The Implementation of Sanctions Imposed by the European Union

A Comparison of the Czech and Slovak Republics' Compliance

Radka Druláková and Pavel Přikryl

This study focuses on the Czech Republic and the Slovak Republic, two countries which do not carry out autonomous sanctions, but are, nevertheless, obliged to implement sanctions adopted by international organisations because of their membership commitments. The study explores the fulfilment of their commitments to sanctions policy arising from the membership in the EU. Theories of compliance are deployed and two phases needed for proper implementation of EU norms are analysed—at the stage of transposition of legislation introducing formal compliance and at the stage of practical implementation discussing behavioural compliance. This work seeks to determine the two countries' levels of conformity or the differences between them in this respect during their implementation of sanctions imposed by the EU by comparing their legislative (formal compliance) and institutional/administrative tools (behavioural compliance). The differences between the analysed countries are considerable both in temporal variations of transposition and in quality of practical implementation.

Keywords: Sanctions Policy, Formal Compliance, Behavioural Compliance European Union, Czech Republic, Slovak Republic

Radka Druláková and Pavel Přikryl (2016), 'The Implementation of Sanctions Imposed by the European Union: A Comparison of the Czech and Slovak Republics' Compliance,' *Central European Journal of International and Security Studies* 10, no. 1: 134-160.

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Introduction

Both the Czech Republic and the Slovak Republic have certain general characteristics of small states in terms of their environmental behaviour, which is the basic presumption and starting point for their comparison here. From empirical observations, it is evident that small countries usually emphasise the principles of international law and other moral criteria when dealing with other countries; rely on multilateral obligations and enter into cooperation in multilateral international organisations; employ diplomatic and economic tools instead of military actions; etc.[1] These selected characteristics are fully reflected in the sanctions policies of small countries—on an international scale, small countries do not use international sanctions as an autonomous tool of their foreign policy, but as an obligation arising from their membership in international organisations.[2]

Small states, given their characteristics, usually have a limited role in decision-making as regards the imposition of sanctions within international organisations. Even though it deserves research within the field of political science, we generally accept this statement and have focused only on the implementation mechanism of sanctions. Exploring small states´ implementation of sanctions is a worthy activity because these sanctions can significantly contribute to the smooth implementation of international multilateral sanctions, thus, in the long run, to international security.

Not only do both the Czech and Slovak Republics rank as small states, but some of their other characteristics are also similar—both are located in Central Europe and for decades have shared the same history. They also made similar pre-accession preparations for their membership in the EU, which they joined in 2004, and both transferred most of their competencies concerning adoption of sanctions to the transnational decision-making level. Thus, we began our research with the presumption that the differences between the countries concerning their compliance with European sanctions policy would be minimal. Surprisingly, we found that the two countries' levels of compliance differ significantly.

This text serves as a pilot study for a broader future project which will focus on the comparison within the V4 group where all members belong to the EU. Since there are noticeable differences in the implementation processes between the Czech and Slovak Republics, we have focused our attention on the other members of the V4 as well (Po-

land, Hungary) and we have gathered that there are many differences across all V4 countries. Thus, this study also establishes the research framework and analytical tools for more complex research in the field of compliance with EU sanctions policy.

In order to gain a deeper insight, we focus on the two countries' pre- and post-accession periods to precisely identify differences. It appears that conditionality of EU accession significantly influenced formal compliance in the pre-accession period, while its importance for behavioural compliance was almost null, even in the pre-accession period. The transposition of legislation (formal compliance) requires political will at the level of political elites and conformity across political parties; the enforcement and application of legislation (behavioural compliance) demands establishing proper bureaucracies, including actors and processes covering coordination, monitoring and enforcing mechanisms and having sufficient administrative capacity. Focusing on these factors helps to explain differences in the implementation of sanctions.

This work deals with a wide range of targeted sanctions tools with an emphasis on economic sanctions, which belong to the most frequently used (and studied) sanctions.[3] The first part of the work introduces the theoretical framework for our analysis, thus contributing to the broader debates concerning compliance with international norms[4] and following the recent scholarly literature dealing with post-communist EU states generating a considerable gap between relatively good formal transposition of EU norms and deficient practical implementation.[5] Focusing on so-called new democracies only (or new member states within the EU), we have challenged the current discourse by the finding that there are differences not only between old and new democracies (or old and new member states), but also among the new democracies, at least when analysing sanctions implementation. Building on previous research, we have distinguished formal compliance from behavioural compliance:

1. Formal compliance detects the extent to which national legislation meets various requirements of compliance with international (European) obligations; we consider international sanctions norms to be legally implemented at the moment the respective national legislation enters into force;
2. Behavioural compliance includes both enforcement and applica-

tion enabling the real implementation of international sanctions measures at the national level; we employ recommendations introduced by international forums (the Bonn-Berlin, Interlaken and Stockholm processes) for the effective implementation of multilateral sanctions, as we focus primarily on the quality of legislative prerequisites for real implementation.

