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Master's Thesis

Legal assessment of the EU restrictive measures (sanctions) against the Russian

Federation and its subjects imposed in the aftermath of the war in Ukraine

Europos Sąjungos ribojamųjų priemonių (sankcijų) prieš Rusijos Federaciją ir jos
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ABSTRACT AND KEY WORDS

This work analyses the object of the Thesis – restrictive measures adopted in 2022 by the European Union and provides conclusions on the same. The quality of 2022 EU sanctions framework and its enforcement is evaluated by comparison of practices, sanctions circumvention possibilities, existing loopholes identification, etc. After the escalation of the war in Ukraine, breaches of international law, human rights, international agreements, Russian Federation should receive proportionate restrictive measures in order to cease the ongoing conflict and violations. Therefore, the 2022 sanctions regime has to be further assessed, updated and strengthened.

Keywords: EU sanctions law, law enforcement, EU principles, types of sanctions, terrorism and its financing, human rights violations.

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INTRODUCTION

In the aftermath of the Russian Federation military invasion in Ukraine, the European Union (EU) responded to the emerging situation including by way of adoption of the restrictive measures (sanctions). This Thesis will focus mainly on the 2022 sanctions regimes, however it will include legal framework adopted from the year 2014 as basis for the amendments, supplements in 2022. The problems of circumvention of sanctions, confiscation of the same and designation of the Russian Federation as state sponsor of terrorism will be discussed as part of the restrictive measures imposition. The timeline, legislative basis of the EU regulatory framework and assessment of the proportionality of the sanctions adopted will be reviewed. The findings on the practical case of Kaliningrad transit showing difficulties in the implementation of the restrictive measures by the EU Member States will be summarized. The present thesis is focusing on the EU's eight sanction packages and is based on the limited academic papers produced in 2022. Many more academic works on this topic are expected in 2023.

The *main issues* that have to be examined are the possibilities of improvements of the EU legal framework on the restrictive measures; as well as the problems of existing loopholes creating possibilities of circumvention; further implementation of sanctions issue in the case of Kaliningrad-Russian Federation transit through the Republic of Lithuania; the need for the next stage of sanctions imposed in the form of confiscation of Russian Federation assets to help rebuild Ukraine.

All of these aspects will be examined. The most complicated *question* to answer: "Is the EU regulatory framework pertaining to the restrictive measures effective and what can be further done in order to improve it?". Among *other queries*, are as follows: why designation of Russian Federation as a state sponsor of terrorism is important?; what are the existing loopholes in the EU legislation that may lead to circumvention and what can be done about them?; what are the restrictive measures frameworks in the examples of the United Kingdom and the United States of America outside the EU?; what can the EU Member States do in order to cease circumvention of sanctions in the Kaliningrad region transit case example; why and how to confiscate Russian Federation assets as part of next possible restrictive measures packages.

The topic of this Thesis remains of high *relevance* since the EU sanctions regime continues expanding and covering more sectors and entities, while multiplying the legal

and political complexities pertaining to the EU sanctions policy and its implementation.

I chose this research topic as it is important for the EU to maintain and further improve the restrictive measures regulatory framework. In 2022 in the aftermath of the escalation of the war in Ukraine, breaches of international law, human rights, international agreements, Russian Federation should receive proportionate restrictive measures in order to cease the ongoing conflict and violations. Therefore, the 2022 sanctions regime should be further assessed, updated and strengthened. It is important for Ukraine and the rest of the world as sanctions may be an effective measure to change the foreign and military policy choices of the Russian Federation.

The aim of the Master Thesis is to analyze the current legislative basis on the restrictive measures, to define key outcomes and opportunities to strengthen them, cover loopholes where possible.

In accordance with these aims it is necessary to solve *the following tasks*:

1. To define the restrictive measures timeline in 2022 and legal framework adopted.
2. To identify possible preventive measures for circumvention of sanctions and to examine the potential opportunities of strengthening the same.
3. To prepare recommendations to the EU policy makers for strengthening the EU sanctions regime.
4. To summarize, assess and give proposals on what can be done about the Kaliningrad region transit issue.
5. To determine if the current sanctions legal framework adopted in 2022 satisfies the principles of proportionality, necessity, maintains fundamental rights.
6. To summarize and provide opinion on the restrictive measures frameworks of the United States of America and the United Kingdom.

Research methods. In the work were used such methods of research as general and specific methods – analysis, synthesis, comparative method.

Moreover, methodological basis consists of general scientific methods such as data collection, simulation, etc. The comparative method was actively applied to study the international and EU frameworks. The historical method was used to investigate the background of sanctions imposed before the year of 2022. Data collection helped to analyze the measures taken by the European Commission, Member States. Document, descriptive analysis was used to deal with the Regulations and legal basis imposed. Case-study was used in the case-law and in the example of the Kaliningrad region transit issue.

The object of this research paper are the restrictive measures imposed by the EU in

2022 against the Russian Federation and its subjects.

The sources for the writing the Master Thesis are: the international and the EU legal acts as well as national acts and case-law on the topic; scientific works, articles, journals, other documentation, publications; official information in electronic sources which complement the factual information on the research topic; European Commissions Guidelines and outlines, etc.

The structure of the work. Research work consists of an introduction, research part, conclusions, summary, Annex I, a list of sources. The amount of this Master Thesis is 51 pages.

CHAPTER I:

Legal framework and historical development of the restrictive measures (sanctions) against the Russian Federation and its subjects by the EU in the aftermath of the war in Ukraine

1.1. Overview of sanctions imposed by the EU following the Russian military invasion

To start with, it is important to note that the EU has a number of restrictive measures imposed on Russian Federation of various types, inclusive of individual, economic sanctions, diplomatic measures, etc. The timeline of the mentioned has its beginning from the March 2014. Since that year, restrictive measures were progressively imposed and updated towards the Russian Federation in the aftermath of illegal occupation of Crimea in 2014 further to the 2022 escalation of the armed conflict (war) in Ukraine. (*European Commission “EU restrictive measures against Russia over Ukraine (since 2014)”*, 2022).

