my results, assessing their implications, and offering avenues for further research on this subject.

Chapter 2: Literature Review

2.1 Introduction

Economic sanctions have been a topic of much discussion and debate amongst researchers for decades. From earlier studies of sanction imposition during the Cold War era (Hufbauer et al. 1990, 2007), to later research that examined the effects of sanction threats and expanded to include the post-Cold War era (Morgan, Bapat, and Kobayashi 2009, 2014), and finally to studies of major sanction senders from 1989–2015 (Weber and Schneider 2022), there is seemingly no dearth of literature in the genre. Researchers have examined the effectiveness of comprehensive as well as targeted sanctions, and both unilateral and multilateral sanctions. Nonetheless, new data and recent events call for further research into the decision-making processes of senders of sanctions and sanction threats, particularly those issued by the EU. In this chapter, I will begin with an examination of the literature on economic sanctions and sanction threats, followed by a discussion of the literature on multilateral sanctions. Finally, I will discuss literature on foreign policy decision-making in the EU, and how this relates to sanctions. I will also address gaps in the literature, particularly regarding the nature of the EP's involvement in EU external relations and sanctions, which I hope to address in this thesis.

2.2 Economic sanctions

Economic sanctions are defined by Morgan, Bapat, and Kobayashi (2014, 5) as "actions that one or more countries take to limit or end their economic relations with a target country in an effort to persuade that country to change its policies." Economic sanctions provide actors threatening or imposing sanctions (also known as senders) with a step between diplomatic and military means to coerce change in a country (also known as a target). I take a wider

definition of sanctions that includes non-state actors and individuals. Sanctions can also be used by the sender to attempt to exert domestic political gains (Hufbauer et al. 2007, 5).

A great deal of research has focused on the effectiveness of sanctions in effecting policy changes in targets. Hufbauer et al.'s pivotal 1990 sanctions database (HSE), updated in 2007, has provided the basis for much research to date. Using this data, sanctions are found to be effective around 33 percent of the time (Hufbauer et al. 2007, 125), which has raised the question of why states continued to deploy them if they only occasionally achieved their goals of target acquiescence. Drury (2005) attempted to answer this question in the United States context by analyzing why presidents have chosen to employ economic sanctions between 1966–2000. In particular, the results showed that increased tensions between the US and its targets led to a higher likelihood of sanction use, but that the US is less likely to impose sanctions against targets that display "provocative" or "bellicose" behavior (Drury 2005, 5). In other words, if the president believes a target will do everything in their power to resist sanctions, he/she is less likely to impose them. Drury's research calls attention to the need for scholars to further examine the factors that lead states to sanction, rather than only the effectiveness of the sanctions themselves, an aspect that will be addressed in this study. While Drury's work includes a valuable distinction between pre- and post-Cold War sanction use, sanctioning behavior has also changed significantly since the 1990s due both to shifts in the structure of the international order and with the introduction of 'smart' or targeted sanctions.

Comprehensive economic sanctions raised questions of negative externalities such as human rights issues, particularly after the devastation suffered by the Iraqi people due to sanctions imposed during the Gulf War (Gordon 2011, 315). Later research has shown, however, that targeted sanctions were commonly used immediately following the Second World War, though their use declined after the 1960s (Morgan, Bapat, and Kobayashi 2014, 14). Cortright and Lopez (2002) called for the types of targeted, or 'smart,' sanctions that have

now become ubiquitous, including financial and travel sanctions, arms embargoes, and targeted trade sanctions. These sanctions regimes were believed to allow senders to achieve their goals without inflicting unnecessary harm on populations in target countries. According to Drezner (2011), though, targeted sanctions are no more effective than comprehensive sanctions—they do, however, serve the domestic political purpose of allowing senders to say that they are 'doing something' when targets violate international norms and rules without negative consequences. Other scholars have also called into question whether smart sanctions really do prevent negative externalities on populations in target states. Aviation bans, for example, can affect vital medical or agricultural supplies as they did in Libya after the Lockerbie bombing, and arms embargoes can unintentionally give one side a dangerous disadvantage as they did during the wars in former Yugoslavia (Conroy 2002; Elliott 2002).

2.3 Economic sanction threats

As research on sanctions, whether targeted or comprehensive, increased, scholars began to point out a major problem of selection bias in commonly used data (Drezner 2003; Lacy and Niou 2004). Because the HSE data did not include sanctions that were *threatened* but never imposed, sanctions research underestimated the effectiveness of measures that led to target acquiescence before they were ever imposed. Eaton and Engers (1999) argued that in a world of perfect information, sanction imposition should not exist because senders and targets accurately assess each other's resolve and cost of compliance. They theorized that targets conceptualize senders as "pit bulls and paper tigers" based on their beliefs and senders' past behavior in backing down from threats or implementing sanctions (Eaton and Engers 1999, 411).[2]

[2] Eaton and Engers characterize a "pit bull" as an actor who "always carries out the threat of sanctions, either because they do not cost her much or because she values the future more highly," and a "paper tiger" as an

Morgan, Bapat and Kobayashi (2009, 2014) attempted to amend this selection bias, allowing testing of these theories and providing scholars more comprehensive data by creating the Threat and Imposition of Sanctions dataset (TIES). TIES includes a separate 'threat' stage in the dataset, which significantly expanded the number of sanction events researchers could analyze. It also includes both trade and non-trade disputes, though sanctions are thought to have different outcomes for more highly salient political issues (Drury and Li 2006, 307).[3] Using the TIES dataset, and including trade disputes (of low salience), sanctions were found to have a 27.2 percent strict success rate, lower than the success rate based off of the HSE data. When considering sanction events that resulted in a negotiated settlement, there was a 40.8 percent success rate, higher than that of the HSE data (Morgan, Bapat, and Kobayashi 2014, 19). The TIES dataset has thus been useful for researchers looking to examine the effects of sanction threats. It is, however, limited in scope as it only includes sanction events up until 2005. Since 2005, events such as the US–Russian reset and later deterioration of relations, the Syrian Civil War, the Joint Comprehensive Plan of Action (JCPOA) and the Global Magnitsky Act of 2016 make the more contemporary period important to include in systematic, large-N analyses as well as case studies.[4] Gilligan's 2016 study on the Global Magnitsky Act, however, does not address EU-level efforts in significant depth.

Additionally, researchers such as Drury and Li (2006) have pointed out the difficulties of studying sanction threats given that many such threats may be communicated privately. While this is true, and makes certain generalizations regarding sanction threats difficult, they are still worthy of study, and it would be extremely challenging to study private sanction

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actor who "threatens sanctions but capitulates if challenged, either because punishment is too costly or because future compliance is less valuable" (1999, 411).

[3] Drury and Li (2006) include sanctions targeting human rights abuses as highly salient, meaning the Magnitsky sanctions would also classify as highly salient. In their study, they found that US sanction threats towards China over salient issues were generally ineffective, and that this can be generalized to similar issues.

[4] For case studies that address these events, see Gilligan (2016); Moret (2015); Borszik (2016), and Ruys (2017).

threats. Public sanction threats can be considered as a category of their own, and can provide valuable insights into how relations between states affect sanction and sanction threat effectiveness. Walentek et al. (2021) used TIES, Formal Alliance data on diplomatic connections, and Polity IV democracy data to investigate sanction threat effectiveness. In line with the earlier work of Whang et al. (2013) and Early and Jadoon's 2019 research on sanction threats and foreign aid, they found that the greater the shared economic interest between sender and target in avoiding the economic disruptions of sanctions, the greater the success of sanction threats. Despite literature on domestic audience costs in democracies, however, Walentek et al. found no evidence that democracies were more likely to succeed in achieving goals at the threat stage (Walentek et al. 2021, 441). On the other hand, they did find that the more democratic a sender, the more effective threats became compared to imposed sanctions (Walentek et al. 2021, 442). This finding raises questions about how and why senders decide whether or not to impose threatened sanctions.

By analyzing sanction threats, scholars have also been able to examine the two linked factors of reputation effects and sender resolve.[5] Peterson (2013) examined the *international* reputation effects of sanction threats. Drawing from Eaton and Engers' earlier work, Peterson analyzed how targets react to senders who have recently backed down from a sanction threat. His study used the US as the sender in its analysis, and found that targets' response depended upon how the US had recently reacted to resistant sanction targets (Peterson 2013, 681). On the contrary, Whang et al. (2013) found that sanction threats do not affect targets' perceptions of sender resolve, which is defined as how likely it is that the sender will follow through on a sanction threat. The authors argue that targets already believe a sender has high resolve to

[5] "Reputation effects" refers to the repercussions for a sender's (in this case international) reputation if they rescind, or back down, from a sanction threat (see Peterson 2013). Whang et al. (2013, 66 fn.3) define sender resolve as "private information that the sender wants to signal using sanction threats."

impose sanctions once they reach the threat stage, and that even greater economic ties between the countries do not significantly change the target's beliefs about sender resolve (Whang, McLean, and Kuberski 2013, 78). While this discrepancy may exist in part due to the different samples (given that the Peterson study only used the US as a sender), it still leaves room for additional research on the role of sender resolve and reputation at the threat stage.

2.4 Multilateral sanctions and sanction threats

Another important area of study in sanctions research involves multilateral sanctions, or sanctions imposed by more than one actor. Researchers have examined multilateral sanctions and their effects for a long time, often analyzing United Nations sanctions regimes (Cortright and Lopez 2000; Drezner 2011; Gordon 2011; Biersteker, Eckert, and Tourinho 2016; T. G. Weiss and Daws 2018; Giumelli 2021). This area of study is increasingly relevant given the generally accepted increased role of multilateral institutions and organizations in recent decades.

Drezner (2011) discusses how contacts between scholars and policymakers impacted the UN's development of smart sanctions in the 1990s and 2000s, leading to a sharp decline in the use of comprehensive sanctions. During the period in the HSE dataset, however, UN sanctions, which are inherently multilateral, were found to be generally ineffective, perhaps due to lack of resources, authority, and monitoring capabilities (Hufbauer et al. 2007, 132–33). In their more comprehensive study specifically of UN sanctions using their own data, Biersteker et al. (2016) found that UN sanctions were effective only 22 percent of the time—significantly less than the average effectiveness for all sanctions in both HSE and TIES data. There is no clear consensus in the literature, however, on the effectiveness of multilateral sanctions in general. Under certain conditions, in fact, multilateral sanctions are more successful than unilateral sanctions. Multilateral coalitions often form in order to solve highly

salient international issues, and are more successful at solving these debates (Bapat and Morgan 2009, 1086–87). Furthermore, Bapat and Morgan suggest that to ensure greater chance of success, parties to multilateral sanctions can focus on a single issue and situate the sanctions within an institution.

Adding to the debate of multilateral sanction use is Weber and Schneider's 2022 EUSANCT dataset. For many years, the EU specifically had not been a major focus of study in sanctions research. Instead, researchers focused on the US, the largest sender of economic sanctions (Morgan, Bapat, and Kobayashi 2014, 10), or on the UN. Despite its increasing significance in international politics, the EU has been largely sidelined in these types of studies. There is also a lack of clarity on how to categorize the EU as a sanctioning actor. Indeed, in the TIES dataset, Morgan, Bapat, and Kobayashi sometimes code the EU as a single actor, and other times add an additional "institutional" category. The stated reason for this is that at times, it behaves like a unified actor and at other times, it is more akin to an international institution (Morgan, Bapat, and Kobayashi 2014, 8–9).[6] This is an important nuance, and adds an important degree of specificity to this dataset. It also highlights the need for further research of specific cases to examine the EU as a foreign policy actor in its own regard, which I will attempt in this thesis. When the EU imposes sanctions, it is indeed acting unilaterally and should be categorized as a single actor; however, the supranational structure of the EU, coupled with the intergovernmental nature of the Council, make it unique from most other

[6] In their words: "In a number of cases, the EU appears very much like a single sender or target, in the sense that it adopts a common policy. We felt it makes sense to treat it as a single actor in those cases. There are cases, however, in which a [sic] EU member acts on its own as either a sender or as a target; and, in some of these cases, the EU behaves very much like an institution. For these cases, we code the institutional involvement of the EU" (Morgan, Bapat, and Kobayashi 2014, 8–9). After examining the dataset and its user manual closely, I found three cases with individual EU member states as senders where the EU's institutional involvement was also coded: Spain towards Morocco in 2002, the UK with New Zealand, Australia, the US, and the EU towards Fiji in 2000, and finally France and Spain with the US and Japan towards Haiti in 2000.

senders. Its structure might also provide insight into a question raised by Walentek et al. (2021), where they wondered whether international institutions created to establish and maintain peace are the *cause* of the phenomenon of an increase in sanction threats. The EU, particularly in the post-Maastricht era when sanctioning officially became an EU competence through the Council, is an important actor to examine in light of this question.