Our qualitative case studies rely on previous scholarly research, relevant legislation, parliamentary discussions and expert interviews with administrators (the Financial Analytical Unit of the Ministry of Finance of the Czech Republic, the Ministry of Foreign Affairs of the Czech Republic, the Ministry of Finance of the Slovak Republic and the Ministry of Foreign and European Affairs of the Slovak Republic).

Compliance with International and European Norms

The article builds on compliance with international norms, which in general means that states that are members of international organisations behave in accordance with their obligations. Compliance with international norms commonly requires the implementation of new laws and capacities at the domestic level—in other words, the adoption of relevant national legislation, the building of institutional capacities, specification of enforcement rules, etc.[6] Even though the EU is one of the influential norm-setting actors, it does not specify an exclusive method for the implementation of sanctions. Therefore, this work closely focuses on the specifics of compliance with European norms from the perspective of member states.

A coherent compliance theory still has not been firmly established.[7] Nevertheless, we demonstrate that for proper implementation of sanctions norms it is not enough to examine only relevant international norms in national legislation. Although EU regulations directly affect EU member states, which must implement them, analysing formal compliance is important because legislation provides member states with a set of tools and processes which are necessary for proper implementation. Analysing the shape of adopted legislation contributes to a deeper understanding of subsequent implementation. And although formal compliance is necessary, it is not the only precondition for a proper and timely implementation, as it may turn to dead letters in the stage of practical implementation according to classification pro-

vided by Falkner and Treib.[8] Reaching complete implementation of EU norms means achieving success in enforcement and application (see Table 1).

EU	*Member states*		
Decision-making process ↓ Text of Directive	Implementation of EU norms		
	Transposition (formal compliance)	Enforcement (behavioural compliance)	Application (behavioural compliance)
	Administration Government Parliament Interest groups	Administration Courts	Norms addressees (administrations, enterprises, etc.)
	- political will - conformity across political actors	- establishing bureaucracies (actors and processes) for coordination, monitoring, enforcement	- awareness - performance of duties
	Monitoring and enforcement by Commission		

Table 1. Stages and actors of the implementation process of EU norms

Source: adjusted according to Gerda Falkner, Elizabeth Holzleithner and Oliver Treib (2008), Compliance in the Enlarged European Union. Living Rights or Dead Letters?, Farnham: Ashgate, p. 8 and Kal Raustiala and Anne-Marie Slaughter (2002), 'International Law, International Relations and Compliance,' in Walter Carlnaes, Thomas Risse and Beth A. Simmons (eds.) The Handbook of International Relations, London: Sage Publications, and taking into account our previous research.

The EU´s membership conditionality has been perceived as a highly effective means of influencing candidate countries.[9] However, the impact of EU accession conditionality came to an end soon after expansion in 2004, leaving the question of 'why the formal adoption of EU rules has led, in some cases, to real institutional and policy change and in other cases to reversal or neglect.'[10] It is clear that behavioural compliance in the phase of practical implementation should be supported by other incentives, this time representing internal ones such as existence of enforcement agencies, court systems which are well-organised and equipped with resources to fulfil their tasks as well as sufficient administrative and bureaucratic capacity including institutional rules, civil service systems and financial resources.[11] Thus, institutionalisation of previously adopted EU rules plays a crucial role in reaching behavioural compliance. This is why we have sought to explain the lag in behavioural compliance during the post-accession period mainly in terms of the quality of these internal institutions and processes.[12]

For analysing behavioural compliance, we focused on the nature and quality of national sanctions legislation, especially general enabling acts which should facilitate the direct applicability of European legislation. We tested them using the measures recommended by a series of conferences aimed at more efficient application of sanctions—the Bonn-Berlin, Interlaken and Stockholm processes[13]—based mainly on competent administrative actions. The recommendations include a set of criteria which should be adopted by member states putting sanctions into practice in order to provide proper and timely implementation:

1. a general authority to implement sanctions without engaging a legislative process for each sanctions decision at the international level
2. mechanisms for coordination of activities of authorised state bodies
3. information dissemination to nationals who shall respect the sanctions provisions and advice by carrying out a proper implementation
4. mechanisms of monitoring compliance
5. penalties in administration and criminal law

Through legal review, we examine whether the recommendations are respected in the sanctions practice in both countries, and we reveal gaps between good legislative compliance and deficient practical application. Empirical consequences of deficient practical application support our findings in cases in which they were either publicly accessible or could be acquired from relevant authorities.