Restrictive measures are acceptable under the EU legal framework. The EU Treaty and the Treaty on the Functioning of the EU explicitly foresee the possibility and the procedure for the EU Institutions to impose restrictive measures. The EU restrictive measures are normally imposed based on two legal basis – first, a Council decision under the EU Treaty (CFSP section), and secondly, under the TFEU. As European Commission mentions, restrictive measures are important in common foreign and security policy (CFSP) as they enable the EU to intervene in cases where necessary to prevent conflict or respond to emerging or current crises. These sanctions are not punitive, the intent of them is aimed more at spreading, adoption of changes into policies and/or activities by targeting entities and individuals in non-EU countries responsible for such “destructive” behaviour. Regarding the individuals they target, the principles of proportionality and necessity apply. The CFSP includes the EU safe-guarding values, fundamental interests and security, human rights, fundamental principle of rule of law, democratic, international principles, armed conflicts prevention, peace strengthening, and international security maintenance. The reasons for the restrictive measures particularly behind the war in Ukraine are aimed to weaken the Government of Russian Federation ability to finance the war as well as to impose economic and political costs on political elite in charge of the invasion. (*Official EU website: European Union sanctions, 7 October 2021*), (*European Commission: Frequently asked questions: Restrictive measures (sanctions)*, 2022),

(Council of the European Union: *How and when the EU adopts sanctions, 2022*)

In 2022, restrictive measures were imposed on Russian Federation after unjustified military invasion on 24th of February 2022 as further escalation of international armed conflict against Ukraine and decision of recognition of Donetsk, Luhansk regions as independent entities on 21st of February 2022. The following countries were involved and fell under sanctions imposed by the EU: the Republic of Belarus and Islamic Republic of Iran. (*European Commission: EU restrictive measures against Russia over Ukraine (since 2014)*), 2022). Nine packages of sanctions were introduced in 2022, the eighth package was adopted on 5 October 2022, with additional listings, new economic sanctions and extension of restrictions to certain regions of Ukraine (Kherson and Zaporizhzhia). Eight packages of sanctions are the object of this Thesis even though ninth one was adopted on 16 December 2022. The Table № 4 on all packages introduced in 2022 is provided in the Annex part of this work as summary, conclusions for the year of 2022 restrictive measures imposed.

It is important to mention the different types of sanctions European Council denotes which apply in the aftermath of the armed conflict in Ukraine.

Table 1. Restrictive measures types (categories)

| № | Type | Components |
|----------|--|---|
| 1. | Individual restrictive measures | <ul style="list-style-type: none"> • Asset freeze • Travel restrictions |
| 2. | Economic sanctions | <ul style="list-style-type: none"> • Financial sector • Energy • Transport • Defence • Raw materials and other goods • Services to Russia or Russian persons |
| 3. | Restrictions on media | Suspension of broadcasting activities, licenses |
| 4. | Diplomatic measures | <ul style="list-style-type: none"> • Meetings held without Russian Federation • Suspension of talks on joining organizations • Initiation of suspension of Russian membership in international organisations or treaties |
| 5. | Visa measures | <ul style="list-style-type: none"> • Towards Russian diplomats • Suspension of the visa facilitation agreement |
| 6. | Restrictions on economic relations with specific areas | Bans on: <ul style="list-style-type: none"> • Import of certain production • Export of particular production • Supplying certain advisory and consultancy services |

| | |
|---|---|
| 7. Measures concerning economic cooperation | Suspension in signing of new financing operations |
|---|---|

Source: based on – European Commission: EU restrictive measures against Russia over Ukraine (since 2014), 2022

Firstly, individual restrictive measures: asset freezes and travel restrictions were imposed currently on the 1386 individuals and 171 entities. The measures were undertaken in March 2014, recently extended until 15 March 2023. The list of sanctioned persons is updated and under review constantly. Furthermore, in March 2014 until 6 March 2023 the Council of Europe ruled to freeze the assets of individuals responsible for misappropriation of state funds of Ukraine. This is a sanction package related more to ex-president V. Yanukovich and his entourage and for corruption, embezzlement of Ukrainian state funds.

Secondly, economic sanctions were applied in July and September 2014 by the EU on the Russian Federation in the particular sectors targeting economic exchanges. In fact, this type of restrictive measures is directed on trade, energy, financial, transport, defence and technology sectors. These restrictive measures are subject to extensions periodically.

Thirdly, restrictions on media were introduced in 2022 as broadcasting activities of Russian Federation's state owned outlets promote propaganda towards the war in Ukraine and are used by the Russian Government as measures to promote disinformation and information manipulation. The following outlets' broadcasting activities were suspended by the EU for its Member States: Sputnik, Russia Today, Rossiya RTR/RTR Planeta, Rossiya 24/Russia 24, Rossiya 1, TV Centre International, NTV/NTV Mir, REN TV, Pervyi Kanal.

Concerning the fourth and fifth categories from the table above, diplomatic measures – summits were canceled with the Russian Federation, the visa facilitation agreement between the EU and Russia was suspended as well as negotiations on joining of the aggressor to the particular international organizations. Also, nowadays G7 format meetings instead of G8 ones take place periodically. Furthermore, in 2022, visa restrictive measures were imposed towards diplomats of the Russian Federation and suspension applied of visa facilitation agreement between the EU and the aggressor state.

Among other restrictive measures (types № 6, 7 from the table), sanctions concerning economic cooperation have been introduced since 2014 and extended. The European Investment Bank's (EIB), the European Bank for Reconstruction and Development's (EBRD) financial operations were suspended with Russian Federation, as

well as particular cooperation programmes between the Parties. In addition, restrictions were imposed on economic relations: on the territories in response to the occupation/annexation of Crimea, Sevastopol and independence recognition by the Russian Federation of Donetsk, Luhansk, Zaporizhzhia, Kherson non-government controlled areas (the last two regions were affected and sanctions imposed since October sixth 2022). (*European Commission: EU restrictive measures against Russia over Ukraine (since 2014), 2022*)

Therefore, the restrictive measures of various types are progressively imposed by the EU on the Russian Federation and eight packages of sanctions are the main focus of this Thesis.

1.2. The EU legal framework on the restrictive measures in the context of the Russian military invasion

Firstly, it is important to mention the legal basis found in the EU Treaties based on which the below Regulations were adopted. Each of these regulations have regard to certain Council Decision, joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the European Commission. Furthermore, the TFEU and in particular Article 215 provides that the Council may adopt restrictive measures against natural or legal persons and groups or non-State entities. The measures must be consistent with the objectives of the EU's external action, as laid down in the Article 21 of TEU (*Consolidated version of the Treaty on European Union, 2012/C 326/01*). Thus, for the EU to impose sanctions there is a need to adopt towards two legal acts – first, under the Treaty on the EU (section concerning CFCP actions) and then, under the Treaty on the Functioning of the EU.

In the aftermath of the war in Ukraine, the EU adopted the following main restrictive measures, Regulations updated regularly:

1. Council Regulation (EU) No 269/2014 adopted by Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine;
2. Council Regulation (EU) No 2022/263 (Consolidated text) adopted on 23 February 2022 concerning restrictive measures in response to the illegal recognition, occupation or annexation by the Russian Federation of certain non-government controlled areas of Ukraine.