EUSANCT (Weber and Schneider 2022) helps to address these gaps. Drawing from EU, US, and UN sanctions in the post-Cold War era (1989–2015), the dataset combines certain aspects of the HSE and TIES datasets into a new and expanded format. Like TIES, EUSANCT includes a distinction for the threat stage. Notably, Weber and Schneider concur with research that multilateral sanctions are more effective than unilateral ones, and find that EU and UN sanctions appear to be more successful than US ones. EUSANCT has provided new opportunities for research on multilateral sanctions that specifically involve the EU. Using quantitative analysis of the EUSANCT dataset, Weber and Schneider have answered some questions about multilateral sanction threats, including those that involve the EU and US. They found that EU sanction threats are less credible than US sanction threats, due in part to the more difficult institutional structure of imposing sanctions in the EU (Weber and Schneider 2020). Imposed EU sanctions, however, are more successful than US sanctions. This research highlights the importance of the institutional structure of senders, particularly at the threat stage, which is why I have chosen to study an EU sanction case at the threat stage. Additionally, some aspects of EUSANCT's coding illustrate the need for further research into the sanction decision-making process in the EU. In the dataset, the authors include a category for which EU institution(s) threatened sanctions. This includes instances where the European Parliament (EP) 'threatened' sanctions by passing a recommendation urging the Council to impose sanctions, such as the Magnitsky case in 2012 (European Parliament 2012). Since the EU's more robust framework for imposing sanctions was adopted in June 2004 (Council of

the European Union 2004), EUSANCT includes four sanctions episodes in which the EP was the sole 'threatener.'[7] Of these, sanctions were imposed twice (against Nepal in 2005 and Iran in 2011). But the dataset and case summary fail to make clear that in the Nepal case, the targeted sanctions 'threatened' by the EP differed from the halting of foreign aid that was actually eventually implemented by the Commission. If researchers do not take the context of specific cases into account, large-n quantitative studies on the effectiveness of EU sanctions could be flawed. Furthermore, by including the EP as a 'threatener' when it does not have the power to initiate or impose sanctions, researchers might lack attention to the institutional decision-making structures and competences of the EU institutions. This suggests that there should be a greater link between literature on sanctions and foreign policy decision-making, rather than a focus on sanction effectiveness alone, and more research into why the EP 'threatens' sanctions in the first place. It is hoped that by studying the Magnitsky case in the EU in detail, that this thesis will provide some insight into these matters.

2.5 Foreign policy decision-making in the EU

In recent years, there has been greater attention to EU sanctions in a systematic way with Weber and Schneider's EUSANCT dataset as well as Giumelli et al.'s 2021 EU Sanctions Database (EUSD). Much of this research, and much of the work discussed above, has focused on the *effectiveness* of sanctions (Portela 2010; Giumelli 2016), and the EUSD does not include sanction threats. Researchers have called for further investigation into how senders threaten and impose sanctions both unilaterally and multilaterally (Weber and Schneider 2022, 104). In particular, the decisions of high-level policymakers demand further study. Peterson (2013)

[7] In an email to one of the authors, he told me that these cases were included due to the EP's role in advising and helping to shape EU sanction policy, and that researchers can easily exclude EP sanction 'threats' from the dataset if they wish. Nonetheless, the lack of clarity regarding the Nepal case may be problematic.

has highlighted the importance of paying attention to different contextual factors at play in various sanctions episodes. Schultz (1999, 2001) has also examined how democratic structures influence decision-making in coercive diplomacy. Kreutz (2015) has analyzed on a large scale the determinants of EU action in foreign policy, including sanctions, but only through 2008. The Treaty of Lisbon, adopted in 2009, has changed the way the EU conducts foreign policy, including sanctions, by giving the Council a greater role (Giumelli 2013, 13). These institutional changes reflect the need for more research into EU sanctions decision-making, which this thesis will endeavor to contribute. This section of the chapter will discuss the existing literature and theory on foreign policy decision-making in the EU, particularly where it pertains to sanctions.

Prior to the Treaty of Lisbon, the rotating Council presidency had many duties over Common Foreign and Security Policy (CFSP), under which sanctions fall. Given the frequent rate of turnover between six-month presidencies, there was sometimes confusion amongst third countries, and a feeling that such a design was no longer suited to a union of 25 or more countries (Vanhoonacker, Pomorska, and Maurer 2012, 140). While the power to impose sanctions has always been held by the Council, the Commission did have an implementing role prior to Lisbon (Giumelli 2013, 11).

With the Treaty of Lisbon, the EU abolished its three-pillar structure and adopted other reforms that changed the shape of EU foreign policy. Significantly, it established a High Representative of the Union for Foreign Affairs and Security Policy and Vice President of the European Commission (HRVP), who is appointed to a five-year term and, along with any member state, has the right of initiative to propose sanctions (Giumelli 2013, 10). The HRVP wears a 'dual hat,' with one foot in the Commission and the other in the Council. Vanhoonacker and Pomorska have pointed out the "vulnerable and sometimes even impossible" position of the HRVP due to competing pressures and questions of loyalty

(Vanhoonacker and Pomorska 2017, 111). Additionally, Carmen Gebhard notes that during the tenures of Baroness Catherine Ashton (2010–2014) and Federica Mogherini (2014–2019), the pressure and time spent balancing the two institutions often kept the HRVP's attention away from "substantive issues" (Gebhard 2017, 135). Schmidt-Felzmann (2022) notes that the establishment of the HRVP has diminished the role of the Council presidency in CFSP, and others have pointed out the importance of the European Council in sanctioning post-Lisbon (Papadopoulos 2017; Szép 2020). Vanhoonacker, Pomorska, and Maurer (2012, 151), on the other hand, have highlighted the ongoing role of the rotating presidency in chairing COREPER II, which helps to ensure coherence between the EU's external economic affairs and CFSP. The HRVP thus has to "compete" with the rotating presidency, the President of the European Council, and the President of the Commission (Smith 2017, 173).

The role of the HRVP's personality and experience is also important, and became problematic with HRVP Ashton due to her "lack of vision" that led to communications problems within the Council (Vanhoonacker, Pomorska, and Maurer 2012, 157; Vanhoonacker and Pomorska 2013). Her preference for controlling dossiers also led to poor agenda management within the newly established European External Action Service (EEAS) (Vanhoonacker and Pomorska 2013, 1324). Finally, these authors point out that "the dossiers that the HR has attempted to keep off the policy agenda are as important as the dossiers for which she has tried to arouse interest" (Vanhoonacker and Pomorska 2013, 1327). Thus, In the Magnitsky case, which was timed largely with her tenure, the role of Ashton and her role in keeping the case 'off the table' demands further attention, and will be examined in this thesis. The reforms to the EU's external relations were aimed in part to solve the issues presented by the short-term nature of the rotating presidency. Some research shows, however, that some national foreign ministries, despite playing a role in creating the role of the HRVP, undermined Ashton's credibility during her tenure (Adler-Nissen 2014, 671). Some scholars

also argue that the EU's foreign policy lacks coherence and a link between sanctions and other foreign policy tools (Fernandes 2022; Giumelli 2013, 42).

This lack of coherence has perhaps been most evident historically when it comes to EU foreign policy towards Russia, where EU institutions have had very different views. While this began to shift after Russia invaded Crimea in 2014, and certainly after the full-scale invasion of Ukraine in February 2022, the lack of alignment between the EP and certain member states in particular has led to debates within the EU (Khudoley and Ras 2022, 21). In fact, the sanctions imposed by the EU on Russia in 2014 have been characterized as surprising and an example of EU solidarity (Fernandes 2022, 43). Natorski and Pomorska (2017, 55) analyzed the role of "intra-EU trust" after the invasion of Crimea, finding that decreased trust in Russia coincided with increased trust between EU institutions, leading to such exceptional solidarity. Given that Natorski and Pomorska, as well as studies of EU-Russia sanction policy such as Timofeev (2022) do not address pre-Crimea calls for sanctions by the EU, the Magnitsky sanctions provide an important case to study.

Prior to 2014, though, the three institutions' views towards Russia were categorized as follows: the EP uses its power to show the "value gap" between the EU and Russia, the Commission acts as an "honest broker," and the Council is divided by member state preferences (Fernandes 2022, 37). For instance, while the Council called for a "fast forward" of relations with Russia at a summit in 2010, the EP has generally been much less accommodating (Danilov 2022, 155). Given the EP's limited role in foreign policy issues, it is also concerned with its own institutional role when it comes to Russia, and does not want to be seen only as a "whistleblower" (Fernandes 2022, 41).

In fact, Eckes (2014) has argued that the EP does have a greater role in external relations and CFSP than it did pre-Treaty of Lisbon. She argues that since it gained other powers after the Treaty of Lisbon, the EP "has been able to establish an external voice, i.e., to speak for EU

citizens in the EU's external relations" and that it benefits from its own "democratic legitimation" (Eckes 2014, 919). Furthermore, in the context of refusing certain international agreements, Eckes argues that the EP has recently tried to have a 'seat at the table' and a greater influence in EU policies from an earlier stage (Eckes 2014, 907). Szép (2022) argues that the EP does have an important role in EU external relations, particularly when it pertains to human rights, and used the EU Global Human Rights Sanctions Regime ("EU Magnitsky Act") as a case. However, his study also focused on the role of national parliaments, and did not use interviews. Szép and Eckes beg the question of whether the EP's external voice can also be applied to cases of 'threatening' sanctions, despite the EP's lack of competency in the area, and whether this newfound expanded external voice has urged the EP to be more vocal in foreign policy matters. These are issues that will be addressed in this thesis.

2.6 Conclusion

In this chapter I have discussed a wide range of literature relating to sanctions and EU foreign policy decision-making. It has addressed sanctions, sanction threats, the growth of multilateral sanctions, and the gap in research into the role that the EP plays in EU sanctions. Furthermore, the existing literature highlights the need for greater attention to be paid to the EU decision-making structures in large-n quantitative studies. This area of research would thus benefit from detailed case studies of sanction (or sanction threat) episodes. The Magnitsky case, in part due to its high salience and timing, is an important case to examine and will be addressed in this thesis. In the following two chapters, I will discuss my methodology and conceptual framework, and then provide a detailed background account of the Magnitsky case.

Chapter 3: Methodology

3.1 Introduction

I will now discuss the methodology that was used in this study to answer my research question: *What are the effects of the Treaty of Lisbon on the European Parliament's role in sanctions decision-making?* I will first broadly explain the process-tracing method. Then, I will outline the data and methods used within process-tracing. After that, I will outline my conceptual framework and hypothesized causal mechanisms and discuss how I operationalized this method. Finally, I will justify my case selection and why it is a good case for studying the European Parliament's role in sanctions decision-making post-Lisbon.

3.2 Process-tracing as a method

While there are a large number of large-n, quantitative studies of sanctions, many of these studies focus on sanction effectiveness. There has been less research on the decision-making process behind sanctions, particularly in the EU, and if/how it has changed since the Treaty of Lisbon. Given the growing calls for democratic legitimacy in decision-making literature and the increased role of the EP in foreign policy, greater understanding of EU sanctions decision-making is important.

In order to answer the research question, process-tracing was selected as a method. Process-tracing provides tools to "study causal mechanisms in a single-case research design" (Beach and Pedersen 2013, 2). More specifically, explaining-outcome process-tracing "attempts to craft a minimally sufficient explanation of a puzzling outcome in a specific historical case" (Beach and Pedersen 2013, 3). While there is a great deal of literature on process-tracing (Beach 2017; Bennett 2010; Collier 2011), I elected primarily to follow Beach and Pedersen's 2013 text due to its comprehensiveness, clear guidelines, and operationalization of different types of

process-tracing. Unlike other small-n case study methods, process-tracing allowed me to make *within*-case inferences about causal mechanisms (Beach and Pedersen 2013, 4). This was valuable in a study involving a complex topic and actors such as this.

Given the limited scholarship in this particular area, explaining-outcome process-tracing was selected over theory-testing or theory-building methods to gain a deeper understanding of the EP's role in recommending the Magnitsky sanctions. This does not mean that theory was not employed, however. Using the literature and background knowledge, I hypothesized several causal mechanisms and deductively tested these in a way akin to theory-testing process-tracing by examining evidence to see if each mechanism was present. If this did not yet provide a "minimally sufficient outcome," I moved to the next step of inductive research using empirical evidence, making this research an iterative process (Beach and Pedersen 2013, 19). Selecting explaining-outcome process-tracing also does not mean that this study has no aspirations of generalizability. It is a goal of this research, and explaining-outcome process-tracing studies in general, that some aspects will be applicable to similar cases. According to Beach and Pedersen (2013, 157), explaining-outcome process-tracing can illuminate systematic causal mechanisms that might exist in other cases, also enabling researchers to use them as "building blocks" toward mechanisms in future research. In this study as is expected in explaining-outcome process tracing, the hypothesized causal mechanisms varied in the degree to which they were conglomerate (systematic) or case-specific.

While I will relate the background of the Magnitsky case in the next chapter to provide greater context to the reader, this analysis was not carried out in narrative form, contrary to some process-tracing studies. As Beach and Pedersen (2013) note, it is preferable to organize process-tracing research as a systematic test of each aspect of a potential causal mechanism.

In order to empirically test each hypothesized mechanism, I followed Beach and

Pedersen's method of employing Bayes' theorem of posterior probability, likelihood, and prior confidence (2013, 84).[8] The purpose of this theorem is to test whether the posterior (my "belief in the validity of a hypothesis… after collecting evidence") is greater than the prior ("the likelihood that a theory is true based on [my] prior knowledge" including theorization and other studies) (Beach and Pedersen 2013, 83). If the posterior is greater than the prior, it lends a greater degree of confidence to the hypothesis. To test this, I first determined the posterior. This is equal to the prior divided by the prior plus the likelihood ratio. The likelihood ratio is "the expected probability of finding evidence supporting a hypothesis based on the researcher's interpretation of the probability of finding it in relation to the hypothesis and background knowledge informed with previous studies, compared with the expected probability of finding the evidence if the hypothesis is not true" (Beach and Pedersen 2013, 84–85). For example, if one hypothesizes that there will be a thunderstorm, observing a cloudy day is not enough evidence to lend a high degree of confidence to the hypothesis because many days are cloudy without any storms. But if one observes rapidly gathering clouds, a change in winds, and it is a late spring afternoon, one would have a much higher degree of confidence that there will be a thunderstorm.