Formal Compliance with European Sanctions Norms

The search for appropriate Czech and Slovak legislation that would enable the proper implementation of international multilateral sanctions measures started immediately after the Velvet Revolution in 1989. In the early 1990's, the sanctions policies of both countries were mostly defined by their membership in the UN; however, from the second half of the 1990's, they publicly declared their interest in acceding to the EU. Hence, they recognized the obligations which arose from this potential membership and the related endorsement of the acquis communautaire in the pre-accession period. The two countries' national legislation that was valid at the time (before the break-up of Czecho-

slovakia), had similar qualities, since the national legislation was that of the common Czechoslovak state based on their shared past. Sanctions (not only) of an economic nature were implemented by the Ministry of Foreign Trade, which issued legislative decrees and resolutions, although they were used only rarely, as only two were introduced. However, after the break-up of the Czech and Slovak Federal Republic on 01 January 1993, differences in the two countries' formal and (especially) behavioural compliance became increasingly evident.

The Czech Sanctions Policy—Formal Compliance

In the first years of its independence, the Czech Republic attempted to implement sanctions which were binding for the country on the basis of its UN membership, through individual pieces of sanctions legislation (for example, Act 113/1990 Coll.,[14] which newly regulated the terms and conditions of international trade or Act 38/1994 Coll.,[15] on licensing the trade in military supplies), and on the basis of governmental regulations and ministerial decrees. During the implementation of sanctions in the 1990s, the reality was such that the Czech Republic adopted standards implementing sanctions obligations with a considerable time delay. The most striking example of its formal non-compliance with international obligations in this period concerned the implementation of sanctions imposed by the United Nations Security Council (UNSC) against Libya.[16] The sanctions had been implemented through Resolution 748 (1992),[17] but in the Czech Republic the adoption was delayed by five years. The implementation gap was primarily caused by Czech politicians who held back the sanctions, as they did not want to jeopardise the ongoing Czech-Libyan negotiations on debts from Czech Republic's socialist past. This example proves that conformity among political actors is a decisive factor in achieving formal compliance.

As is evident, the Czech Republic's sanctions policy, which was based on the adoption of individual acts, was quite inadequate. In 1999, the Ministry of Foreign Affairs of the Czech Republic initiated a general enabling act that would enable the government to introduce sanctions through government regulations. During parliamentary debates, Egon Lánský (then the Deputy Prime Minister) expressed concern that if the Czech Republic was not able to implement the sanctions in question, it could damage its credibility as a candidate for membership in the

EU.[18] With an emphasis on speeding up the legislative process and responding efficiently to EU law, the bill was passed by the Chamber of Deputies in April 2000.[19]

By acceding to the EU in 2004, the Czech Republic accepted the duty of complying with already-adopted or newly-adopted EU legislation that had a direct effect in all membership countries. There were several administrators of sanctions legislation. Therefore, during the negotiations preceding the accession to the EU, the Financial Analytical Unit (FAU) of the Ministry of Finance (FAU originated on the basis of Act 61/1996 Coll., on measures against legalisation of proceeds from criminal activities)[20] was appointed to be the central administrator of the majority of the existing regulations that the EU employed to impose international sanctions.[21] Such a step proved to be helpful for reaching formal compliance as this unit identified the insufficiencies of current legislation and proposed a new legislation bill that was passed as Act 69/2006 Coll., on implementation of international sanctions on 01 April 2006.[22]

In accordance with previous experiences and shortcomings, the law passed smoothly through the decision-making process in the Chamber of Deputies. The then Deputy Prime Minister Bohuslav Sobotka stressed during parliamentary debates that the implementation of international sanctions had been insufficiently covered in our legal system, and that the draft mainly fulfilled the duties arising from Czech Republic's membership in the EU and from the existence of the European Common Foreign and Security Policy.[23]

The general enabling act, Act 69/2006 Coll.,[24] covers nearly all obligations arising from EU membership; however, it does not address the issue of when terrorists have citizenship in one of the membership countries. Consequently, membership countries have had to reflect this issue in their own legal regulations. In 2008, the Czech Republic adopted respective regulation (210/2008 Coll.[25]; the current version is the Government Regulation 88/2009 Coll.,[26] dated 16 March 2009). This ensured formal compliance with the joint approach and, in fact, with the entire legislative system of sanctions policy.

The Slovak Sanctions Policy—Formal Compliance

After the break-up of the Czechoslovak Federation, Slovakia implemented international economic sanctions through bylaws (decrees

and resolutions) until 2002, when Act 42/1980 Coll. on economic relations with foreign countries[27] became the legislative basis. Instead of initiatives that would lead to the adoption of either general enabling standards or (at the least) individual reception standards, the Ministry of Economy strictly limited itself to publishing informative lists, including the regimes of sanctions.[28] The Ministry of Economy assumed the competence of the (now-defunct) Federal Ministry of Foreign Trade to implement sanctions, even though some types of sanctions were not within its authority (for example, the Ministry of Foreign Affairs implemented diplomatic sanctions).