3. Council Regulation (EU) 692/2014 adopted on 23 June 2014 concerning restrictive measures in response to the illegal recognition, occupation or annexation by the Russian Federation of certain non-government controlled areas of Ukraine;
4. Council Regulation (EU) No 208/2014 (Consolidated text) of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine;
5. Council Regulation (EU) No 833/2014 (Consolidated text) of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine

Going forward, the regulations mentioned above have to be briefly discussed. Firstly, the Council Regulation (EU) No 269/2014 was further supplemented in 2022 and the list of sanctioned persons subjected to asset freeze, travel restrictions measures was increased. The list covers those natural and legal persons that in any way supported or benefited Russian Federation or delivered prominent income therein. The Regulation contains relatively extensive list of derogations possible, including ones for the humanitarian purposes. (*Consolidated text: Council Regulation (EU) No 269/2014, 17 March 2014*)

The next Council Regulation from the above-mentioned has only been adopted this year in 2022 not in 2014. In fact, the Council Regulation № 2022/263 was issued in the aftermath of recognition of the non-government controlled areas of Donetsk and Luhansk oblasts of Ukraine as independent by the Russian Federation (legal acts were further supplemented with Kherson, Luhansk and Zaporizhzhia oblasts in October 2022 in eighth package). This behaviour of the sanctioned state amounted to a breach of international law, treaties, principles of territorial integrity of Ukraine. The illegal referendum held in September 2022 in parts of four Ukrainian occupied oblasts also had consequences as it is a breach of the Article 2 of Charter of the United Nations. Thereupon, the EU Council Decision and Regulation were adopted. The contents of the legal acts are as follows. The restrictive measures prohibit the import in the EU from the occupied territories, except for those provided under certificate of origin delivered by the Government of Ukraine. Moreover, trade restrictions in certain areas were imposed as well as prohibitions in transport, telecommunications, energy, exploration sectors, tourism activities in the oblasts occupied by the Russian Federation. Derogations and exemptions are possible from these restrictive measures including for the humanitarian purposes, under general or

specific authorizations, about granting of which the Member State must inform the other Members and Commission within two weeks. (*European Commission: Restrictive measures in response to the illegal recognition, occupation or annexation by the Russian Federation of certain non-government controlled areas of Ukraine, 2022*); (*Consolidated text: Council Regulation (EU) 2022/263, 23 February 2022*)

Restrictive measures in response to the illegal annexation of Crimea and Sevastopol in 2022 were renewed on 20 June 2022 and prolonged to 06 June 2023. They were reflected in legal act (EU Council Decision) and Guidelines to the measures. (*European Commission: Restrictive measures in response to the illegal annexation of Crimea and Sevastopol, 2022*); (*Council Regulation (EU) No 692/2014 of 23 June 2014*)

Regarding the misappropriation of state funds of Ukraine restrictive measure, Council Regulation and Decision concerning sanctions against particular persons, entities and bodies in the aftermath of the war in Ukraine were adopted. In 2022 the lists of individuals that fall under the restrictive measure above were updated, supplemented, extended until 6 March 2023. Following the review by the European Council, it was noted that the entries for four persons from the list expired on 6 September 2022 and the information regarding their rights of defence and their right to effective judicial protection was deleted. (*European Commission: Misappropriation of state funds of Ukraine, 2022*); (*Consolidated text: Council Regulation (EU) No 208/2014, 5 March 2014*)

What is interesting and important to note about the provisions of these regulations are the derogations and exemptions to sanctions adopted which are possible, as mentioned, for instance in case of delivery of humanitarian aid. Humanitarian aid is an important element, prescribed in the international humanitarian legal framework. However, it must be noted that it might create further loopholes for Russian Federation in order to take advantage of this possible derogation. For example, under particular grounds followed by authorizations granted by the competent authorities for exclusively humanitarian purposes in Ukraine certain frozen funds or economic resources may be released by way of derogation from the Article 2 of the Regulation № 208/2014 discussed above (*European Commission: Restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, 2022*). It must be noted as included in the EU Council Regulations and Decisions on restrictive measures, under international humanitarian law, where there are no other options available, the provision of humanitarian aid must not be prevented by the EU sanctions. Furthermore, it is for humanitarian operators to prove it was the only available option.

Thus, any possible negative impact on humanitarian assistance must be avoided from the EU side. The prohibitions indicated in the sanctions regime can be derogated if the action is falling under the restrictive measures list and is necessary for delivery of humanitarian aid. Therefore, only carried out after competent authorities grant specific or general authorizations. Although this provision is important for the situation being, nevertheless, in my opinion, it should be excluded for restrictive measures circumvention and anti-money laundering purposes by parties in bad faith. (*European Commission; European Civil Protection and Humanitarian Aid Operations: Working with DG Echo Sanctions 2021-2027*)

Concerning the last one, Council Regulation № 833/2014 (31 July 2014) on restrictive measures in view of Russia's actions destabilising the situation in Ukraine was further supplemented in 2022 and the lists of sanctioned natural or legal persons in Russia as well as goods and technologies, luxury production, fuel, alcohol, etc. for use in Russia are mentioned in the Annex part of the Regulation. In the Annex part the lists are provided which cover legal persons, entities and bodies referred to in the Articles of the Regulation. The Regulation contains relatively extensive list of derogations possible, including ones for the humanitarian purposes.

Apart from the EU legal acts, what is also worth to be mentioned in this sub-chapter, is that international coalition countries revoked Russian Federation's "most favoured nation" status (MFN) under the security exemptions of the World Trade Organization (WTO) Agreement. Consequently, the sanctioned state lost its crucial advantages of non-discrimination and predictability. WTO Member States can now impose tariff and non-tariff restrictions on imports of Russian Federation. Consequently, the EU as part of international community has proceeded with the same. (*Svitlana Taran, 27 October 2022*)

To conclude this chapter, the brief analysis of Council Regulations is provided, the information on extensive EU legal framework and packages is discussed. Therefore, it would be appropriate to proceed further with the topic.

CHAPTER II

Strengthening of the EU restrictive measures against the Russian Federation and its subjects imposed in the aftermath of the war in Ukraine

2.1. Strengthening the effectiveness of the EU restrictive measures

2.1.1. Legal improvement of the sanctions effectiveness

The effectiveness of the restrictive measures must be improved. In order to reach this result several steps, measures should be taken. For instance, it is important to increase the scope of sanctions, to adopt more export restrictions, prolong periods for economic sanctions and establish a proper regulatory framework for the prevention of norms circumvention.