It is true that Bayes' theorem in this context creates some subjectivity regarding the priors and likelihood. However, given the fact that that I conducted multiple empirical tests, which will be outlined next, the validity of the end posterior probability is greater (Beach and Pedersen 2013, 85). Additionally, while it is possible (if uncommon) to assign numerical values to Bayes' theorem as Beach and Pedersen did to Doyle's famous *Silver Blaze* Sherlock Holmes story, I elected not to for this thesis, but still endeavored to make the reasoning behind my

[8] For purposes of clarity, I did not include the theorem in its equational form in this thesis. I instead chose to explain the theorem in word form. For a representation of the theorem as a formula, see Beach and Pedersen (2013, 84) or Howson and Urbach (2006, 21).

prior and likelihood ratios explicit (2013, 87).

In order to test the hypothesized causal mechanisms, I conducted hoop tests. These empirical tests "involve predictions that are certain but not unique; the failure of such a test (finding ~*e*) reduces our confidence in the hypothesis, but finding *e* does not enable inferences to be made" (Beach and Pedersen 2013, 102). For example, seeing rapidly gathering clouds supports the hypothesis that there will be a thunderstorm, but it is not enough on its own. A lack of clouds makes us less confident in the hypothesis that there will be a thunderstorm. While a single hoop test cannot provide sufficient evidence to suggest the existence of a causal mechanism, they were useful in excluding hypotheses. Furthermore, when different types of evidence are collected and successive hoop tests are conducted (in other words, jumping through multiple hoops), this allows greater confidence in supporting a hypothesis (Beach and Pedersen 2013, 105). Chapters 5–7 will address the results of these tests.

3.3 Conceptual framework and operationalization

When conducting a case study using process-tracing, it is also necessary to operationalize and ground my hypothesized causal mechanisms in literature. The purpose of the conceptual framework is to inform how I conducted the research using explain-outcome process training using a single case.

It was first necessary to define the concepts that I expected to be relevant in this study. I conceptualized these "conditions as used in set theory" rather than understanding them as variables, because in process-tracing, I strove to find the presence/absence of causal mechanism(s) that are sufficient to explain an outcome, rather than degrees of presence (Beach and Pedersen 2013, 47). One of the purposes of process-tracing is to determine "the causal mechanism through which *X* contributes to producing an outcome *Y*" (Beach and Pedersen 2013, 33). I did not thus seek only to determine an *X* that led to a *Y*, but the *mechanism* between

the two. In explaining-outcome process-tracing, it is necessary to first define the outcome, *Y* (Beach and Pedersen 2013, 51). Based upon the literature, I defined this at the theoretical level as *European Parliament attempts to assert power in foreign policy vis à vis other EU institutions.* At the empirical level, this was expressed in this case as *the European Parliament 'threatening' sanctions against Russia.* I then defined *X* as *shifting power balances between EU institutions* at the theoretical level, which was derived from the literature and prior knowledge. Empirically, this was represented by the *Treaty of Lisbon* in this specific case. By the 'European Parliament,' I recognize that it is an institution that includes many people and a diverse range of views. In this study, though, I conceptualize it as a single actor. I did not intentionally focus on any particular political group(s) within the EP, but those that were most active in the Magnitsky case. I also analyzed resolutions that were adopted by the EP, indicating generally representative support. I adapt a constructivist definition of 'power' from Susan Strange, who characterized "structural power" as "the power to decide how things shall be done, the power to shape frameworks within which states [in this case, EU institutions] relate to each other, relate to people, or relate to corporate enterprises" (Strange 1988, 25). 'Shifting power balances,' then, is defined as changes in the ability of EU institutions to set agendas and influence policy (Bachrach and Baratz 1962).

These definitions help to inform the hypothesized causal mechanisms. In explaining-outcome process-tracing, it is necessary to have both systematic causal mechanisms that could be present in other cases, and nonsystematic, case-specific mechanisms and concepts (Beach and Pedersen 2013, 51–52). These causal mechanisms are also, in essence, hypotheses. Figure 1 illustrates how *X* influences causal mechanisms that lead to *Y* in this case on both a theoretical and empirical level. The *actual* causal mechanisms, both systematic/conglomerate and case-specific, are not yet defined. The hypothesized causal mechanisms, however, are discussed below.

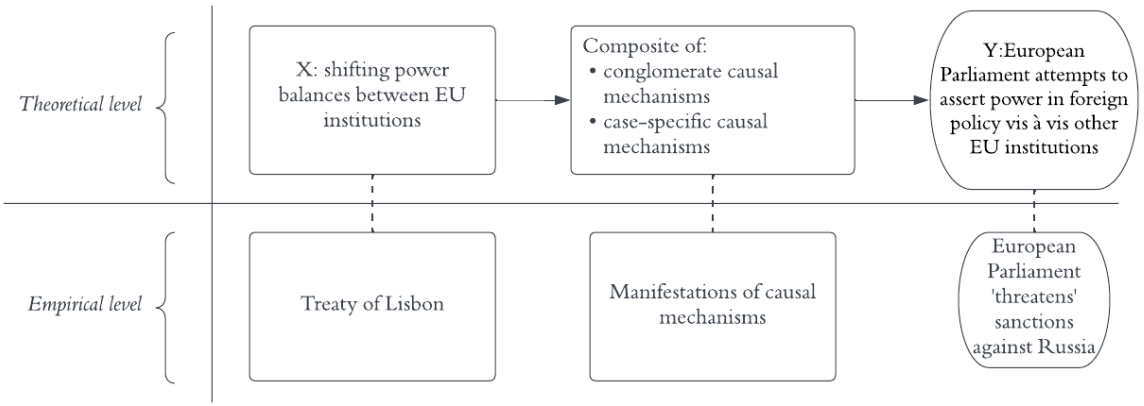

Figure 1: Conceptualized causal mechanisms (Magnitsky), based upon Beach and Pedersen (2013, 37)

First, there may be *institutional* mechanisms at play in the Magnitsky case. The Treaty of Lisbon altered the institutional structures of the EU, as well as aspects of the TFEU. When conducting background research, I found references that alluded to the heightened sanctioning competences of the EP post-Lisbon due to Article 75 TFEU, which gives the EP the right to work with the Council under ordinary legislative procedure when imposing sanctions to combat terrorism (Giumelli 2013, 11). While the Magnitsky sanctions did not relate to terrorism and therefore fell under CFSP, one might expect that more generally, on a systematic level, that this dual legal basis made the EP more assertive in sanctions policy. By 'assertive,' I expected the EP to attempt to make use of Article 75 TFEU in the post-Lisbon period, and to potentially be more active in other areas of sanctions.

There might also be *ideational* mechanisms at play in this case. Given the EP's democratic legitimation described by Eckes (2014), it could be theorized that this legitimacy has contributed to ideas the EP has about its role that translate into actions, and which are not constrained by structure. In other words, "ideas are not just manifestations of structures" (Beach and Pedersen 2013, 53). Though Eckes' concept of democratic legitimation referred to the EP's increased competences post-Lisbon regarding certain international agreements, it

may be possible that the Treaty of Lisbon led parliamentarians to have ideas about increased relevance for the EP in other areas of foreign policy. Perhaps the EP's increased role in external relations post-Lisbon contributed to actors within the institution growing more assertive in areas where it still did not have competences. This would also be aligned with the constructivist definitions of power—it is possible that the Treaty of Lisbon provided a catalyst for the EP to attempt to exercise greater agenda-setting powers, which was manifested in their high degree of activity in the Magnitsky case.

Thirdly, there may be another *institutional* mechanism in this case. By establishing a High Representative and decreasing some of the powers of the rotating presidency, the EU altered the capabilities of the institutions. As an agenda-setter, the HRVP became an essential person to convince regarding sanctions policy. The presence of a HRVP amenable to EP goals could make them more likely to call upon the Council to take action. On the other hand, an unfriendly or uninterested HRVP could slow things down by blocking (not putting items on the agenda) and increase frustrations. In Natorski and Pomorska's study, there was a high degree of trust between EU member states and institutions that contributed to solidarity following Russia's invasion of Crimea (2017, 55). If intra-institutional trust levels were high during this study's period, MEPs may have expected the Council to act on what they deemed to be an important human rights issue. Yet other research suggests that this was not always the case with HRVP Ashton. Thus, I expect that in this particular case, the augmentation of the HRVP's role led to a more difficult relationship between the EP and Council.

Of these potential mechanisms, it is likely that the first and second are systematic, while the third may be case-specific. As is common in explaining-outcome process-tracing (Beach and Pedersen 2013, 63), it is clear that the preceding theorization based on prior knowledge and literature does not yet provide a sufficient explanation for the puzzle at hand. It is thus necessary to undertake empirical research before reexamining these concepts, which I will

discuss in chapters 5–7.

The three hypothesized causal mechanisms are defined as follows:

- *H1: The dual legal basis for sanctions in Articles 215 and 75 TFEU after the Treaty of Lisbon made the European Parliament more assertive in the area of sanctions.*
- *H2: the European Parliament's increased role in external relations post-Lisbon contributed to actors within the institution 'testing the waters' in areas where the Parliament still did not have competences.*
- *H3: The augmentation of the High Representative by the Treaty of Lisbon led the European Parliament to have a more difficult relationship with the Council.*

To answer my research questions and discern causal mechanisms through the aforementioned hypotheses, I expected to find certain types of evidence. Beach and Pedersen (2013) identify four types of evidence relevant to process-tracing: pattern, sequence, trace, and account. Pattern evidence involves "predictions of statistical patterns in the evidence" (Beach and Pedersen 2013, 99). Sequence evidence relates to the chronology of events (both spatial and temporal) that would occur of a hypothesized causal mechanism were true. Trace evidence, if found, "provides proof that a part of a hypothesized mechanism exists" (Beach and Pedersen 2013, 99). Account evidence, lastly, includes "the content of empirical material" (Beach and Pedersen 2013, 99).

When testing H1, I expected there to be trace and pattern evidence in the form of resolutions referencing Article 75 TFEU. I also expected there to be trace evidence pertaining to Article 75 TFEU in EP debates. I also anticipated account evidence from interviews to address this hypothesized causal mechanism.

For H2, I expected that there would be some simple pattern evidence, as well as trace evidence and account evidence. There might be a greater number of EP sanctions

recommendations or other allusions to foreign policy in the immediate post-Lisbon period than there were in the immediate period prior to the treaty's adoption. Additionally, there may be direct mentions of the Treaty of Lisbon in EP sanctions recommendations and other documents that suggest the treaty had at least some impact on the EP's assertiveness. Finally, account evidence provided through interviews and memoirs might also exist to support or discredit this hypothesis.

When testing H3, I expected there to be trace and pattern evidence in the form of resolutions that indicated the nature of the EP's relationship with the HRVP. I also expected to find trace and account evidence in the form of memoirs and interviews that discuss the HRVP's impact on the Magnitsky case.

3.4 Data and scope

I conducted this research using both primary and secondary sources. Selecting a variety of sources and types of sources helped to increase the validity of the hoop tests (Howson and Urbach 2006, 125). I chose to conduct interviews because many aspects of decision-making occur behind closed doors, particularly in the EU. Interviews can provide greater insight into lesser-known aspects of the decision-making process, and, in this case, interviews with members of the European Parliament were a relatively novel contribution to research on sanctions decision-making in the EU. I invited eight interviewees from the EP (including several advisors) who were involved in calls for sanctions during the Magnitsky case between 2010–2014. EP invitees included MEPs who signed a 2014 letter to HRVP Mogherini and the rapporteurs for recommendations to the Council on the issue between 2010–2014. This letter was selected because it was a good indicator of which MEPs were either active in coordinating the push for the Council to impose sanctions and those who were involved more generally in the push for human rights. Some MEPs were found through a snowballing method, after other

interviewees recommended them. I also invited a former senior advisor to Bill Browder, who was Magnitsky's employer and led the Magnitsky Global Justice Campaign (MGJC) that lobbied for sanctions in the US and EU. The advisor was invited because of his direct, high-level contact with policymakers in the EP and Council and the insights this access provided into the decision-making process. I also invited two Dutch MPs and two representatives from the Dutch Permanent Representation to the EU due to the Netherlands' role in calling for sanctions at the EU level. I conducted four interviews between March and May 2023, with Dr. Charles Tannock (a former ECR MEP from the United Kingdom), Mark Sabah (a former senior advisor to Bill Browder, CEO of Hermitage Capital Management), Dovile Sukyte (advisor to Petras Auštrevičius, a Lithuanian Renew Europe [formerly ALDE] MEP), and an anonymous EP advisor to a major political group who was involved in the sanctions. The interviews were semi-structured in nature, with questions to MEPs focused on their involvement in the calls for sanctions and the role of the EP in sanctioning and foreign policy.

One limitation of conducting interviews in this study was the amount of time that has passed since the events under consideration. Many relevant actors were no longer in their roles and were difficult to contact, such as Kristiina Ojuland (Lithuania–ALDE), who was a leading figure in the push for sanctions. Furthermore, those who were successfully interviewed might not remember all of the details from 9–13 years ago, or might have their memories colored by later assessments from other sources. There were also time constraints, with some invitees not responding or others unable due to scheduling constraints. In particular, it would have aided this research to speak to the Dutch Permanent Representation to hear their perspective on the role of the EP in the Magnitsky case. Not having this perspective made gathering evidence for some of the more case-specific aspects of some hypothesized causal mechanisms more challenging. Nonetheless, the interviews that were conducted provided an important part of the evidence in this study, and they were triangulated with other types of sources.