In this period, Slovakia tried to promote its pro-EU orientation and strong interest in EU membership; however, Vladimír Mečiar's regime (1994–1998) failed to meet the criteria for rapid EU membership, and thus Slovakia was in a more vulnerable position compared to the Czech Republic.[29] The transposition of legislation requires political will at the level of political elites and conformity across political parties; however, both conditions had been weak in Slovakia at that time. After the decision of the Council (1997, Luxembourg) not to include Slovakia in the group of forerunners for EU membership, the pro-European mood in Slovakia became slightly weaker and politicians were divided concerning foreign policy orientation. This political disunity and political hesitation explains the lag in legislative arrangements at that time.

After the heavy criticism expressed by both the UN and the EU,[30] Slovakia started to carry out some reform steps in the general process of formal sanctions compliance, thus, confirming the influence of conditionality in the pre-accession period. Therefore, in 2001, Section 56 of Act 42/1980 Coll.[31] acquired a new paragraph, which should have created a de facto general enabling standard and authorised the government to implement international sanctions by issuing regulations. According to this amendment, the only regulation was Regulation 273/2002 Coll.[32] as amended, which was used to impose UNSC sanctions. However, attempts to rectify the insufficient legal basis for implementing international economic sanctions were inadequate. Therefore, the first general enabling standard was adopted by the National Council of the Slovak Republic with not a single dispute, as evident from the stenographical records of the parliamentary negotiations.[33] Amendment Act 460/2002 Coll. on the implementation of international sanctions[34]

ensuring international peace and safety replaced governmental regulations and enabled the government to implement not only sanctions introduced by UNSC resolutions, but also sanctions newly introduced by the EU Council.

The Implementation of Sanctions Imposed by the European Union

After acceding to the EU in 2004, the Slovak Republic had to update its existing legislation in order to reflect the re-division of competencies between the EU and the membership states with regard to sanctions. Amendment Act 460/2002 Coll.[35] was amended by Amendment Act 127/2005 Coll.,[36] which enabled the issuing of government regulations to implement sanctions in cases when the EU Council does not directly adopt efficient community legislation. The main reason for the amendment was to adapt to EU requirements; it was the one amendment which enabled binding EU standards to have a direct effect in the Slovak Republic. During parliamentary negotiations, the then Deputy Prime Minister Pavol Rusko stressed that the aim of the draft was to adjust the rights and duties of state executive bodies and entrepreneurial subjects in order to carry out decisions of the UNSC concerning international sanctions and to adjust the legal system of the Slovak Republic in accordance with the membership in the EU.[37]

At last, the legislative level corresponded to the obligations of the Slovak Republic arising from its membership in the EU, although only as rules-on-the-books rather than rules-in-use.[38] Since conditionality no longer affected compliance, there were other external incentives, such as criticism by the Moneyval committee accompanied by domestic knowledge stating that '... after Slovakia joined the European Union, [the former act] no longer corresponded to the adopted obligations from that result ... it was, therefore, necessary to draw up an entirely new draft, since its amendment would be rather demanding.'[39]

Thus, the new sanctions legislation came into effect in May 2011 as Amendment Act 126/2011 Coll. on implementation of international sanctions (the act was amended by Regulation 394/2011 Coll.[40] in October 2011). The act enables direct effects of relevant EU legal acts on the territory of the Slovak Republic. It states that international sanctions not only refer to decisions of the UNSC, but also to decisions made according to Chapter V of the EU Treaty. Thus, a formal dimension of compliance has been reached as the act proved Slovakia's ability to implement all sanctions employed by the EU.

Behavioural Compliance with European Sanctions Norms

Behavioural compliance represents a set of measures enabling a real implementation of the adopted legislation. For successful implementation of sanctions it is essential to introduce a system of legal penalties for national entities that do not respect sanctions.[41] This means that a monitoring and coordinating authority (or authorities) must also be established in order to act as a control mechanism. National institutionalisation of adopted sanctions legislation is necessary for proper implementation of EU norms. Therefore, it is important to set up enforcement agencies and develop sufficient administrative and bureaucratic capacity for handling practical issues.

The Czech Sanctions Policy—Behavioural Compliance

The first Czech General Sanctions Act (Act 98/2000 Coll.)[42] was accompanied by a list of specific sanctions that was much appreciated, as it also included a list of exceptions in which the sanctions did not apply. The government was authorised to introduce specific measures through regulations. The act introduced penalties for non-compliance with the adopted measures; however, the act's main shortcoming was the fact that it did not appoint any administration authority that would supervise compliance, enforce penalties and resolve disputes (see Table 2).