(1) Increasing the scope of sanctions and reducing exceptions

In fact, the eighth sanctions package and the previous ones imposed by the EU have been more restrictive towards Russian imports than exports. At the same time, non-sanctioned Russian Federation's imports and exports remain significant and more actions can be taken to strengthen them. The embargo on oil imposed by the EU will become effective December 2022 - February 2023. Although the real impact of sanctions will be visible after the full implementation of the EU oil embargo, the initial impact on economy of the Russian Federation is already seen. High export revenues allowed Russian Federation economy to stabilize after initial restrictive measures due to non-global sanctions against it and shift of export to non-restricting markets of mostly Asian countries. However, further strengthening, adoption of new restrictive measures in the EU will widen the gaps in the Russian Federation market. (*Svitlana Taran at European Policy Centre, 27 October 2022*)

In regards to the information technologies (IT), it must be noted and I agree with International working group on Russian sanctions that licensing system should be introduced for the nationals of Russian origin, that is relating to the export of equipment, other stuff needed for the war in Ukraine. The Group also created an extensive list of activities, intellectual property, infrastructure that have to be sanctioned, for instance software, cloud computing. These elements are notable for the economy of Russian Federation. (*International Working Group on Russian Sanctions, 2 November 2022*)

In the following article, the International working group on Russian sanctions has

noted that restrictive measures have to be implemented on the Rosatom nuclear power company based in Moscow as it failed to implement the recommendations by International atomic energy agency (IAEA) and is responsible for the sabotage in Zaporizhzhia and Chornobyl nuclear power plants (NPPs). The initial sanctions must be imposed to weaken Rosatom position, encourage to comply with the existing recommendations and law at present. Further ones will follow in cases of major nuclear incidents in Ukraine. To achieve a successful result, nowadays, such actions as import ban on uranium from Russian Federation, restrictive measures imposed on Kurchatov Institute, personal sanctions on employees and Rosatom officials including its CEO, Mr. A. Likhachev as well as bans on any new contractual agreements with the same are required. International projects and representative offices of the company have to be closed. The punitive sanctions have to be ready in case of the further escalation of invasion. (*The International Working Group on Russian Sanctions, 14 November 2022*)

(2) Introducing additional restrictions on EU exports and imports to Russian Federation

To sum up the information and proposals stated above, the need to extend the scope of sanctions on Russian Federation export revenues is important as a relatively major part of trade remains unsanctioned. Extension of lists is possible and highly required to the natural gas, diamonds, cast iron, direct reduced iron. In fact, the import of diamonds to the EU from Russian Federation is still ongoing and only largest diamond mining firm Alrosa was sanctioned. As follows, clauses on import restrictions could be further adopted. In comparison with the EU – the United States (US) and the United Kingdom (UK) banned the import, purchases from the Russian Federation. Regarding the export restrictions, their expanding and aligning among the coalition countries has to be prioritized and achieved by the further expansion of them, better targeting production, for instance import to Russian Federation that would be difficult to replace, and unity, coordination among EU countries. Also, encouraging company-level self-sanctions is important as international companies may impose sanctions even on unsanctioned product categories. These restrictive measures may have even greater effect on trade and investment. However, many corporations still remain in solidarity with the Russian Federation. (*Svitlana Taran at European Policy Centre, 27 October 2022*)

(3) Prolonging economic sanctions to longer periods

Furthermore, the renewal periods have to be prolonged due to the current six-month period sanctions renewal is rather unhelpful. The restrictive measures imposed on the

Islamic Republic of Iran for human rights violation are extended annually. Six months period is nowadays considered rather short and a kind of encouragement for particular Member States to lift the economic sanctions, thus, undermining the EU unity. It is recommended to extend the same at least until Russian Federation troops leave Ukrainian territory. In addition, the functioning free trade agreement with the EU (DCFTA), the well-regulated EU-Ukraine Association Agreement will advance Ukrainian candidate status further as will help Ukraine to better integrate and substitute Russian Federation production with Ukrainian one on the market. (*Svitlana Taran, 27 October 2022*)

(4) Reinforcing prevention of circumvention of sanctions

Furthermore, to improve the effectiveness of sanctions we must look into the factors that limit it. The so called “wind-down periods” and exemptions lead to the opportunities of circumvention or weaker impact. In fact, the EU bans on supplies to and from Russian Federation were applied immediately to the new contracts. However, existing ones were not suspended during the wind-down periods. For instance, exports of equipment, technology and services for the Russian oil exploration industry under contracts concluded before 16 March 2022 could be executed until 17 September 2022 (subject to a notification requirement) (*Official Journal of the European Union, Council Regulation (EU) 2022/428 of 15 March 2022 amending Regulation (EU) No 833/2014, 15 March 2022*).

(5) Improving international coordination on sanctions

The restrictive measures were applied to embargoes to a limited extent. To some of steel and iron production they were applied, however not to cast iron and semi-finished steel products. Furthermore, new sanctions adoption process was postponed to 2023-2024, but the need of it at present remains as it influences the effectiveness of sanctions. Also, the insufficient coordination of export restrictions among coalition of partners undermines the sanctions effect. The major issues is that the Russian Federation proceeds with reorientation of its trade, foreign policies outside the restrictive measures coalition to the third countries. Thereafter, they use the imports for domestic state purposes and further direct domestic products for the export to the EU. This helps Russian Federation to receive, cover loses caused by the restrictive measures regime adopted so far. Thus, the decisions and guidelines have to be proposed. I agree with the Author that the mechanisms to detect and facilitate goods arrival into the EU could be strengthened. The states which are the main supporters of sanctions circumvention for the benefit of Russian Federation (such as the Republic of Belarus, the Islamic Republic of Iran) have to

be put under the restrictive measures regime applicable in their particular case. (*Svitlana Taran at European Policy Centre, 27 October 2022*)

(6) Implementation, designing of the Russian Federation's oil price cap

Concerning the level at which to set the price cap, the International working group on Russian sanctions advises to proceed with enforcement of oil sold at or under a price cap, approximately at \$35/bbl which is a \$50/bbl discount to the Brent price nowadays, after the EU embargo takes the effect (from December 5th 2022). This will help to achieve key objectives of the restrictive measures imposed against the Russian Federation, particularly will curb oil income and decrease Russian ability to fund invasion in Ukraine. The United States, the United Kingdom have prohibited gas and oil from the Russian Federation. Therefore, in the EU as the embargo comes into effect as per sixth restrictive measures package, these provisions should be taken into consideration. In fact, the Union of Soviet Socialist Republics fell apart due to the decrease in oil prices, thus it can be important for Ukraine. Later on the implementation mechanism will be required. (*The International Working Group on Russian Sanctions, 28 November 2022*)

To sum up all information above, to strengthen the effectiveness of restrictive measures several legal improvements can be made. For instance, the adoption of new sanctions towards import and export is required. Additional listings, licensing systems should be introduced for the nationals of Russian origin in regards to IT, export of equipment and other stuff needed for the war in Ukraine. Sanctions have to be imposed on Rosatom nuclear power company for restrictive measures circumvention, failure to implement the recommendations by the IAEA, etc. Periods for the economic sanctions have to be prolonged. "Wind-down periods", exemptions that lead to the opportunities of circumvention have to be targeted. The international coordination on sanctions should be maintained, strengthened. Russian Federation's oil price cap has to be implemented and well designed.