Other sources included a variety of EP documents, such as resolutions, letters, and debates.[9] In order to operationalize this study, I evaluated such documents based on observations *(o)* regarding their purpose and content combined with my prior knowledge *(k)* about the documents or their genre to determine whether or not they were relevant evidence *(e)*—i.e., an EP resolution is a public document with a particular purpose, but if I was looking for EP resolutions that referenced the HRVP, a resolution that only does so once, at the end in a standard request that the resolution be forwarded to the Commission and Council, did not constitute meaningful evidence. Beach and Pedersen describe this process as evaluating $o + k \rightarrow e$ (Beach and Pedersen 2013, 138). I also analyzed sources such as HRVP Ashton's recent memoir. Finally, I used a variety of secondary sources as is common in process-tracing research. These included historical works specifically about the Magnitsky case, scholarship on relations between EU member states and Russia, and news sources. Just as there are downsides to interviews such as biases and passed time, there are downsides to some of these sources, as well. Memoirs and some historical accounts may be biased or flawed similarly to interviews; however, HRVP Ashton's memoir was compiled based on informal interviews with her husband, a journalist, during her tenure, so is not as prone to lapses in memory or being clouded by secondary sources as some might be (Ashton 2023, loc. 80). Nonetheless, using such a variety of sources helped to triangulate data and ensure the validity of the results of this study.

Hypothesis 1

In order to test H1, I analyzed EP resolutions and debates that related to Article 75 TFEU, as well as the European Court of Justice (ECJ) ruling and legal scholarship on the issue

[9] This data is available upon request.

from the time. I searched the EP Plenary database for adopted texts, Parliamentary questions, Parliament positions, and joint texts that referenced "Article 75 TFEU" or "Article 75" during the three most recent parliamentary terms. While it is possible that some resolutions referenced Article 75 TFEU while also mentioning other articles (e.g., Articles 1, 2, 3, 75), this did not seem to be common after an initial scan, thus it was not necessary to also include simply "75" in my search, which also kept the data to a more manageable sample.

Hypothesis 2

When I tested H2, I analyzed EP resolutions from 1 December 2007–30 November 2009 (pre-Lisbon) and 1 December 2009–2 December 2011 (post-Lisbon). Though a wider scope that began sooner and ended later would provide greater validity to the hypothesis and greater insight into the EP's foreign policy identity, I selected a narrower time scope for this study due to the volume of EP resolutions as well as the fact that the goal of this test was to gain a general idea of the EP's actions before and after the Treaty of Lisbon. I used the European Parliament Plenary website database for my search. Since the database is sorted by parliamentary term, I first searched in the 2004–2009 parliamentary term, and then the 2009–2014 parliamentary term. I searched for adopted texts with the word "sanction" in the text.[10] I chose adopted texts as my primary source for document analysis, because they represent the views of the EP, rather than just an individual or political group. In the pre-Lisbon period, there were 114 resolutions that contained the word "sanction." I made qualitative assessments to exclude those that related to trade sanctions or internal EU matters. This left 22 that related to CFSP and EU political sanctions. In the two-year period immediately after the Treaty of Lisbon's entry into force, there were 118 EP resolutions that contained the word "sanction."

[10] Though the official term for economic sanctions in the EU is "restrictive measures," they are in practice used interchangeably (European Parliament 2009d) and I found that "sanctions" was used more often on its own.

Of these, 31 were assessed to relate to political rather than trade sanctions. I also analyzed several EP debates that mentioned "sanctions," "Lisbon" and/or "Magnitsky" between 2009–2014, in order to see if there was evidence of increased EP attempts for influence in sanctions decision-making in light of the Treaty of Lisbon. Debates provided useful trace evidence, and were also selected because they show the interplay between EP, Council and Commission officials. I supplemented the analysis of EP documents with evidence from two interviews—one with former MEP Charles Tannock (United Kingdom–ECR), and one with an anonymous EP advisor to a major political group.

Hypothesis 3

To test H3, I analyzed 131 non-legislative resolutions that referenced HRVP Ashton during the same period studied in H2, December 2007–December 2011. I removed from my sample resolutions that only mentioned the HRVP in the standard sentence at the end of many resolutions that instructs the President of the EP to share it with the other EU institutions. I separated the resolutions into four 12-month periods. I analyzed these resolutions for their tone towards the HRVP (either the position or Ashton herself) and categorized them as "positive," "negative," and "neutral." "Positive" resolutions were those that were explicitly optimistic/positive regarding the role of the HRVP or her performance. "Negative" resolutions either explicitly displayed displeasure/disappointment with the HR, or strongly hinted towards this. "Neutral" resolutions were neither positive nor negative. There was obviously a degree of subjectivity in this analysis which may be a limitation, in particular between categorizing a resolution as neutral or as negative. I attempted to be as judicious as possible when categorizing the resolutions, and used common sense and contextual knowledge to determine the appropriate category. I supplemented this analysis with interviews, analysis of HRVP Ashton's memoir, and other primary sources.

I chose to limit the time the bulk of this study's scope to 2008–2014, but I included some information from interviews that pertained to after 2014. I chose to include two years prior to the Treaty of Lisbon's entry into force in this study because one of the hypotheses that demanded examining evidence prior to when the Treaty of Lisbon took effect. The majority of this study, though, will focus on the period from 2010–2014. This is because the EP issued a number of recommendations for sanctions against Russia during this period. I delimited the study bulk of the study to end in 2014, because after Russia's invasion of Crimea, the EU's relationship with Russia began to change and the EU did impose sanctions (though not *Magnitsky* sanctions) against the country. Finally, the period provides an opportunity to examine the role and tenure of the first HRVP under the Treaty of Lisbon.

3.5 Case Selection

In this section, I will discuss my case selection. The Magnitsky case was selected for several reasons. First, it is one of the few instances since the Treaty of Lisbon in the EUSANCT dataset in which the EP was the sole 'threatener' of sanctions. This makes it useful for studying the role of the EP in EU foreign policy in cases where the Council did not act. Second, the Magnitsky case occurred at a pivotal time just after the Treaty of Lisbon was adopted. This makes it an appropriate early 'test' of the impact of the treaty on EU foreign policy decision-making.

Furthermore, until recently, Russia was a highly divisive issue in the EU, particularly amongst certain member states. While the EU has adopted a strong stance toward Russia in the last eighteen months, it remains unclear how long this will last. And even if it does, the case could provide greater insight into how the EU institutions differ in their approaches to balancing human rights and economic ties to some member states with potentially challenging powerful third countries (e.g., China). While the EU often issues sanctions

alongside its ally the US (Weber and Schneider 2022), it did not (initially) follow suit in the Magnitsky case, and US-EU views toward China might be even more out of pace than they were regarding Russia. EU member states by no means have unified views towards China. Prior to and during an April 2023 visit to China, French President Emmanuel Macron and President of the European Commission Ursula von der Leyen displayed differing attitudes, with Macron highlighting economic cooperation and shared interests and von der Leyen calling for diplomatic and economic "de-risking" (Haenle et al. 2023; von der Leyen 2023). Macron also called for Europe to chart its own path and not simply follow the US's lead (Anderlini and Caulcutt 2023). This is a view echoed by European Council on Foreign Relations polling released in June 2023. In a poll of over 16,000 respondents in 11 EU member states, they found that an average of just 23 percent thought the EU should support the US in a conflict with China over Taiwan (Zerka and Puglierin 2023).[11] 62 percent on average thought the EU should remain neutral, and even the highest percentage in favor of supporting the US in any individual country (Sweden) was only 35 percent (Zerka and Puglierin 2023). Given all of this, it is worthwhile to study the Magnitsky case because pre-2014 or 2022, EU member states were similarly divided in their views towards Russia. A careful examination of how the EP and other EU institutions behaved in this case in light of the Treaty of Lisbon might then provide insight into how they might handle similar situations with China in the future.

Finally, the Magnitsky case embodies particular hypotheses regarding EU foreign policy and EU integration. It was expected to be an example of increased EP activity in the area of foreign policy, yet it also illustrated the continued intergovernmental nature of many aspects of CFSP embedded within the Treaty of Lisbon. In the future, there will undoubtedly be other cases that embody this tension. A thorough examination of the Magnitsky case

[11] Austria, Bulgaria, Denmark, France, Germany, Hungary, Italy, the Netherlands, Poland, Spain, and Sweden.

through explaining-outcome process-tracing may provide insight into other such cases.

As discussed earlier, I limited this study to 2008–2014, but primarily 2010–2014, in order to examine the Magnitsky sanctions prior to the invasion of Crimea, which altered the EU's relationship with Russia. Additionally, a focus on the period of HRVP Ashton's tenure provided an opportunity to examine her role, influence, and relationship to the EP. This, in turn, provided insight into the interplay between particular High Representatives and the EP, and how this affects EU foreign policy. While this study did not include the period where the EU Global Human Rights Sanctions Regime was enacted, this was outside of the scope of this research because the focus of this study is on the Treaty of Lisbon's effects on EP decision-making and EU foreign policy.

3.6 Conclusion

This chapter provided an overview of the methodology used to answer my research question. I discussed the reasoning behind selecting process-tracing as a method, as well as the conceptual framework that included three hypothesized causal mechanisms. I expected to find certain types of evidence for each hypothesis, namely pattern, trace, and account. This methodology also addressed how I conducted interviews as well as analysis of other sources. Finally, I discussed my rationale for selecting the Magnitsky case for this study. In the next chapter, I will briefly discuss the course of the Magnitsky case to provide greater context. The three subsequent chapters will then consist of my empirical evidence for each hypothesis.

Chapter 4: Background on the Magnitsky case

4.1 Introduction

In this chapter, I will give an account of the Magnitsky case in order to provide additional context on it before delving into my empirical research. To provide full context, I will cover the period through 2020, using a combination of news articles, other secondary accounts of the case, and EP documents.

4.2 Sergei Magnitsky's Death

Sergei Magnitsky, a Russian accountant, worked as a tax auditor at Firestone Duncan, a Moscow-based law firm (Lagunina and Whitmore 2009).[12] Magnitsky was advising Hermitage Capital Management, a British investment fund co-founded by CEO Bill Browder (Lagunina and Whitmore 2009). Browder, originally a supporter of Russian President Vladimir Putin, saw his relationship with the country sour over time after being accused of $3 million in tax evasion in 2002, and he was later banned from entry in 2005 and tried to dissuade others from investing in Russian companies (Weir 2009).[13] After Russian authorities

[12] In a plethora of news articles, books, and accounts by Hermitage Capital Management CEO Bill Browder, Magnitsky is repeatedly referred to as a "lawyer." However, as *Der Spiegel's* Benjamin Bidder pointed out in a 2019 article questioning some aspects of Browder's narrative (see bibliography), while being questioned under oath in April 2015, Browder admitted that Magnitsky was *not* a lawyer. The prevalence of news articles and other sources saying otherwise without questioning is perhaps indicative of the degree and success of Browder's lobbying campaign, which targeted not only lawmakers in the US and EU but the media as well. As Bidder points out, Browder often cited Council of Europe reports as evidence, but many of these were based on his own word. Indeed, when researching the background of the case, it became difficult to identify news articles that independently verified information as opposed to simply taking Browder's account for granted. In my interview with Mark Sabah, he stated that their team would arrange for journalists to ask HRVP Ashton about the Magnitsky case, adding that "if you can get the issue in the minds of every journalist, they will want to ask people about it." I discussed the lobbying aspects of this case in the US and EU in greater detail in a course paper (Wood 2023).

[13] At the time of Magnitsky's death, Putin was prime minister and Dmitry Medvedev president. Prior to this, Putin was president from 2000–2008, and again became president in 2012.

raided the firm's offices in 2007, Firestone Duncan was hired to represent Hermitage, with Magnitsky working on the case (Lagunina and Whitmore 2009). According to Browder, Magnitsky then uncovered fraud by Russian police totaling $230 million: allegedly, two Russian investigators launched a baseless investigation against Hermitage, took control of several of its letterbox companies, transferred ownership to others in on the scheme who falsified losses in order to steal back $230 million in previously paid taxes (Bidder 2019).[14] Magnitsky, who had been involved with some of Hermitage's letterbox firms since at least 2002, was summoned by Russian investigators to testify in an ongoing case against Browder in June 2008 (contrary to Browder's version of events, which characterized Magnitsky as a whistleblower who spoke to the authorities of his own accord) (Bidder 2019).

In November, Magnitsky was then arrested and charged with tax evasion (V. O. A. News 2013). While awaiting trial, Magnitsky developed pancreatitis in the summer of 2009, and during this time complained repeatedly about his treatment yet was moved to another prison that did not have the necessary facilities for proper medical treatment (Bidder 2019). By November 2009, he was gravely ill, and he died at 37 years old on November 16 of toxic shock and heart failure brought on by the untreated pancreatitis (Bidder 2019; Lagunina and Whitmore 2009). After his death, Russian President Dmitry Medvedev's human rights council launched an investigation that, in 2011, found evidence of wrongdoing and neglect leading up to Magnitsky's death (V. O. A. News 2013). According to Bidder's 2019 article in *Der Spiegel* on the case:

> The commission's 20-page report offered detailed insights into the sadistic, cold-hearted nature of Russia's prison system. In the months before his death, Magnitsky was constantly moved from one cell to another. His mother brought him medications

[14] The OECD defines letterbox companies as "a paper company, shell company or money box company, i.e., a company which has complied only with the bare essentials for organization and registration in a particular country. The actual commercial activities are carried out in another country" ("Glossary of Tax Terms - OECD" n.d.).