However, Regulation 170/2003 Coll. on sanctions concerning the Republic of Iraq[43] revealed another insufficiency of the general enabling act in practice which included also economic sanctions. When they were lifted in 2003,[44] UN members were invited to return all illegally exported cultural heritage items to the country. Notably, Act 98/2000 Coll.[45] did not allow for this measure, so, despite the existence of the general act, it was necessary to adopt an additional individual act (4/2005 Coll. on measures concerning the Republic of Iraq as amended).[46] Hence, the sanctions legislation of the time did not enable the Czech government to respond to all contingencies of sanctions regimes.

The newly adopted legislation bill on implementation of international sanctions was passed as Act 69/2006 Coll.[47] on 01 April 2006, and it reflected the shortcomings of the earlier sanctions policy. In the amended version, Act No. 227/2009 Coll.,[48] which amends other acts in connection with the Basic Register Act, it became the basis for a

valid Czech sanctions policy, which is still in use. It newly amended measures concerning financial and other resources that are used for terrorist activities. It also dealt with the handling of secured assets and it specified enforcement measures for the practical enforcement of sanctions (see Table 2).

Measures	*Act 98/2000 Coll.*	*Act 69/2006 Coll. and Act 70/2006 Coll.*
General authority to implement sanctions	+ (but only for imposition of fines)	+
Mechanisms for coordination of activities of authorised state bodies	–	+
Information dissemination to nationals who shall respect the sanctions provisions and advice by proper implementation	–	–
Mechanisms of monitoring compliance	–	+
Penalties (fines) in administration law	+	+
Penalties in criminal law	–	+

Table 2. Conditions supporting behavioural compliance in the primary enabling Act 98/2000 Coll. and in Acts 69/2006 Coll. and 70/2006 Coll. (Czech Republic)

If the EU Council does not issue a directly applicable regulation, the act enables the Czech government to carry out relevant sanctions through government regulations. The act fairly precisely sets forth exceptions from the sanctions regime, such as humanitarian aid, social services, medical care, etc. It also includes provisions on offences and administrative tort that can be punishable by financial fines.[49] In order to comply fully with notification obligations, Procedural Decree

281/2006 Coll.[50] was adopted, and it details the method of compliance with the notification obligation as expressly stated by the FAU to which the notifications are submitted.

The Slovak Sanctions Policy—Behavioural Compliance

Until 2002, the Slovak Republic modelled its sanctions policy on the out-dated Act No. 42/1980 Coll.,[51] which acquired a new paragraph in 2001, which should have authorised the government to implement international sanctions by issuing regulations. However, only one regulation has been amended through this act, revealing its insufficiency for the behavioural dimension of compliance. This legal amendment completely failed to envisage the changes arising from impending entry into the EU. It did not even stipulate the contents of sanctions. Administrative and institutional procedures for efficient implementation of sanctions were addressed only very vaguely by the regulation or not at all.

Subsequently, Act 460/2002 Coll.[52] was adopted, which detailed specific sanctions and enabled the granting of exceptions (see Table 3). It also introduced financial sanctions for natural and legal persons in cases where they violate the duty to comply with the adopted sanctions. Furthermore, under this act, the government had the duty to introduce specific regimes of sanctions through regulations, and if international authorities decided to cancel decisions on international sanctions, the government of the Slovak Republic was to cancel the relevant regulations (Section 2, paragraph 2 of the act). However, this measure was the weak point of the act, as it led to justified concerns about having a very lengthy process for declaring sanctions, and not being able to respond sufficiently to the actual needs of international sanctions policies. Thus, even though the legal regulations were more precise than the preceding amendment, there were still obvious shortcomings which did not enable efficient implementation of sanctions including failure in institutionalising sanctions policy.

Even Amendment Act 127/2005 Coll.[53] enabling the Slovak government to issue government regulations to implement sanctions in cases where the EU Council did not directly adopt efficient community legislation almost duplicated the insufficiencies in practical implementation. Since 2002, the Slovak government has issued twelve implementing regulations in total. Their annexes were used as a tool

to update the list of persons or entities against which the sanctions were targeted. In reality, the government proved the insufficiency of the then current legislation as changes to the EU sanctions lists had to be reflected in the national legislation; otherwise they had no direct effect. Going down the route of implementing regulations proved to be a dead end, and the then current legislation was heavily criticised from abroad, specifically by the Moneyval Committee,[54] which repeatedly stated that from a formal point of view the Slovak Republic had adopted the necessary mechanisms, but their practical implementation was rather weak due mostly to a lack of coordination.[55]

The Implementation of Sanctions Imposed by the European Union

The new Act 126/2011 Coll.,[56] in contrast to previous legislation, precisely defines the notification obligations of natural and legal persons