2.1.2. Legal strengthening of sanctions enforcement

After the discussion on strengthening of effectiveness of sanctions by the EU, the topic of their enforcement has to be reviewed. Even though sanctions are adopted at the EU level, individual Member States deal with their enforcement. After the military invasion started, the main focus was on the adoption not application of the restrictive measures. In fact, this may be due to the complexity of sanctions, the costs of implementation process and many political reasons.

(1) Strengthening Member States internal regulatory structures

As it is discussed by Mr. Kim B. Olsen and Mr. Simon FASTERKJÆR KJELDSSEN in the Article cited, it is important for Member States to have a well set internal regulatory structure. (*Kim B. Olsen, Simon FASTERKJÆR KJELDSSEN, September 2022*) The information on the activities mostly is under their control, supervision and is further communicated to the European Commission. The Member States are in duty to pass the information about the designated national authorities responsible for the implementation of the restrictive measures at the national level. In fact, this process is demanding and complex as states constitutional basis differ and multiple actors, institutions are involved. The Authors mentioned provide a suggestion to develop mechanisms with which this wide range of national instruments can be consolidated. For instance, by creation of the so-called “Sanctions Information Exchange Repository” database that will gather all of the reports from the national actors and deliver it for the European Commission. Furthermore, the Commission established an expert group to suggest on the enforcement procedure. The experts are from different EU countries, therefore they will be able to present to the European Commission a wide spectrum of national frameworks and practices on the implementation of sanctions. The third instrument mentioned in the Article is also notable and is about the anonymous information gathering from the natural and legal persons witnessed the possible circumvention. Moreover, from my perspective, the states governmental web sites must always list the current up-to-date authorities responsible for the enforcement. The transparency between the all current operating national authorities has to be maintained. Recently the Federal Republic of Germany established new federal crime agency responsible for the implementation of the anti-money laundering framework and economic restrictive measures. Other Member States can proceed with creation of the same institutions to ensure centralized enforcement of anti-money laundering regulations, economic sanctions. (*Kim B. Olsen, Simon FASTERKJÆR KJELDSSEN, September 2022*); (*David Savage, 8 July 2022*)

(2) The uneven punishments across the EU undermining compliance

The next important part of the sub-chapter is about uneven punishments across the EU. Therefore, the national courts are not yet equipped with the appropriate legal framework to ensure uniform application of the sanctions regime. Mr. Kim B. Olsen and Mr. Simon FASTERKJÆR KJELDSSEN indicated that the 27 separate court systems of the EU each apply their individual approaches, definitions and particularly in the cases when they consider a violation as an administrative offence or as a crime. The outcome of the same

is not satisfactory as national courts of the states would try to impose less penalty that is needed. In fact, twelve Member States have imposed criminal liability for the breach of the restrictive measures frameworks either EU regulations or international (the United Nations) one depending on the seriousness, damage or mens rea criteria. The other thirteen Member States have either criminal or administrative liability. Lastly, in the remaining two countries – only administrative penalties.

One of the most complicated issues is the judicial cooperation, cross-border element between the EU Member States. Most of such implementation, activities, other cooperation are focused on the criminal law, including EUROPOL, EUROJUST investigations help. However, no such actions can be undertaken if administrative offence occurs. Furthermore, as Mr. Kim B. Olsen and Mr. Simon FASTERKJÆR KJELDEN pointed out, the problems of lack of transparency and information spread are present in the enforcement procedures. The scarcity of published case-law, information is a notable loophole as the courts, authorities do not have an appropriate, available legal framework to assess penalties to impose and other measures in cases, therefore decreasing the legal certainty for parties across the EU Member States. Furthermore, to strengthen restrictive measures framework, the EU shall not re-invent new policies, instead it can look into the best practices such as with competition law, data protection. These practices differ from the common foreign and security policy (CFSP), however can be beneficial as evenly enforced in the EU Member States and still remain under the national authorities control. Therefore, if applied in unity, the risk of the offenders evading restrictive measures will decrease and internal EU market will be safeguard. (*Kim B. Olsen, Simon FASTERKJÆR KJELDEN, September 2022*)

(3) Ensure compliance for companies and individuals

The issue that will be discussed further is the importance of the mere will of responsible companies, natural and legal entities to combat restrictive measures evasion through preventing it's possibility for customers, business partners. And special attention, monthly or quarterly response, campaign from the EU and national authorities are required for proper enforcement and implementation. To achieve this, self-reporting, support of rule of law, legal certainty and even response to non-compliance has to be provided. Furthermore, as mentioned above, information sharing and cooperation should be assured between responsible national authorities, not only between the Member States and the EU. The national competent authorities as mentioned by the authors have to investigate the potential restrictive measures framework violations, demand from the

parties, companies to report the information, cease immediately the violations, order interim measures, put forward penalties or fines. Only then, it will be possible to provide legal framework for the competent authorities to proceed with cross-border joint investigations, enforcement with the EU counterparts. Member States will have to provide the national authorities with the resources for the same. The EU common registry has to be created for publishing purposes as well for the unified application of the restrictive measures throughout EU. This will be beneficial for the national courts to apply. (*Kim B. Olsen, Simon FASTERKJÆR KJELDSSEN, September 2022*)

In conclusion to the enforcement aspect, it must be said that the need of unity, regulatory-legal framework for the enforcement practices throughout the EU is on the agenda. It can be improved by including the same into upcoming regulations in 2023. The EU principle of subsidiarity will not be breached, instead the EU framework on restrictive measures will be enhanced.