> that took 18 days to reach him. In September, he was forced to wear his jacket at night because his cell window lacked a pane of glass. His cell toilet often backed up. One time Magnitsky's abdominal pains became so acute that his neighbor began desperately kicking against the door of his cell and calling for help. It took prison staff five hours to get Magnitsky to a doctor.

On the day he died, Magnitsky grew gravely ill and was taken back to the original prison where he was supposed to receive medical treatment, but died after being left unobserved in his cell, having earlier panicked and been sedated (Bidder 2019).

4.3 Sanctions in the United States

After Magnitsky died, Browder launched the Magnitsky Global Justice Campaign (MGJC), accusing two of the officials who arrested Magnitsky as being the same as those implicated in the $230 million fraud, thus fearing they would not meet justice within Russia (Browder 2015). Browder intensively lobbied the US government to impose visa restrictions on 60 allegedly corrupt Russian officials; however, the Department of State was not cooperative, and neither was President Barack Obama's administration which was in the midst of a "Reset" with Russia (Browder 2015). The MGJC turned its attention to the House of Representatives and Senate instead, where there was a bipartisan group of legislators who were more receptive and sponsored the Sergei Magnitsky Rule of Law Accountability Act (Cardin 2011). However, for a time the bill was blocked by Chair of the Senate Foreign Relations Committee John Kerry, who was an ally of President Obama and would later become his Secretary of State (Browder 2015). While he was able to block the bill from committee agendas for some time, eventually its sponsors made a deal with the Obama administration that they would only agree to repeal the Jackson-Vanik amendment, a Cold War-era law that imposed tariffs on US companies who wanted to trade with Russia, if President Obama would support the bill (Browder 2015).

Thus, the Magnitsky Act was finally passed on a bipartisan basis in both the House of Representatives and Senate, and signed into law by President Obama in December 2012 (Browder 2015). In retaliation, Vladimir Putin, by then Russia's president again, banned adoptions of Russian children by Americans (V. O. A. News 2013). In 2016, the US Congress paved the way for even broader human rights sanctions by passing the Global Magnitsky Human Rights Accountability Act, which was then implemented and expanded via executive order in 2017 (Trump 2017). Known as the Global Magnitsky Act, this provided the executive branch a mechanism to impose targeted sanctions on anyone, anywhere, who has committed human rights violations or shown serious corruption ("The US Global Magnitsky Act: Questions and Answers" 2017).

4.4 The campaign for sanctions in the European Union

Meanwhile, after achieving some success in the US, Browder and the MGJC began lobbying in the EU, as well (M. Weiss 2012, 63). In December 2010, the EP included calls for targeted sanctions in their 2010 resolution "Human rights in the world in 2009 and EU policy on the matter" (European Parliament 2010g). The EP again called for sanctions in October 2012 after no action was taken, and referenced the Magnitsky Act that had been passed in the US (European Parliament 2012b). By April 2014, the EP asked the Council to impose asset freezes and visa bans on those implicated in Magnitsky's death for a third time, this time listing by name the 32 Russian individuals in the US Magnitsky Act (European Parliament 2014a). HRVP Ashton, though, did not directly respond to these recommendations, and it is unknown the extent to which they were discussed at Foreign Affairs Council meetings, if at all. Given that approval for the sanctions needed to be unanimous, and some member states still had warmer relations with Russia, no sanctions were imposed.

In November 2014, after HRVP Mogherini's tenure began, a group of 23 MEPs from four political groups (European People's Party [EPP], Alliance of Liberals and Democrats [ALDE, now Renew Europe], European Conservatives and Reformists [ECR], and Progressive Alliance of Socialists and Democrats [S&D]) sent a letter asking her to propose sanctions to the Council in light of the EP's repeated recommendations and HRVP Ashton's lack of follow-up (Landsbergies et al. 2014). Around this time, the relations between the EU and Russia began to decline after Russia's illegal annexation of Crimea in March 2014. The EU imposed sanctions against Russia soon after the invasion that have been expanded and extended in the years since (Council of the European Union 2014). Bilateral relations between Russia and some member states also deteriorated during this period. In July 2014, Dutch passenger airline flight MH17 was shot down by Russian separatist forces over eastern Ukraine, killing 298 people of whom 198 were Dutch nationals (Rankin 2022). Estonia, Latvia, Lithuania, and the United Kingdom all passed some version of 'Magnitsky legislation' in their own countries, and in 2018, the Dutch parliament passed a motion requiring their government to propose legislation at the EU level (Daventry 2020; Russell 2021).

At a Council meeting in 2018, The Netherlands proposed EU-level Magnitsky sanctions (Council of the European Union 2020). They may have done so reluctantly, as historically the Netherlands had not really 'uploaded' human rights issues that related to Russia to the EU level (Casier 2013, 122). The sanctions were adopted in 2020 in what was known as the EU Global Human Rights Sanctions Regime (and did not have "Magnitsky" in the title or text, nor include corruption as one of the violations) (Council of the European Union 2020). In May 2023, the HRVP and Commission jointly proposed an additional corruption-based sanctions regime, which they hope would allow for sanctions approval by qualified majority voting, rather than unanimity (Rettman 2023). The outcome of this proposal remains uncertain.

4.5 Conclusion

This chapter provided an account of the events leading to Magnitsky sanctions in the EU. While Magnitsky's death saw relatively rapid legislative action in the US despite considerable pushback from the Obama administration and its allies, the same was not true in the EU. Despite several progressive calls for sanctions by the EP, it was only after the Dutch Parliament, and eventually the Netherlands in the Council, proposed EU-level sanctions that the EU adopted its own version of 'Magnitsky sanctions.' In the following three chapters, I will attempt to trace the mechanisms surrounding EP calls for sanctions in the EU in order to answer my research question, "What are the effects of the Treaty of Lisbon on the European Parliament's role in sanctions decision-making?"

Chapter 5: A legal basis for a European Parliament role in sanctions?

5.1 Introduction

In this chapter, I test H1: *The dual legal basis for sanctions in Articles 215 and 75 TFEU after the Treaty of Lisbon made the European Parliament more assertive in the area of sanctions*. First, I analyze EP resolutions and debates that relate to Article 75 TFEU in order to determine the Article's impact on EP policy. I then analyze European Court of Justice rulings on the legal basis as well as legal scholarship surrounding the issue. Finally, I discuss the implications of this evidence, resulting in a partial rejection of H1 in the Magnitsky case.

5.2 The European Parliament and Article 75 TFEU

The 'dual' legal basis of Articles 215 and 75 TFEU was in practice very unclear, and led the EP to seek clarity, as well as increased competences, just after the entry into force of the Treaty of Lisbon. In December 2009, the EP passed a resolution titled "Restrictive measures affecting the rights of individuals following the entry into force of the Lisbon Treaty" (European Parliament 2009d). It points to Article 21 TEU's focus on human rights advancement, as well as Articles 215 and 75 TFEU. Article 215 TFEU deals with the Council's ability to adopt sanctions against "natural or legal persons and groups or non-State entities" (Official Journal of the European Union 2012b). Meanwhile, Article 75 TFEU states that:

> where necessary to achieve the objectives set out in Article 67, as regards preventing and combating terrorism and related activities, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall define a framework for administrative measures with regard to capital movements and payments, such as freezing of funds, financial assets or economic gains belonging to, or owned or held by, natural or legal persons, groups or non-State entities (Official Journal of the European Union 2012b).

The resolution quotes the above in its entirety, and later asserts that the Parliament's role in data protection extends to data relating to CFSP (European Parliament 2009d, 4). Furthermore, it argues that because anti-terrorism sanctions blur the line between "external" and "internal" threats, they should be considered under Article 75 TFEU especially because these sanctions might affect the rights of EU citizens (European Parliament 2009d, 5). This interpretation would give the EP competence over such sanctions via OLP. Specifically, this resolution asserts that Article 75 TFEU should apply in the case of sanctions "directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban" (European Parliament 2009d, 6). Finally, the resolution calls for optional consultation of the EP in certain other cases of restrictive measures, "in keeping with the spirit of the Treaty of Lisbon" (European Parliament 2009d, 6). Four other EP resolutions through 2014 reference 'the spirit of the Treaty of Lisbon,' with the phrase referring to the growing importance of the EP alongside the other two EU institutions and the implied democratic legitimacy that goes along with this (European Parliament 2013b; 2014b; 2014c).

In the debate on the aforementioned resolution, MEP Emine Bozkurt (The Netherlands–PES) and others called on the Council and Commission to clarify how Articles 215 and 75 TFEU function in the context of the Treaty of Lisbon in cases related to terrorism. The context for this particular case was the EP's fear that sanctions related to

terrorism can lead to abuses of the rights of those whose assets are frozen or placed on blacklists given the lack of due process (European Parliament 2009c). In other words, the EP was not attempting to *impose* sanctions related to this case, but ensure that the rights of Europeans would be protected. Given that the EP's Committee on Legal Affairs and Legal Services found Article 75 TFEU to be the correct legal basis, they sought clarity on this issue from the Council. Cecilia Malmström, President-in-Office of the Council, responded that "the Council interprets the Treaty of Lisbon in such a way as to apply Article 215 [TFEU] in respect of… restrictive measures within the framework of the common foreign and security policy, including with regard to terrorism." HRVP Catherine Ashton echoed Malmström's assessment, adding that "a double legal base – Article 215(2) and Article 75 – is not workable." Numerous MEPs expressed dissatisfaction with this, citing the "contradictory" nature between the co-decision procedure and the limits to the EP's sanctioning competences with the prominence of Article 215 TFEU. Nuno Melo (Portugal–EPP) criticized the Council and Commission's contradictory behavior in practice versus the words of José Manuel Barroso, President of the European Commission, and Herman Van Rompuy, President of the European Council at the time. Melo said: "It would make no sense to highlight the strengthening of our powers and competences in official discourse and then to adopt a restrictive interpretation of the Treaty of Lisbon, so as to deprive Parliament of prerogatives that it used to have and which it would make no sense to lose." Monika Flašíková Benová (Slovakia–S&D) echoed that given the connection between these sanctions and fundamental human rights, the EP was "expecting an opportunity (as the European Parliament) to be much more involved in decision making in this area." Thus, while the EP *expected* their competences to increase in many areas, they recognized the lack of clarity given the overlap between Articles 215 and 75 TFEU. While on paper, Article 75 TFEU seemed to give the EP greater competences regarding sanctions affecting the rights of individuals, this was not the Council's interpretation. I also did not find evidence supporting that the EP's newfound competences with Article 75 TFEU

played a role in the Magnitsky case. Instead, this resolution and debate illustrate the 'backsliding' of some EP competences under the Treaty of Lisbon, and the EP's attempts to push back against this.

5.3 The legal debate and the ECJ's judgment

The lack of clarity between Articles 215 and 75 TFEU led to legal debate and scholarship on the relationship between the two articles, as well as a case brought to the ECJ by the EP against the Council. Despite the HRVP and Malmström's views in the EP debate, this was not a settled issue until the ECJ decision, which ruled in the Council's favor in July 2012. Even then, the EP was able to maximize on the perceived lack of clarity in order to make a case for itself in sanctions policy.

In an article published while the case was still pending, Van Elsuwege (2010) suggests possible solutions to the dilemma, including how to distinguish sanctions that fall under the area of freedom, security, and justice (AFSJ) from those that fall under CFSP. For instance, he discusses the implications and challenges of determining the legal basis based upon 1) whether the terrorist threat was internal or external; 2) whether the sanctions were initiated by the EU or the UN; and 3) whether the sanctions have a counter-terrorism goal or a goal tied to the target country's political situation (Van Elsuwege 2011, 495–96). He adds that this remains problematic, because of the ambiguity and changing nature of terrorism. Van Elsuwege concludes that it should be possible for there to be a dual legal basis that would "respect the external competences of the European Parliament and, on the other hand, confirm the principle of unanimous decision-making in the Council" (Van Elsuwege 2011, 497). Eckes (2012) echoes some of Van Elsuwege's potential solutions to the question of legal basis. She also points out that "the wording of the Treaties does not offer a clear delimitation of the two legal bases" and hopes that the court case might offer clarity on the issue (Eckes 2014, 122, 132). These scholarly articles offer insight into the

legal debates of the time, which in this case offered compromise and considered the EP's greater legal standing post-Lisbon.

In the ECJ case itself, the EP argued that the appropriate legal basis for these sanctions against people or entities associated with Usama bin Laden, Al-Qaeda, and the Taliban is Article 75 TFEU due to the "aim and content" of the measure, which aimed to combat terrorism (European Parliament v Council of the European Union 2012, para 12). The Council, on the other hand, argued that the measure in question fell under CFSP (and therefore Article 215 TFEU), while the Commission added that they did not believe there can be a dual legal basis with the two articles (European Parliament v Council of the European Union 2012, para 27). The court ultimately sided with the Council and Commission, finding that Article 215 TFEU was the appropriate legal basis in this and similar cases as it falls under CFSP. They note that "it is not *procedures* that define the legal basis of a measure but the *legal basis* of a measure that determines the procedures" (emphasis added) (European Parliament v Council of the European Union 2012, para 80). While they concede that this ruling has implications for the EP and the "fundamental democratic principle that the people should participate in the exercise of power through the intermediary of a representative assembly," they point out that this "is the result of the choice made by the framers of the Treaty of Lisbon conferring a more limited role on the Parliament with regard to the Union's action under the CFSP" (European Parliament v Council of the European Union 2012, para 82). Thus, the ECJ found that in the case of sanctions related to terrorism, at least, the EP has a *lessened* rather than an augmented competence under the Treaty of Lisbon.