Table 3. Conditions supporting behavioural compliance in Act 460/2002 Coll. and Act 126/2011 Coll. (Slovak Republic)

Measures	*Act 460/2002 Coll.*	*Act 126/2011 Coll.*
General authority to implement sanctions	+	+
Mechanisms for coordination of activities of authorised state bodies	–	–
Information dissemination to nationals who shall respect the sanctions provisions and advice by proper implementation	–	–
Mechanisms of monitoring compliance	–	–
Penalties (fines) in administration law	+	+
Penalties in criminal law	–	+

if they come across assets or facts where international sanctions are binding for the Slovak Republic apply. The act also strengthens the enforcement mechanism by determining the measures of criminal responsibility for the violation of international sanctions. It also determines financial fines for the perpetrators: up to 66,400 EUR for natural persons and up to 132,800 EUR for legal persons.

Unfortunately, the biggest problem of the current Slovak sanctions policy – that no central authority has been established to monitor compliance with sanctions regulations (see Table 3) – has not been resolved by any legislation. Also, the fourth Moneyval Report summarises that 'still there are no appropriate measures in place for monitoring the effective compliance.'[57] Act 126/2011 Coll. includes an exhaustive list of eight central state administration authorities[58] that are responsible for decision-making within their scope. The Ministry of Trade of the Slovak Republic is the reporting authority for EU sanctions concerning import and export and restrictions for setting up joint ventures or investments; the Ministry of Finance of the Slovak Republic is the reporting authority for EU sanctions concerning restricted transfers of finance and financial services and freezing of financial assets.[59] However, their coordination and mutual competencies are not determined by the act, which represents a serious problem during the practical implementation of sanctions.

The legal framework for supervising financial and capital markets, which forms a major part of the targeted economic sanctions, is provided in particular by the Act on Supervision of Financial Markets (Act 747/2004 Coll.),[60] which amended the competency of the National Bank of Slovakia. The Department for Supervising Financial Markets was established by the bank in 2006; however, the efficiency of its supervision of obligations arising from accepted financial and capital sanctions tools was weakened by poor coordination with other authorities acting in the field of ensuring international financial and capital sanctions. Specifically, the Intelligence Unit of the Financial Police of the Slovak Republic Police Force is not bound by any responsibilities towards the Department for Supervising Financial Markets, nor does it have any obligation to inform this department about any facts concerning (non-)compliance with adopted obligations in the field of international sanctions.

Moreover, by nature of their responsibility, these institutions can monitor only entities that are subject to economic or financial sanc-

tions (such as frozen assets) but other types of sanctions remain off-limits. For example, this was the case as regarding EU sanctions Directive against Iran (961/2010)[61] comprising, among others, sanctions on education in technical fields of study. The FAU in the Czech Republic started to coordinate and monitor compliance with respected sanctions in close cooperation with the Czech Ministry of Education, Youth and Sports, whilst the Department for Supervising Financial Markets could not have handled these sanctions as they overreached the bounds of its authority.

Formal and Behavioural Compliance with EU Sanctions Norms: A Comparative View

As we have pointed out, the speed and quality of the implemented international sanctions are not only connected with the existence of relevant legislation (formal compliance), but also with the existence and nature of the tools used to implement sanctions in practice (behavioural compliance). In both respects, Czech and Slovak sanctions legislation and practical implementation differ significantly. Conditionality mattered in both countries in the pre-accession period, mainly at the formal stage of compliance. Early on, both countries tried to achieve formal compliance through individual reception standards which proved to be insufficient in practice and were criticised by the EU. Thus, both countries adopted general enabling acts before accession. However, reaching the behavioural stage of compliance brought about more visible variations, both in time and quality.

In the early 1990s, the Czech Republic and the Slovak Republic had the same starting conditions, since they constituted one state at the time—Czechoslovakia. The legislative basis for the implementation of economic sanctions adopted as a result of a membership in the UN was provided by Act 42/1980 Coll. on economic relations with foreign countries.[62] While in the Czech Republic sanctions regimes have been implemented through individual laws since 1993, in Slovakia the same practice as that of socialist Czechoslovakia lasted until 2001.