2.1.3. Confiscating Russian Federation's sovereign and personal assets to fund Ukraine's reconstruction

First of all, it should be noted that there is an important distinction between freezing assets meaning the prevention of their use and confiscation of them – removing title from the original owner. In fact, reconstruction costs and funding sources would be needed for Ukraine soon. As of today, the so called “freeze and seize” approach was introduced by the EU with the aim to identify, freeze, confiscate assets. The Directive (*European Commission: Proposal for a Directive of the European Parliament and of the Council on asset recovery and confiscation, 25 May 2022*) has been proposed, however the focus of it is set on the assets of individuals involved in criminal activities. It does not contain proposals for confiscation of sovereign funds. (*Eamonn Noonan, 26 October 2022*)

Furthermore, in international law, the responsibilities of states include termination of violations and provision of reparations to the victim. There is sufficient historical precedent for reparations during a war in the past. Russian Federation's invasion in Ukraine can be compared to the Republic of Iraq's one with attempted annexation of the State of Kuwait. In February 2022, United Nations Compensation Commission was established, created by United Nations Security Council (UNSC) and reparations of 52 billion were forced to be paid. The same approach can be taken towards the Russian Federation for Ukraine.

However, issues may arise as the Russian Federation due to its nuclear weapon

arsenal is believed not to be defeated militarily. Secondly, the aggressor is one of the five permanent members of UNSC and therefore can veto reparation claims. Nevertheless, both these issues can be resolved by confiscating assets outside of the Russian Federation. (*The International Working Group on Russian Sanctions, 11 October 2022*). It is also important to mention the principle of sovereign immunity, as it is one of the key obstacles to ensure confiscation even outside of the Russian Federation. State assets are immune all over the world and this can be overturned only through the adoption of new practice by states, international organizations and change of international legal norms and customs. For instance, UN General Assembly can issue a resolution stating the same or a group of states can conclude a multilateral treaty on confiscation of Russian sovereign assets. Furthermore, international tribunal can be created and impose confiscation of Russian state assets. (*UN, 2 December 2004*)

Notable results at this stage in preparation to confiscation was achieved by Canada which adopted the relevant law (*Bill C-19; Division 31, para. 436-444*) that established the possibility of applying sanctions in the form of confiscation of both property of states and private persons due to violations of the international legal order and security, gross violations of human rights by such states and persons. Therefore, the Governor in Council may “by order, cause to be seized or restrained any property situated in Canada that is owned or that is held or controlled, directly or indirectly by sanctioned persons or states”. However, Canada has not yet passed any relevant decisions regarding the implementation of such measures in practice.

Furthermore, personal assets confiscation should be discussed. Regarding the Draft Directive mentioned above on asset recovery and confiscation, it has positive aspects as its contents, rules established are limited not only to the sanctioned Russian Federation oligarchs, but to any person suspected of having committed financial crimes including non-EU natural and legal persons (*Bogdan Bibicu, Jitka Logesova, Olimpia Farcas, June 2022*). According to the Rome Statute of ICC, responsibility for committing crimes is not limited exclusively to the deprivation of liberty. Criminal prosecution can be an option as well. Thus, the Statute establishes that, along with the deprivation of liberty, the court may impose a fine or confiscation of income, property and assets obtained directly or indirectly as a result of the crime (Part 2 of Article 77), and may also issue a separate resolution on compensation for damages to victims in the form of restitution, compensation, rehabilitation, in accordance with Article 75 of the Statute. Therefore, in

case of conviction of a person by the International Criminal Court or another similar international tribunal, the person may be subject in the respective sentence to liability in form of fine, confiscation of property, obligation to compensate victims. These amounts cannot cover whole sums needed for reconstruction of Ukraine, however if causality of affiliation to the armed conflict and the person's identity will be proved – these amounts will still benefit Ukraine. (*Overview of alternative tools to stop the war and sources of post-war reconstruction of Ukraine*, by Tetyana Khutor, Andriy Klymosyuk, Taras Ryabchenko, Andriy Mikheev, 2022); (*Institute of Legislative ideas: "Sanctioned confiscation of private assets. Essence and implementation"*, by Tetyana Khutor, Andriy Klymosyuk, Taras Ryabchenko, Andriy Mikheev, 2022);

The Ukrainian draft law № 7194 on increasing the effectiveness of sanctions related to the assets of individuals based on which the law of Ukraine 2257-IX of 12 May 2022 was adopted and is already being implemented, will serve as important example for other countries to implement confiscation provisions. The President of Ukraine Volodymyr Zelenskyi signed Law No. 7194 "On Amendments to Certain Laws of Ukraine Regarding Increasing the Effectiveness of Sanctions Related to the Assets of Individuals", which was adopted by the Verkhovna Rada. Regarding its implementation, notably, Russian oligarch V. P. Yevtushenkov's assets in Ukraine were confiscated (*Institute of Legislative ideas: "Sanctioned confiscation of private assets. Essence and implementation"*, Tetyana Khutor, Andriy Klymosyuk, Taras Ryabchenko, Andriy Mikheev, 2022). The conditions for the confiscation of assets are mentioned in the Article 5-1 of the Act № 7194 above. Firstly, preliminary imposition of sanctions on assets is carried out in the form of blocking. Secondly, the confiscation applies towards the period of validity of the legal regime of martial law. The main advantage of the law № 7194 is the establishment of an exclusively judicial procedure for the confiscation of assets. Furthermore, the confiscation is reflected in the Act as a type of sanctions, not as a separate independent instrument. Therefore, the list of persons to whom the confiscation applies is clear.

However, Ukrainian law should still be further improved to reduce the risk of human rights-based judicial challenges, f. e. in the ECtHR. The criteria set in Article 1, of Protocol 1 to the ECHR must be satisfied. Namely, confiscation should comply with the principle of legality, pursue a legitimate aim and be proportionate to purpose as discussed further.

The principle of legality means that the provisions must be sufficiently accessible,

predictable and accurate in their application. In the Ukrainian law № 7194 the basis for confiscation is defined in a wide manner, namely “the creation of a significant threat to national security”, “significant facilitation of such actions by others”. The absence of criteria of “significance of threat” and “significant degree of facilitation” can mean lack of predictability, accuracy for individuals. Also, according to the principle of legality, multiple necessary procedural safeguards have to be provided in this legal act.

Secondly, the purpose of applying restrictive measures must be clear and proportionate to the social significance (public benefit). The legitimate aim indicates what law actually prescribes, actions that must be stopped after application of sanctions and directions of use of confiscated funds. In the Ukrainian law № 7194 the further fate of confiscated assets remains uncertain. It is not foreseen how they will be transferred in the state income. Therefore, the transparency, legal certainty have to be maintained. In this case, defined directions of the sanctioned assets have to be established, it will guarantee the use of funds for the chosen purpose.