The EP's views regarding the legal basis for sanctions under Articles 215 and 75 TFEU do not appear to have changed, however, suggesting that the institution could attempt to assert itself using Article 75 TFEU in the future. In a European Parliamentary Research Service report by RAND Europe, also co-authored by Christina Eckes, the EPRS argued that "much speaks in favour of using Article 75 TFEU, with its stronger democratic

legitimation through the involvement of the Parliament, in particular for autonomous EU counter-terrorism sanctions" (Eckes and RAND Europe 2018, 113). However, as the authors note, to date there had been no EU anti-terrorism sanctions adopted that use Article 75 TFEU as a legal basis (Eckes and RAND Europe 2018, 112). One would expect that if Article 75 TFEU made the EP more assertive in the area of sanctions, that there would be many attempts to invoke the article or prompt the Council to do so. After searching the EP Plenary database for texts adopted, Parliamentary questions, Parliament positions, and joint texts that reference "Article 75 TFEU" or "Article 75" during the 2009–2014, 2014–2019, and 2019–2024 terms, however, this did not prove to be the case. While the EP did reference Article 75 TFEU in 2012 and 2013 resolutions on the EU's Internal Security Strategy, and two MEPs posed questions to the Commission concerning the article in 2017, it was referenced very few times (European Parliament 2012a; 2013a; 2017a; 2017b). This would suggest that it has *not* continued to play a significant role in the EP's active policymaking goals.

5.4 Discussion

In this section, I will discuss H1 in light of the evidence presented. Based upon literature such as Giumelli (2013) regarding the EU sanctioning process since the Treaty of Lisbon, I expected that the dual legal basis for sanctions in Articles 215 and 75 TFEU would lead the EP to be more assertive in the area of sanctions—potentially including sanctions not related to terrorism such as the Magnitsky sanctions. This hypothesized causal mechanism is shown in Figure 2, where the European Parliament *claims* the precedence of Article 75 TFEU as a legal basis in some sanctions cases, and *expands* upon this indirectly in other sanctions cases, thereby asserting their institutional competences in foreign policy vis à vis other institutions.

This does not appear to be entirely the case. Rather, the evidence suggested that *initially*, the EP attempted to assert itself and what it perceived to be its competences under

the Treaty of Lisbon. But after the ECJ sided with the Council and ruled in favor of Article 215 TFEU, this seems to have set a precedent which the EP did not further challenge in any significant way. While scholars continued to point to the EP's democratic legitimacy as a potential justification for Article 75 TFEU as a legal basis in certain sanctions cases during and after the ECJ case, the ECJ explicitly stated their view that legal basis should determine procedures rather than procedures defining legal basis. This effectively suggests that claims of democratic legitimacy would not be likely to bolster the EP's attempts to invoke Article 75 TFEU in future cases, and may explain in part why there have been very limited references to the article.

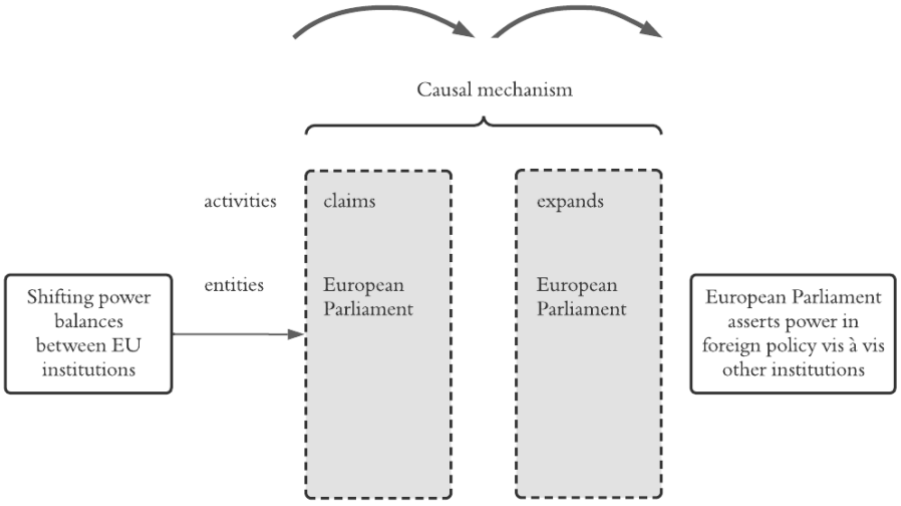

Figure 2: Hypothesized causal mechanism for H1, based upon Beach and Pedersen (2013, 40).

In testing this hypothesis, there was doubly decisive evidence to support the first part of the causal mechanism (that the EP claimed the precedence of Article 75 TFEU). This was clear from an EP debate and resolution, and given the content of the MEP comments in the debate in particular, there are not alternative explanations for this evidence. This evidence, though, was not particularly 'surprising' following Bayes' theorem, and therefore was not given undue weight (Howson and Urbach 2006, 97). For the second part of the causal mechanism, though, I did not find evidence to support it, leading to a partial rejection of H1. Nonetheless, this only means that the EP did not seek

to expand their foreign policy competences in other areas in the context of Article 75 TFEU. This outcome, the EP not continuing to aggressively pursue Article 75 TFEU after the ECJ decision, remains puzzling. One might expect that the EP would try to maximize its structural power within the bounds of the Treaty, but this did not occur regarding Article 75 TFEU. It does not, however, preclude the possibility that the EP 'tested the waters' of EU external relations following the Treaty of Lisbon in other ways, which will be addressed in Chapter 6.

These findings do raise important questions regarding the nature of the EP's role as an institution and its role in EU foreign policy. Many in the EP evidently believed that the Parliament's strengthened powers in the Treaty of Lisbon applied, or should apply, in this area, as well. These expectations, while unsurprising for an institution for which strengthening its role is in its interest, are also natural given the language of Article 75 TFEU, and the EU's official messaging that seemed to highlight the EP's newfound competences. It is clear, then, that while the Treaty of Lisbon undoubtedly increased the prominence of the EP as co-legislator, one of its most significant aspects was also the strengthening of CFSP—a much more intergovernmental area of EU policy. The EP's desire for increased democratic legitimacy thus coexists under the Treaty with some restrictions when it comes to CFSP, which remains largely in the hands of the member states.

Finally, the evidence discussed here also ties to EU sanctioning policy in the post-Lisbon era. As Van Elsuwege (2011, 498-499) notes, the pre-Lisbon sanctioning framework did not adequately account for the 'smart sanctions' against individuals, rather than states, that are ubiquitous today. But by attempting to remedy this, the Treaty of Lisbon added additional confusion with the apparent dual legal basis for sanction relating to terrorism. While the ECJ decision provided clarity, it also restricted the EP's competences to the extent that there has evidently been a decreased focus on Article 75 TFEU. This prevalence of sanctions against non-state actors also raises questions for how sanctions databases

categorize sanctions against individuals. Given that so much sanctions research includes discussions of target countries, there needs to be further attention paid to how sanctions such as asset freezes against non-state actors, including individuals and entities such as terrorist organizations, are categorized.

These results also did not display a meaningful link to the Magnitsky case, contrary to my expectations. This may mean that there was not a link between the two, or it could be a result of methodological limitations. It may have been insightful had I been able to speak to the Dutch Permanent Representation on this issue, or spoken to a larger number of MEPs who might have worked more closely on the issue.

5.5 Conclusion

In this chapter, I analyzed H1, *The dual legal basis for sanctions in Articles 215 and 75 TFEU after the Treaty of Lisbon made the European Parliament more assertive in the area of sanctions.* I did not find that competences under Article 75 TFEU made the EP more assertive outside of sanctions regarding terrorism in the Magnitsky case, leading to a partial rejection of H1. Not finding such evidence does not mean that it did not exist, merely that it was not provable in this thesis. Instead, I found that despite initial attempts to claim its competences using Article 75 TFEU as a legal basis for certain types of sanctions, the EP did not persist in this despite legal scholarship and views in the Parliament that using Article 75 TFEU could increase the EU's democratic legitimacy. This chapter showed that in some ways, the EP's competences were *lessened* rather than increased with the Treaty of Lisbon, and calls for greater attention to be paid to sanctions against non-state entities.

Chapter 6: The European Parliament's Assertiveness

6.1 Introduction

In this chapter, I test H2, *the European Parliament's increased role in external relations post-Lisbon contributed to actors within the institution 'testing the waters' in areas where the Parliament still did not have competences*. First, I analyze EP resolutions and debates prior to the Treaty of Lisbon. Then, I analyze resolutions and debates after the Treaty of Lisbon's entry into force. I expected there to be more calls upon the Council to impose sanctions and more allusions to increased EP powers in the years immediately following the Treaty of Lisbon's entry into force. The evidence analyzed suggested the validity of H2, and that this may have played a role in the Magnitsky case.

6.2 Human rights and the European Parliament

One of the most noteworthy characteristics of EP resolutions and debates in the pre- and post-Lisbon periods was the focus on human rights. Twenty-one of the 22 pre-Lisbon resolutions, and 30 of the 31 post-Lisbon resolutions, mentioned "human rights" in a significant capacity.

Prior to the Treaty's entry into effect, four resolutions mentioned the Treaty, and three alluded to the EP's increased powers. One of these, the "2006 Annual report on the CFSP," referenced Article 21 TEU, which deals with the EU's external action including that it should be guided by advancing "the rule of law" and "the universality and indivisibility of human rights and fundamental freedoms" around the world (Official Journal of the European Union 2012a). The resolution also references the not-yet-adopted Treaty of Lisbon, and the EP's hope that the HRVP would help to establish "a more forward-looking and long-term foreign policy strategy" (European Parliament 2008b, 4). It also demands making human rights central to CFSP, thereby attempting to increase its role in foreign policy given its historical role in human rights (Bartels 2014, 21). Importantly,

it also highlights the EP's "strengthened powers of scrutiny" under the Treaty of Lisbon (European Parliament 2008b, 13).

Another resolution, "The evaluation of EU sanctions as part of the EU's actions and policies in the area of human rights," extensively discusses the possible implications of the Treaty of Lisbon on human rights and foreign policy, including sanctions (European Parliament 2008c). It draws a connection between Article 21 TEU and the goals of EU sanctioning policy, which include human rights. There is also a call for the Council to involve the EP in sanctions policy, particularly regarding human rights (European Parliament 2008c, 15–16), thus making explicit the connection between the EP's assertiveness in sanctions policy and its competences in human rights.

In a May 2009 debate on the "Parliament's new role and responsibilities in implementing the Lisbon Treaty," the rapporteur, Elmar Brok (Germany–EPP), who was previously and subsequently Chairman of the Committee on Foreign Affairs, discussed the importance of the EP, as well as national parliaments, in certain aspects of CFSP post-Lisbon (European Parliament 2009a). He references the increased democratic legitimacy of the EU thanks to the EP and national parliaments' increased competences in CFSP, but only in relation to Europol.

Ten post-treaty resolutions mentioned the Treaty of Lisbon. One of these, "Restrictive measures affecting the rights of individuals following the entry into force of the Lisbon Treaty," is particularly relevant (European Parliament 2009d), and is the same that was discussed extensively in Chapter 5. The resolution "2008 annual report on the CFSP" also highlights the EP's support for the centrality of human rights in EU external relations (European Parliament 2010d, 2). In this document, the EP also lays out their view that the Treaty of Lisbon will increase the democratic legitimacy of CFSP by giving the EP a role in approving the HRVP and in the adoption of certain international agreements (European Parliament 2010d, 4–6). In another resolution relating to human rights, the EP highlights the clauses relating to human rights in EU external agreements. The EP argues

that due to the Treaty of Lisbon's emphasis on the centrality of human rights to external relations, the EP should have a greater role in human rights dialogues (European Parliament 2010e). Significantly, it also calls for the EU to develop criteria and apply sanctions against countries "which perpetrate serious human rights violations," thus again associating the EP and its human rights competences with external relations and sanctions (European Parliament 2010e, 9).

The three EP resolutions pertaining to the Magnitsky case also suggest that there may be a link between the EP's human rights competences and aspirations of influence in sanctions policy. In 2010, the EP highlighted the impunity faced by human rights violators such as those responsible for Magnitsky's death when it called for visa bans and asset freezes (European Parliament 2010g). The 2012 resolution went further, referencing human rights seven times and highlighting the EU's capacity to issue sanctions that were not "traditional judicial sanctions *per se*," and could send a "political signal" of the EU's concern regarding human rights violations (European Parliament 2012b). This resolution also addressed corruption, which an interviewee told me was an important factor in how the Magnitsky case was framed at the beginning before the focus shifted to human rights. The EP's April 2014 resolution contained similar content, but did not mention corruption and had more forceful language towards the Council and HRVP due to their lack of response to the previous resolution (European Parliament 2014a). It also called attention to the EU's policies and statements on human rights, as well as the need for consistent sanctions policy.

Interviewees also echoed the importance of the EP in human rights, and the link between this and sanctions post-Lisbon. Charles Tannock noted that despite the EP's "consultative, advisory role," on sanctions, their role in human rights is taken seriously by the other EU institutions. Furthermore, he noted that after the Treaty of Lisbon gave the EP a formal legislative role in international treaties, this created an overlap between the areas of trade and foreign policy. The anonymous EP advisor felt that the Treaty of Lisbon gave the EP "increased relevance" "in many areas and sectors" including foreign affairs.