The general enabling act adopted in Slovakia in 2002 represented the minimalist version of the law with almost no impact on the practice—reminiscent, therefore, of dead letters. The main reasons for Slovakia falling behind are the failure to reach conformity across political parties and missing political will at the level of political elites. During

the pre-accession period, Slovakia's slowdown could have been caused by a general slowdown in the process of Slovakia's integration with European structures. The regime of Prime Minister Vladimír Mečiar (1994–1998) failed to meet the criteria for a rapid EU membership, the pro-European mood slightly weakened and Slovakia revised its foreign policy orientation. Moreover, Slovakia started off in a much weaker geopolitical and economic position than its newly-created western neighbour.[63]

The sanctions policy of the Czech Republic came close to the requirements of international practice in 2006. This can be primarily attribut-

Table 4. Number of administrative procedures conducted as a result of breaching international sanctions in the Czech Republic (2009 – 2012)

	2009	*2010*	*2011*	*2012*
number of administrative procedures conducted because of the breaching international sanctions	unlisted	3	33	23
number of concluded administrative procedures	unlisted	2	24	22
total amount of penalties (millions of Czech crowns)	unlisted	1,5	0,157	0,133

Source: elaborated according to FAÚ (2010) Zpráva o činnosti Finančního analytického útvaru za rok 2009 [on-line] Dostupné z: http://www.mfcr.cz/cs/verejny-sektor/regulace/boj-proti-prani-penez-a-financovani-tero/vysledky-cinnosti-financniho-analytickeh/2013/zprava-o-cinnosti-2009-9335; FAÚ (2011) Zpráva o činnosti Finančního analytického útvaru za rok 2010 [on-line] Dostupné z: http://www.mfcr.cz/cs/verejny-sektor/regulace/boj-proti-prani-penez-a-financovani-tero/vysledky-cinnosti-financniho-analytickeh/2010/zprava-o-cinnosti-2010-9336; FAÚ (2012) Zpráva o činnosti Finančního analytického útvaru za rok 2011 [on-line] Dostupné z: http://www.mfcr.cz/cs/verejny-sektor/regulace/boj-proti-prani-penez-a-financovani-tero/vysledky-cinnosti-financniho-analytickeh/2011/zprava-o-cinnosti-2011-9337; FAÚ (2013) Zpráva o činnosti Finančního analytického útvaru za rok 2012 [on-line] Dostupné z: http://www.mfcr.cz/cs/verejny-sektor/regulace/boj-proti-prani-penez-a-financovani-tero/vysledky-cinnosti-financniho-analytickeh/2012/zadej-nazev-nove-stranky-11484; FAÚ (2014) Zpráva o činnosti Finančního analytického útvaru za rok 2013 [on-line] Dostupné z: http://www.mfcr.cz/cs/verejny-sektor/regulace/boj-proti-prani-penez-a-financovani-tero/vysledky-cinnosti-financniho-analytickeh/2013/zprava-o-cinnosti-financniho-analytickeh-17323 (all accessed 10 June 2014)

ed to its membership in the EU, which ensured the legislative dimensions for the implementation of sanctions, but also to the progressive new Act on Sanctions 69/2006 Coll.[64] This act not only brought about the Czech Republic's formal compliance with EU standards, but also especially the mechanisms for its efficient use in practice. In particular, it determined the central authority (FAU) that would be responsible for the implementation and monitoring of international sanctions. The FAU even initiates meetings with representatives of state institutions involved in implementation of a certain type of sanction to provide information and ensure a common approach (for example, meeting with university rectors to discuss science and technology sanctions imposed on Iran). Even though legislation in the Czech Republic lacks the obligation to disseminate information to liable entities, the Czech FAU provides information on its website, including statistics concerning penalties for breaching the law (see Table 4), the amount of frozen assets (see Table 5) etc. Moneyval evaluated the sanctions policy of the Czech Republic as suitable and as covering internal EU procedures.[65]

Table 5. Sanctions measures against Iran as regards EU Decision 2010/413/CFSP and EU Directive against Iran (1263/2012) (statistic for the Czech Republic, 2010 – 2013)

	2010	*2011*	*2012*	*2013*
number of announcements concerning transfer of financial means over 10.000, € from / to Iran	3	156	174	117
number of permissions concerning transfer of financial means from / to Iran exceeding 40.000,- €	6	164	144	95
number of denied permissions concerning transfer of financial means from / to Iran exceeding 40.000,- €	0	0	1	3

Source: elaborated according to FAÚ (2010), FAÚ (2011), FAÚ (2012), FAÚ (2013) a FAÚ (2014)

The non-existence of a central coordinating mechanism in Slovakia has been a major obstacle for efficient implementation of sanctions; thus, in Slovakia the behavioural dimension of compliance remains insufficient, even after the EU accession. The Department for Supervising Financial Markets of the Slovak National Bank was authorised to implement financial sanctions in Slovakia—a practice that was abandoned by the Czech Republic in 2004. It did not enable an implementation of a whole range of sanctions, nor did it enable monitoring of suspicious activities in the monitored areas, nor did it have coordination competency or the duty to inform private individuals about the scope of sanctions.