Concerning the proportionality criteria, the Ukrainian law № 7194 currently does not comply with the requirements. The conditions to secure proportionate, non-excessive burden for the parties have to be established. In fact, the court can confiscate all assets of a party. In order to deal with this issue, the list of property that can not be confiscated should be added to the law. This will safeguard basic rights of a person. Furthermore, it is important to enshrine in the provisions the dependence between the amount of confiscated assets and person’s actions which became the basis for such sanction. (*Institute of Legislative Ideas, 1 May 2022: The second attempt to confiscate Russian assets: the main risks of draft law 7194*)

To sum up the sub-chapter, Ukraine has not only frozen, but implemented confiscation of assets into the national legislation. Other countries still continue looking for legal mechanisms to implement the instrument of confiscation of sovereign and personal assets of those responsible for the invasion and facilitation of it. The main obstacle for this process is the need to ensure the legality of such procedure and its compliance with the principle of the rule of law. Moreover, it is mainly about the issue of proper protection of the right to sovereign immunity, private property, which are inherent pillars of the legal systems of democratic states. (*Tetyana Khutor, Andriy Klymosyuk, Taras Ryabchenko, Andriy Mikheev, 2022*); (*Zia Ullah, Victoria Turner, 07 July, 2022*)

2.1.4. The need of designation of Russian Federation as a state sponsor of terrorism and how Ukraine will benefit from it

One of the recommendations provided by the legal professionals, including the International working group on Russian sanctions, is for states to designate Russian Federation as a State Sponsor of Terrorism (SST). Particularly it is referred to the USA and Canada as such designation is included, covered in their existing legal basis. This designation would formalize the truth based on the events what is currently happening in Ukraine as well as would expand the scale, scope, and effectiveness of the sanctions. This designation will not lead to financial benefit, for instance will not influence confiscation application, however will expedite the improvement of the EU legal framework and development of new legal measures to effectively sanction and confiscate the Russian Federation and implicated subjects. It must be noted that there is no one international article or legal act with all of the criteria in order to define which activities may fall under the State Sponsor of Terrorism category. Moreover, the EU does not have a formal, official denotation for SST in comparison to the US.

In the US, the designation would lead to restrictions on transactions. This would mean that it will be illegal for the US natural and legal persons to engage in financial transactions with the Russian government. Also, secondary sanctions, individual sanctions will consequently follow. This will increase the level of financial control over many Russian companies and allow the US to impose trade, economic sanctions on other countries, natural and legal persons which continue to cooperate with Russian Federation. Also, the SST designation in the US will lead to loss of sovereign immunity for Russian Federation from legal proceedings against it and compensation. However, the negative aspect of the designation would be that only Americans could claim to receive the Russian assets, not Ukraine. (*Recognition of Russia as a state sponsor of terrorism: how will Ukraine benefit from this financially?*, by Tetyana Khutor, Andriy Mikheev, 2022)

On the 23th of November 2022 the European Parliament issued a resolution recognizing the Russian Federation as “a SST and as a state which uses means of terrorism”. The multiple breaches of international humanitarian law, human rights, other violations amounted to the acts of terror. Based on the EU Treaty (and the functions of individual EU institutions), the European Council could issue Conclusions declaring Russian Federation a terrorist state and then call on the EU institutions to design and

impose further relevant sanctions. (*International working group on Russian sanctions, 28 September 2022*); (*Viktor Almqvist - Press Officer, News European Parliament, 23 November 2022*).

2.2. Circumvention of sanctions and measures to prevent it

2.2.1. The problem of the circumvention of sanctions

It must be said that there is a circumvention of the EU restrictive measures on export to and import from the Russian Federation to the EU. Almost all sanctions cover a ban on circumvention, as it decreases their effectiveness.

The eighth sanctions package included the provisions on the restrictive measures circumvention. Notably, the European Commission provides (in Council Regulation № 2022-1905 amending Regulation № 269/2014) that it will list “natural or legal persons, entities or bodies facilitating infringements of the prohibition against circumvention of the provisions of the Regulation and of Council Regulations” (*Council Regulation (EU) No 269/2014 of 17 March 2014, (Art. 1 (1) (h)*). This would apply for instance to the companies that purchase goods in the EU and then intentionally or knowingly transport them to the Russian Federation through the third countries (*Richard Gibbon, José María Viñals, Diego Sevilla Pascual and Collis Abrahams on 30 September 2022*). Article 12 of the Council Regulation № 833/2014 provides that it is prohibited to participate, knowingly and intentionally, in activities, the object or effect of which is to circumvent prohibitions indicated in the Regulation. (*European Commission: Directorate-General for Financial Stability, 31 May 2022*)

Russian Federation seeks to find new routes of export and import to the EU through the third countries, including the Republic of Belarus, Central Asian states. For instance, Russian Federation logistics companies circumvent import bans. Ms. Svitlana Taran in the Article on strengthening of sanctions imposed by the EU, denotes that circumvention may occur in the following ways indicated in the Table № 2 below:

Table 2. Circumvention of import sanctions on Russian Federation by its logistics companies

| № | Circumvention | Description |
|----------|--------------------------|---|
| 1. | Import via third country | When sanctioned production is imported into the third country, cleared by customs, resold to the Russian Federation |
| 2. | Direct re-export | Same procedure as per № 1, however the goods are purchased by the third country |

| | | |
|----|--------------------|--|
| 3. | Indirect re-export | Sanctioned production is purchased by the third country, resold to Russian companies during the transit in the EU, then imported to Russian Federation |
| 4. | False transit | Sanctioned production is delivered into the territory of Russian Federation with documentation indicating the further transit to the third country; production enters the customs and is further resold to Russian companies |

Source: Svitlana Taran, 27 October 2022: Strengthening the impact of EU sanctions against Russian aggression in Ukraine

Also, Russian military manufacturers use different schemes to circumvent restrictive measures for dual-use items (needed for military purposes). Therefore, the same evade sanctions by establishment of the companies, businesses-intermediaries in the “friendly” third countries, consequently falsifying description of goods or importing individual components to the Russian Federation.

Furthermore, the documentation can be falsified to conceal the production state of origin as follows. The Russian Federation manufacturers to circumvent export to the EU, usually mix, refine restricted goods (for instance, iron, steel, oil and coal) in third countries before transportation of the same to the EU or other countries. The example which Ms. S. Taran mentions is about the crude oil that is mixed with other country’s one in proportion before export to the EU. In the documentation the oil is defined as of non-Russian Federation origin. (*Svitlana Taran, 27 October 2022*)

It falls within the competencies of the national authority of the EU Member State to decide on possible cases of circumventions within their jurisdiction. Enforcing sanctions provisions is a matter for the responsible national authorities and any information regarding possible circumvention should be reported to them (*European Commission: Directorate-General for Financial Stability, 31 May 2022*). The EU provided many instruments in order to prevent money laundering, circumvention through information notices on the restrictive measures in detail for businesses to understand and to comply.