While they do not have a legislative role in sanctions, the advisor described the EP's "important voice" that, while it might not change the mind of member states, is able to put pressure on them. Dovile Sukyte echoed this, describing the EP as the "conscience" of the EU on human rights issues and discussed its ability to pass messages to the Council through means such as plenary sessions and resolutions. She characterized the ability to achieve influence as dependent on a variety of factors including the issue, the MEP's personality, their party, country, background, and the type of coalition they are able to forge. As a human rights issue, the Magnitsky case was highly salient and widely discussed in countries such as the Baltics and Poland, making it easier to 'pass messages' to the Council.

In the more extensive "Human rights in the world 2009," the EP reiterates their post-Lisbon powers in international agreements related to terrorism and organized crime, stating that "these changes will give Parliament additional leverage on the right balance between security and human rights" (European Parliament 2010g, 27). This resolution, mentioned above, is also the first to mention Sergei Magnitsky's death, and calls on the Council to freeze assets of involved Russian officials and consider a visa ban (European Parliament 2010g, 22). In this resolution, the EP also addresses corruption more generally. The anonymous EP advisor I interviewed also stated that early on, the Magnitsky case was framed as relating to corruption, but over time evolved to a broader focus on human rights. The interviewee thought this was due in part to a decision by member states, as well as the fact that "the Parliament is more and more visible on human rights issues, and at some point we were facing extremely increased cases of violations of human rights." The EP advisor also said that the switch to human rights was "kind of a logic [sic] move because the starting point was corruption, so then if you really wanted to focus on corruption, which at the end was not possible because there was a clear majority of member states that thought it was too complicated, then the logical move is kind of to move it to human rights."

Other resolutions, including "Second revision of the ACP-EC Partnership Agreement (Cotonou Agreement)," "Human rights, social and environmental standards in International Trade agreements," and "EU external policies in favor of democratisation" mention the change in decision-making structures and the EP's increased powers post-Lisbon (European Parliament 2010a; 2010f; 2011b).

Of the 31 post-Lisbon resolutions that I analyzed, ten mentioned the Treaty of Lisbon and nine mentioned or allude to the EP's increased competences in this context, usually in relation to human rights and international agreements. Twenty-four made explicit requests of the Council, including 14 calls for adoption or expansion of sanctions.

6.3 Increased calls for sanctions post-Lisbon

There was a noteworthy increase in the EP's direct requests that the Council adopt or expand sanctions, after the Treaty of Lisbon entered into effect. Prior to the Treaty of Lisbon, there were 19 (n=21) calls for the Council to take action of some sort, and four requests that the Council impose or expand sanctions. Of the 31 resolutions analyzed in the post-Lisbon period, 24 made explicit requests of the Council, including 14 calls for the adoption or expansion of sanctions. This represents a significant increase from the four such requests pre-Lisbon. Post-Lisbon calls for sanctions included calls for new or expanded sanctions towards Libya, Iran, Madagascar, and Belarus (European Parliament n.d.; 2010b; 2010c; 2011a)

More generally, there was also an increase in the number of resolutions that mentioned increased EP powers post-Lisbon, with three instances before the treaty and nine after. Table 1 shows a comparison between the resolutions from the pre- and post-Lisbon periods.

Table 1: European Parliament resolutions that mention "sanction" before and after the Treaty of Lisbon's entry into force

	Pre-Lisbon (n=22)	**Post-Lisbon (n=31)**
Reference Treaty of Lisbon	4	10
Mention increased EP powers	3	9
Request Council to impose or expand sanctions	4	14
Mention human rights	21	30

6.4 Discussion

In this section, I will evaluate H2, *the European Parliament's increased role in external relations post-Lisbon contributed to actors within the institution 'testing the waters' in areas where the Parliament still did not have competences,* in light of the evidence presented above. H2 led me to a hypothesized causal mechanism, in which the EP '*tests* the waters' of EU external relations prompted by the institutional changes in the Treaty of Lisbon, and *shifts* its activities in a way that will maximize its foreign policy power vis à vis other institutions. This mechanism is displayed in Figure 3.

Regarding the first part of the mechanism, I expected to find more calls upon the Council to impose sanctions and more allusions to increased EP powers in the years immediately following the Treaty of Lisbon's entry into force. I found trace evidence that supported this part of the hypothesis. While it is possible that there are other explanations for this increase—including that perhaps, there were simply more external factors and events leading to calls for sanctions—the fact that there was such a clear increase lends greater credence to the mechanism. These findings also call into question the ways in which sanctions databases categorize sanction threats by the EU. There does not seem to be a reason why the Magnitsky case in 2012 should be treated uniquely as a sanction threat

in EUSANCT, and the 2010 recommendation not, when both came from solely the EP and not the Council. On the other hand, this is not to say that all EP resolutions that call for sanctions should be considered sanction threats. If databases do include such 'threats,' they should be treated with caution and appropriately highlighted in the accompanying codebooks and manuals to ensure that they do not affect metrics of sanction or sanction threat effectiveness as 'empty threats.' Yet, it may not be the case that calls for sanctions coming solely from the EP are 'empty threats.' More research would need to be conducted to confirm if this is the case, or if these resolutions, given the EP's growing democratic legitimacy and structural power, do have some sway upon targets.

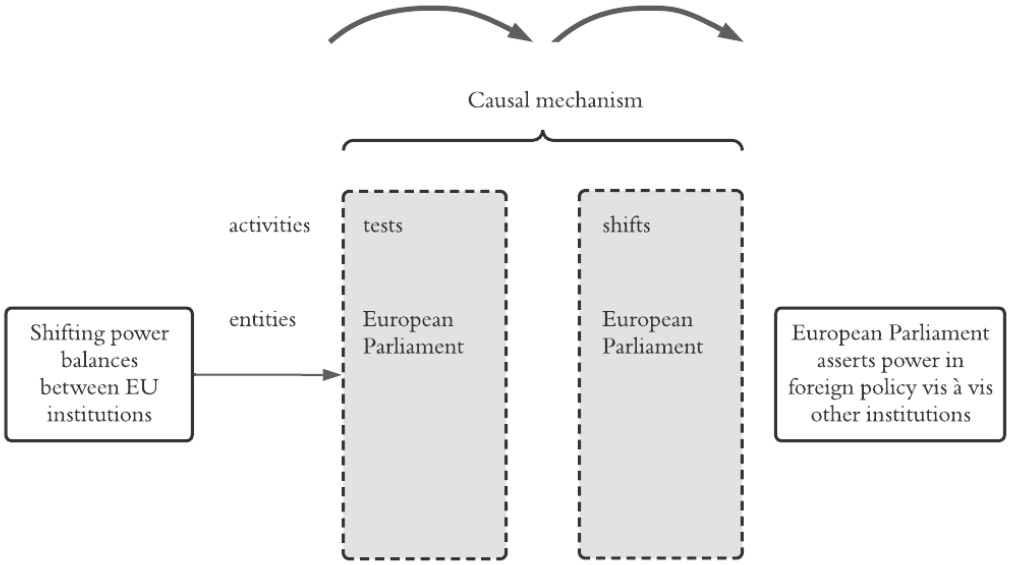

Figure 3: Hypothesized causal mechanism for H2, based upon Beach and Pedersen (2013, 40)

The second part of the hypothesized mechanism is also supported by evidence, which suggests that the EP focused more heavily on human rights within CFSP post-Lisbon due to their human rights competencies, potentially in order to then increase their standing in the field of external relations. It is true that there were mentions of human rights both before and after the Treaty of Lisbon, making this evidence 'unsurprising.' However, the references to human rights after the Treaty focused more heavily on the centrality of human rights to CFSP by repeatedly centering Article 21 TEU. Multiple

interviewees also validated this connection, further supporting the hypothesis. Furthermore, the interviews, particularly with the anonymous EP advisor, specifically supported the hypothesis in the Magnitsky case: the Magnitsky sanctions became more focused on human rights over time, in part due to the EP's visibility and competences in this area. This is in line with previous work that the EP uses human rights to gain a foothold in external relations (Szép 2022), and further suggests that the Treaty of Lisbon played a role in this. Following Bayes' theorem, it does not seem probable that the EP would have shifted the framing of the Magnitsky case to focus on human rights rather than corruption were there not a connection to the EP's competences in that area (Howson and Urbach 2006, 97). This evidence, combined with the previous evidence discussed, lends substantial credence to the hypothesized causal mechanism that the EP used its human rights competences to assert itself in sanctions policy.

Thus, both components of the hypothesized causal mechanism are supported, and H2 is affirmed, suggesting that the EP 'tested the waters' of the institutional changes in the Treaty of Lisbon, and shifted its external relations activities to focus increasingly on human rights given its competences there, thereby asserting its power in foreign policy towards the other EU institutions. In this study, a wider scope of resolutions, or analyzing more debates and other EP documents, would have been beneficial to provide more robust evidence. Nonetheless, this causal mechanism might provide insight into H1, as well. While H1 was not fully supported, and the EP did not continue trying to assert the legal basis of Article 75 TFEU, it is also possible that they instead turned to other areas, such as human rights, to assert their role. This potential connection though, is not explored in depth in this thesis and cannot be proven, but is worthy of further research.

6.5 Conclusion

In this chapter, I tested H2: "*the European Parliament's increased role in external relations post-Lisbon contributed to actors within the institution growing more assertive in areas*

where it still did not have competences." Finding a mix of pattern, trace, and account evidence, I analyzed EP resolutions and debates from before and after the Treaty of Lisbon's entry into force, and supplemented this with evidence from two interviews. This evidence showed that there were more calls from the EP to Council to impose or expand sanctions post-Lisbon, as well as an increased association between CFSP and human rights (including in the Magnitsky case), thereby supporting H2.

Chapter 7: The relationship between the European Parliament and the High Representative

7.1 Introduction

In this chapter, I test H3, *The augmentation of the High Representative by the Treaty of Lisbon led the European Parliament to have a more difficult relationship with the Council.* I expected to find primarily account and trace evidence, with account evidence coming from interviews and memoirs, and trace evidence coming from EP resolutions and debates. I found that the EP was optimistic regarding the role of the HRVP before the Treaty of Lisbon, but disappointed in many ways with HRVP Ashton's performance, particularly in the Magnitsky case, where she was perceived to have been the one blocking the issue from Council agendas. Finally, I found that while this was the case during HRVP Ashton's tenure, the role of the HRVP, and his/her relationship with the EP, is highly changeable and evolving. Furthermore, the role of the HRVP itself undergoes a non-linear 'evolution' depending on many factors, indicating that the role has not centralized EU foreign policy to the extent expected with the Treaty of Lisbon. These findings led me to accept H3 in this case, but the results hinted that this phenomenon was case-specific, and may be different in other events.

7.2 Optimism and disappointment

The tenure of the first HRVP, Catherine Ashton, was marked by optimism at the beginning that transformed into disappointment amongst the EP regarding certain issues, as well as the sense by some that hopes for a more centralized CFSP after the Treaty of Lisbon were not realized. I analyzed 131 non-legislative resolutions that referenced HRVP Ashton during the same period studied in H2, December 2007–December 2011. Table 2 shows the results of this analysis. Because it is likely that views towards the HRVP changed more gradually (rather than 'pre-Lisbon' and 'post-Lisbon), I separated the resolutions into

12-month periods. Analyzing the resolutions for their tone towards the HRVP, I found that there were the most negative references towards her between 2010–2011, whereas previously there had been none. Throughout all four years, there were a number of positive references towards the HRVP, though proportionally, this decreased over time. Additionally, the number of resolutions that referenced the HRVP increased over time, and the majority of references after the Treaty of Lisbon's entry into effect were deemed neutral.

Table 2: Tone of European Parliament references to the HRVP in non-legislative resolutions, December 2007–December 2011

	Positive	**Negative**	**Neutral**
December 2007-2008	6	0	1
December 2008-2009	3	0	4
December 2009-2010	9	0	41
December 2010-2011	5	8	55
Total	**23**	**8**	**101**

Early on, EP resolutions spoke about the hope that there would be "more coherence" with the augmentation of the HRVP role (European Parliament 2008a). A resolution from 2008 pointed out that relations between the Council and EP had improved over time, and hoped that the new HRVP would help to improve the "legitimacy and coherence" of CFSP (European Parliament 2008b). Other resolutions referenced the EP's scrutiny powers over the HRVP, as well as the hope that the augmented role would bring increased democratic legitimacy to the Council (European Parliament 2009b; 2010d).

After the first HRVP had settled into her role, however, these positive words dwindled. There were more negative references to the HRVP, focused mainly around disappointment in her lack of delineation of responsibilities and various actors in the EEAS not knowing their roles and responsibilities (European Parliament 2011d; 2011c). These results were aligned with what I was told by the anonymous EP advisor, who felt that while HRVP Ashton "tried her best," Treaty of Lisbon competences between the EP, Council,

and Commission that appeared clear "on paper" were not actually clear in practice. Additionally, the advisor discussed the 'dual role' of being High Representative and Vice President of the Commission, and mentioned that for contentious issues, the HRVP might release a statement as VP of the Commission if they did not have the full backing of all member states. While not directly related to the perspective of the EP, this speaks to the complex, at times inconsistent nature of the HRVP role, which may have contributed to a more negative feeling amongst some MEPs during the course of the first HRVP's tenure.