For comparative purposes, we asked the Department of Banking of the Ministry of Finance to provide us with information concerning the real implementation of sanctions measures imposed on Iran—for example, the number of announcements made by obligatory subjects concerning the transfer of financial means or the number of permissions to obligatory subjects concerning the transfer of financial means. We also asked for general information concerning the number of granted dispensations from sanctions regimes; the number of fines imposed due to breaching reporting obligations; and the number of administrative procedures conducted because of breaching international sanctions since 2004. What we have learned is very fragmentary—during the second and third quarter of 2013, there were withheld and finally released financial means in the total amount of 18,239,374.56 EUR. Moreover, according to the information provided, Iran represents a '0.017 % share in the SK exports and 0.006 % share on the SK imports.'[66] Therefore, no comparable information is available as it has not been faithfully documented. Moneyval negatively evaluated Slovak legislation for the implementation of sanctions[67] and the last available report from 2011 expressed the evaluators' concerns about the efficiency of government regulations in practice.[68]

Although the Slovak Act 126/2011 Coll. on the implementation of international sanctions[69] stated which state administration authorities are responsible within their scopes, it did not introduce a coordinating mechanism between these authorities. According to our source, a system of coordination need not be necessarily codified, as the competencies among ministries have already been set out in relevant legislation. However, ministries hesitate to exercise them whenever the law does not impose the obligations explicitly. In principle, the only problem

is with the non-systemic coordination of the current legislation. The current legislation is considered to be sufficient, and the only flaw seems to be the lengthy, time-consuming *ad hoc* procedure that is used in reaching the common position of the respective authorities.[70] Surprisingly, our search for information among national representatives induced actions for organising after a two-year pause an inter-ministerial meeting with the aim to reach a gentleman´s agreement on the system of coordination.

Another reason for Slovakia´s lag behind the Czech Republic in regards to compliance with European sanctions norms, even after its accession to the EU, consists in its administrative capacity to take an active role in relevant processes concerning the practical implementation of European sanctions measures (at the RELEX/Sanctions sessions, for example). The lack of administrative capacity, insufficient human resources and a missing central authority are the main reasons for Slovakia's poor behavioural compliance.

Conclusion

This work looked at the formal and behavioural implementation of sanctions regimes, which two small countries are bound to implement on the basis of their membership in international organisations. It was expected that there would be only minor differences between the Czech and Slovak Republics – which have similar historical, geopolitical and behavioural experiences – during the implementation of international sanctions resulting from EU commitments.

In the period before EU accession, the Czech Republic's legislation had been far from satisfactory, as the individual sanctions acts could not have responded to international obligations in a proper and timely manner. The changes made after its accession to the EU were understandably based on pre-accession preparations for membership and were directed to the adoption of a general enabling act. Apart from the legislative changes made after the accession to the EU, it was vital to establish an authority that would monitor how the adopted sanctions were put into practice. The FAU of the Ministry of Finance of the Czech Republic took over this role, but not before 2004. This was also the year when the preparations for the adoption of a new general enabling act began, so that the new act would correspond directly to the EU's existing sanctions policy. The act that currently sets the Czech Republic's

sanctions policy (69/2006 Coll.) became effective in April 2006. It provides both formal and behavioural compliance with the EU legislation.

In recent years, the Slovak Republic has taken several measures to comply fully with its obligations arising from its membership in the EU, with regard to the implementation of sanctions mechanisms in practice. However, Amendment Act 460/2002 Coll. on the implementation of international sanctions ensuring international peace and security was sufficient only in terms of formal compliance, as it did not enable behavioural implementation (it included no penalties and no control authority). Therefore, Amendment Act 126/2011Coll. on implementation of international sanctions was adopted. Although it corresponds with formal compliance in full, behavioural compliance remains insufficient, mainly due to the absence of a central coordinating authority. Thus, the adopted legislation seems to become dead letters.

Hence, the assumed similarities between the Czech and Slovak Republics were not confirmed in either of the dimensions, although both seemingly reached formal compliance in the pre-accession period. However, full formal compliance was delayed in Slovakia as it adopted a general enabling act five years later than in the Czech Republic. In Slovakia, the fault of the pre-accession period lies, particularly, in the slowdown of 1993-1998, when it was affected by domestic political disputes and tried to (re)define its position within the Central European region instead of being its established member. The lowest common denominator enabled the adoption of a minimalist version of legislation hindering real application in sanctions practice. Behavioural compliance in Slovakia has lagged, even after accession to the EU, as it has no set coordination mechanisms. No central authority to supervise the implementation of sanctions has been established and the considerable lack of administrative capacity hinders any up-to-date inclusion in the following processes.

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Notes

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9 Epstein and Sedelmeier (2008), p. 795.

10 Dimitrova (2010), p. 138.

11 Dimitrova (2010), p. 141; Falkner and Treib (2008), p. 308.

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