7.3 Blocking

I also expected that in the Magnitsky case, the HRVP had a 'blocking' role that was related to the more difficult relationship with the EP. This appears to have been true, though primarily under the tenure of HRVP Ashton. At the October 2012 EP debate tied to the resolution calling for sanctions against officials involved in Sergei Magnitsky's death, Andris Piebalgs of the Commission stood in for HRVP Ashton and pointed to European Council President Herman Van Rompuy's letter to Dmitry Medvedev on the matter that called for a thorough investigation (EP 22 October 2012). Mr. Piebalgs also stated that "sanctions should be used only as a last resort, otherwise we risk them becoming the only instrument in many of our relationships whenever such crimes are committed" (EP 22 October 2012). In an earlier debate on the political use of justice in Russia, HRVP Ashton only mentioned her concern in a "continued lack of progress on the Magnitsky case" but did not provide any further details despite six MEPs questioning her about it (EP 11 September 2012).

HRVP Ashton's memoir of her time at the helm of EU foreign policy also hints at her view of the EP. Her memoir follows several major events during her tenure, such as the JCPOA, natural disasters in Haiti and Japan, the Arab Spring, and Euromaidan, so she does not reference the Magnitsky case directly. She does note that the Council "required unanimity in its decision-making and without referring to the European Parliament. It had

no wish to delegate to the Commission nor to involve Parliament, especially on defence and security issues" (Ashton 2023, loc. 386). She also viewed the EP as "immature in character" and that, during hearings for the role, officials should never promise to give MEPs any increases in oversight (Ashton 2023, loc. 356, 365). This suggests that she viewed supporting the Council's unanimity and not bringing certain divisive issues to the agenda as an important part of her job.

In 2014, a group of 23 MEPs sent a letter to the new HRVP, Federica Mogherini, that bolstered this. The MEPs, who came from a variety of groups across the political spectrum, requested that HRVP Mogherini act on the Magnitsky case, noting that "Over successive escalating resolutions… the European Parliament has called on the European External Action Service to impose sanctions. Until now each request has been explicitly ignored" (Landsbergis et al. 2014). While it is difficult to know for sure whether the Magnitsky case was discussed at all given the secrecy of Council proceedings, I also interviewed Mark Sabah, a former senior advisor to Bill Browder, who lobbied heavily on the Magnitsky case to the EP, member state governments, and national parliaments, meaning he likely had some insight into this. He described that HRVP Ashton did not want to engage on the Magnitsky sanctions, "wasn't interested," felt the need to "listen to all sides," and engage with Russia. His views provide some credence to the other evidence that HRVP Ashton did not attempt to push for the sanctions in the Council, and that she valued a more diplomatic approach to Russia at the time.

7.4 Discussion

Now, I will evaluate H3 in light of the evidence above. I expected there to be a two-part causal mechanism, in which the EP persisted in its calls for Magnitsky sanctions, and the HRVP continued to block them, as shown in Figure 4. This appears to be the case regarding Magnitsky sanctions under HRVP Ashton. There does not appear to be enough evidence in this study, however, that the EP had significantly more negative views of HRVP

Ashton over time. While there was a greater proportion of negative references to the HRVP in the later part of the period studied here, there were also many positive references on other issues, such as the JCPOA and Serbia–Kosovo agreement. Thus, while the EP's relationship with HRVP Ashton *regarding Russia/Magnitsky* deteriorated over time, it is not supported that this was the case across the board. Nonetheless, this part of the hypothesized causal mechanism is supported in this case, and is aligned with previous work on the challenges and pressures faced by the HRVP wearing a 'dual hat' that might contribute to disagreements with the EU institutions (Vanhoonacker and Pomorska 2017; Vanhoonacker, Pomorska, and Maurer 2012). Furthermore, it was noteworthy that there were significantly more references to the HRVP in his/her expanded role post-Lisbon than prior to the Treaty. While I did find (and exclude from analysis) references to HR Javier Solana, these were much less numerous. Many of the 'neutral' references to HRVP Ashton entailed references to speeches or trips she made, supporting claims that the HRVP, whatever the nature of his/her relationship to the EP, has a far more significant role in the EU as a figurehead than before.

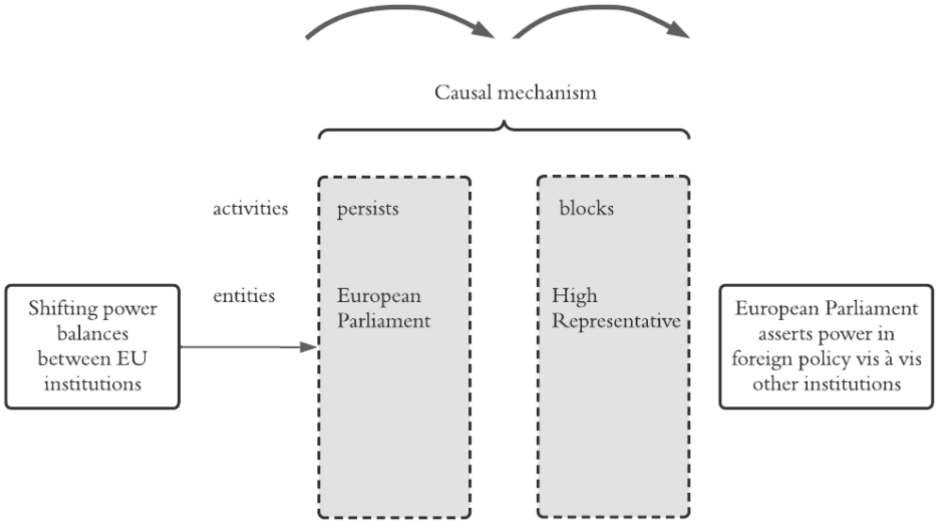

Figure 4: Hypothesized causal mechanism for H3, based upon Beach and Pedersen (2013, 40)

The second part of the hypothesized causal mechanism entailed the HRVP blocking the EP's efforts. This was again supported by EP debates and account evidence in the form

of memoirs and interviews. It also adds credence to previous work on the importance of examining items that the HRVP does *not* bring to the Council agenda (Vanhoonacker and Pomorska 2013). In the Magnitsky case, the EP was eventually able to pass a human rights sanctions regime despite HRVP blocking thanks to a combination of efforts discussed in Chapter 4, but there are likely many dossiers for which this is not the case, too, and provide opportunities for further research. This part of the mechanism is only supported with case-specific evidence, and therefore cannot be generalized. Nonetheless, it is possible (and likely) that a similar mechanism of HRVP blocking occurs in other issues.

Finally, though somewhat outside the scope of this thesis, the anonymous EP advisor interviewee also shared insight into aspects later during the Magnitsky case as well as into the role of the HRVP more generally. While the interviewee explicitly said this did not play a role in the Magnitsky case, they noted that while the EP is often portrayed as an 'annoying sibling' [my words], echoing the sentiments in HRVP Ashton's memoir, there are situations where the EP has a *symbiotic* relationship with the Council. In these situations, the interviewee stated, the EP is "the voice of member states because they cannot be so vocal on some issues" and that they "can be used to pass the political message that member states cannot pass." Furthermore, speaking about the Magnitsky case, the interviewee added that HRVP Josep Borrell shared the EP's position on adding QMV to the Act—"On the EU Magnitsky Act, the High Representative and the Parliament were [sic] in a line and the Council was in a different line." Thus, the 'dual hat' worn by the HRVP, as well as more practical aspects of having to achieve unanimity between 27 member states, make the HRVP more aligned with the EP rather than the Council that they represent in some situations. This also echoes Vanhoonacker and Pomorska's research that pointed out the complexity of the HRVP's "loyalty" (Vanhoonacker and Pomorska 2017, 111). At times, as in the later part of the Magnitsky case, the HRVP might feel their loyalties divided not only between the Council and the Commission, but between the Parliament, too. In the Magnitsky case, the shared interest in moving towards QMV seems

to be the reason, but further research might look into whether this has occurred in other cases.

The interviewee also described a sort of devolution over the last three HRVPs roles and visibility in the EU. Whereas HRVP Ashton was the first, had to build the EEAS from scratch, and had a great deal of visibility, this was slightly lessened with HRVP Mogherini. Now, the interviewee views HRVP Borrell as "more challenged with other presidents of institutions than the previous [High Representatives]," due to the high visibility of European Council President Charles Michel and President of the European Commission Ursula von der Leyen. The interviewee's view is in line with the research by Smith (2017) on the 'competition' between the heads and leaders of the EU institutions. This could be attributed to events, such as Russia's aggression in Ukraine, but the interviewee believed the personalities of the institutional presidents also plays a significant role. Thus, the HRVP's relationship to the EP, and his/her visibility internationally, could become more solidified with the next HRVP depending on factors such as personality, political leaning, nationality, and external factors. But the point remains that despite 13 years of the EU post-Lisbon, the role of the HRVP is *malleable*. It has not developed into what some might have expected, and it is no easier to answer the infamous question posed by Henry Kissinger, "Who do I call if I want to call Europe?"[15]

7.5 Conclusion

In this chapter, I analyzed H3 and found that in the Magnitsky case, the augmentation of the HRVP's role post-Lisbon led the EP to have a more difficult relationship with the Council. I thus accepted H3 for this case, though it is possible (and likely) that other issues might display different outcomes. I found from an interviewee that the Council and EP, as well as HRVP and EP, at times have a symbiotic relationship. The

[15] In 2012, Kissinger stated that he did not remember saying this phrase commonly attributed to him, but that "it's a good phrase" (Sobczyk 2012).

interviewee also argued that the role of the HRVP has undergone a devolution that may not be linear, and that the role is highly malleable and subject to change. These suggestions, while outside the scope of this thesis, provide topics for future research into the intra-institutional dynamics of the EU.

Chapter 8: Conclusion

This thesis set out to examine European Union sanctioning behavior in the period since the Treaty of Lisbon. Despite increasing scholarly attention on sanctions issued by the EU, and changes to the EU's institutional competences since the Treaty that seem to have strengthened it as a foreign policy actor and heightened the role of the European Parliament in some areas, there has been little attention paid to the role of the EP in sanctions policy with few exceptions. Thus, I conducted empirical evidence to answer the research question: *"What are the effects of the Treaty of Lisbon on the European Parliament's role in sanctions decision-making?"* I attempted to answer this question using the Magnitsky case, because of its appropriate timing as a 'test' of the Treaty of Lisbon, and because while it is an example of increased EP activity in the area of external relations, it also illustrated the continued intergovernmental nature of Common Foreign & Security Policy. Furthermore, an examination of the Magnitsky case, given its connection to EU-Russia relations, was hoped to provide insight into how the EU might conduct foreign policy towards other third countries with whom it has complex economic and diplomatic relations.

I began this thesis with an examination of the literature and theory related to sanctions, sanction threats, and EU foreign policy decision-making. This revealed that there is a gap in research into EP influence on EU sanctions policy, and also pointed to potential flaws in some sanctions datasets that are inconsistent in their definition of an EU sanction threat, or are not explicit in their inclusion of EP 'threats.' I then used process-tracing to analyze the Magnitsky case in order to answer the research question. Using a combination of literature and prior knowledge, I hypothesized three causal mechanisms in the case. I expected that *1) The dual legal basis for sanctions in Articles 215 and 75 TFEU after the Treaty of Lisbon made the European Parliament more assertive in the area of sanctions; 2) The European Parliament's increased role in external relations post-Lisbon contributed to actors within the*

institution 'testing the waters' in areas where the Parliament still did not have competences; and 3) The augmentation of the High Representative by the Treaty of Lisbon led the European Parliament to have a more difficult relationship with the Council.

After an examination of each causal mechanism using a combination of interviews and document analysis, I was unable to find a "minimally sufficient explanation" that supported all hypotheses (Beach and Pedersen, 3). While the first part of H1, the EP claiming Article 75 TFEU's precedence, was present, I did not find that they used this to attempt to expand their influence in sanctions policy. On the contrary, the evidence analyzed suggested that after the ECJ ruling, the EP did not focus their attentions on Article 75 TFEU. Thus, H1 was rejected. I did, however, find evidence to support H2, supporting a causal mechanism wherein the EP 'tested the waters' and shifted their focus to a connection between human rights and external relations in the Magnitsky case. Finally, the evidence supported H3, suggesting that the augmentation of the HRVP role in the Treaty of Lisbon made the EP's relationship with the Council more fraught in the Magnitsky case.

There are limitations to this study, such as limited interviews, that prevent the mechanisms from being entirely conclusive. Nonetheless, the evidence suggests that with the Magnitsky case, the EP was attempting to exercise greater influence after the Treaty of Lisbon. The EP's relationship with the Council was also made more difficult by the augmentation of the HRVP, but this may not have been so for other events, or other HRVPs. More broadly, one of the most apparent effects of the Treaty of Lisbon on the European Parliament's role in EU foreign policy may be a trend of increased assertiveness in human rights, and an increased significance to its relationship with the HRVP, which can be mutually beneficial or mutually detrimental depending on the case. The role of the HRVP was also shown to be highly malleable depending on the HRVP of the time.

This thesis raises several opportunities for future research. Scholars could conduct a comparative study examining the EP's relationship with each of the HRVPs so far,

providing insight into when, and how, this relationship has been beneficial or detrimental to each actor. Researchers could also examine the assumption that EP resolutions calling for sanctions are not effective towards targets, as it is possible that these sanction 'threats' have some influence. Scholars should also pay greater attention into how sanction threats involving solely the EP are categorized. This thesis also suggests that though there has not yet been another EU founding agreement since the Treaty of Lisbon, the impact of the treaty, and the way it has influenced the EU institutions, is not static. When actors such as the EP are unable to maximize a particular competence within the bounds of the treaty, they may seek to do so elsewhere. While it is by no means certain whether, or when, the Council will move to qualified majority voting on some CFSP matters, the fact that one-third of member states currently support it illustrates that these post-Lisbon changes will continue. The role of the European Parliament in sanctions decision-making may thus continue to evolve.

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