Lithuanian Public Institution Centre of Excellence in Anti-Money Laundering indicated the most common methods in which businesses circumvent sanctions in its notices. Firstly, forgery of documentation during either import, export or transport of goods, for instance hiding true origin of goods or the final recipient of the production. Secondly, the changes made to the documentation by indicating of a third country which borders on Russian Federation as a final destination place of goods. For example, it might concern Georgia or the Republics of Kazakhstan, Belarus. Lastly, companies may change

payment methods, banks or companies in order to avoid restrictive measures. If such violations, prohibited activities are identified by a natural or legal persons, it is obligatory for them to report by contacting the Ministry of Foreign Affairs or submitting an anonymous form created by the European Commission. Administrative or criminal liability may follow for the perpetrators. In the Republic of Lithuania, Article 515 of the Code of Administrative Offences (25 June 2015, XII-1869) provides that breach of international sanctions implemented in the Republic of Lithuania will be punishable by a fine of between two hundred and six thousand euros. Furthermore, according to Article 123 (1) of the Criminal Code (26 September 2000, VIII-1968) offender has consequently caused serious damage to the interests of the Republic of Lithuania and will be liable to a fine or arrest or imprisonment for up to five years. (*Public Institution Centre of Excellence in Anti-Money Laundering, 16 March 2022*)

Nowadays, cryptocurrency is one of the main sources of the circumvention of taxes and especially money-laundering. The regulation of the same should be evaluated in terms of restrictive measures and the International working group on sanctions has provided the same. These activities with the digital currency lead to the gross loopholes for the sanctioned natural and legal persons from the listings. In this case the International working group on sanctions has to be credited for the opinion that as for now all of the transactions with cryptocurrency in the Russian Federation and the Republic of Belarus should be prohibited. Later on, through the Know Your Customer (KYC) procedures, banks would be able to figure out the circumvention of the digital currency. However, I agree with the International working group on sanctions that this approach is the only possible at present. The further percentage from the transactions occurred, the Group proposes to take as a fine: “20% in order to support the reconstruction of Ukraine on any crypto transfer” along with a ban on these activities as stated above. (*International working group on Russian sanctions, 22 November 2022*); (*Kristen E. Busch and Paul Tierno, 4 May 2022*)

To sum up, the circumvention of sanctions undermines their effectiveness. The sanctioned states search ways to evade different types of restrictive measures imposed in various sectors. The Member States deal with the enforcement of sanctions, therefore must take action to tackle the problem of circumvention.

2.2.2. The measures that can be taken to prevent circumvention

It is important to identify possible measures that can be taken to prevent the circumvention of restrictive measures in the EU.

Firstly, companies in the sectors as transport, aviation, high-tech, aerospace, luxury goods must operate with caution and consider the end user of the production and the way restrictive measures may impact their functioning. The Council Regulations are comprised of Annexes that contain listings with goods that are sanctioned and of Articles that include applicable prohibitions.

Furthermore, the due diligence has to be conducted for all business activities and transactions. It means that companies shall provide assessment of the same. Individuals', entities', directors', representatives', the Ultimate Beneficial Owners' (UBOs), involved in the transactions, origin should be known. Consequently, the companies will be assured that no economic resources are directly or indirectly made available to the parties sanctioned and will have the necessary knowledge which persons or parties receive income, remuneration, benefits, compensation, etc. Additionally, internal controls have to be established in order not to indirectly transfer funds to the Russian Federation, to always be aware of the final end-user or users of the production or services.

The importance of interpretation of sanctions and circumvention of the same has to be noted by the businesses. If a party fails to prove that sufficient measures were upheld in order to prevent the violation, for instance after production or funds were made available to the sanctioned party, liability may follow. In fact, restrictive measures are interpreted in broad manner, based on the aim of the measures. Although certain activities are not strictly prohibited, they can yet fall under the scope of the restrictions if they have the effect of circumventing sanctions. Therefore, if new business activities are set, it is important to ensure that transactions do not circumvent restrictive measures regulatory framework. (*NautaDutilh's AML & Sanctions team, Marleen Velthuis, Marike Bakker, Francien Rense, 2022*); (*Eversheds Sutherland, Zia Ullah, Victoria Turner, 07 July, 2022*)

As for the restrictive measures in energy and trade categories, in order to prevent falsification of documentation indicating for instance mixed production, due diligence should be maintained. This means that where needed, the license should be claimed and checked, as well as all applicable documentation, including bills. Therefore, attention has to be paid to the end-users of goods, country of origin, recipients of the production. The goods that are at risk for the use in military or close to the sanction list production have to

be banned to deliver to Russian Federation, the Republic of Belarus. The International working group on Russian sanctions proposes for the convenience and further processes to adopt blacklists, greylists and registry of those companies which facilitated sanctions evasion or can potentially proceed with the same. They should be taken under supervision by the authorities. Therefore, the immediate and future enforcement actions should be undertaken, combined sanctioned list, offender list, list of those at risk have to be adopted and updated on a regular basis. (*International working group on Russian sanctions, 22 November 2022*)

In regards to the new emerging problem of the falsified acquiring of the visa and master-card cards in various banks, the pressure on the same should be imposed. The enforcement as well as regulatory framework enhancing the scope of restrictive measures have to be adopted. It is important to note that the Russian citizens should receive payment cards not only after presentation of the national code or issuance number, but also other evidence of the residence permits. For instance, utility bills must be presented in order to avoid falsifications of the permits. Towards the banks which cooperate, enhance or proceed with the sanctions circumvention, measures have to be applied. Furthermore, it is important to sanction Russian Federation banks such as Gazprombank, however a precisely stated exemption for the energy-related payments could be mentioned if needed.

The International working group proposes for the European Commission and other international institutions to adopt listings of the companies, entities, individuals that are under high risk of participation or in any other way supporting sanctions circumvention. The information sharing on Russian evasion schemes is also important to mention as Russian Federation proceeds with different approaches towards sanctions evasion through falsification of documentation, changing customs ID codes and other measures to change trade data and consequently circumvent sanctions imposed. Furthermore, the following parties, natural and legal persons have to be sanctioned: producers of military production; trading and commercial companies which are related to the import in the Russian Federation as well as intermediaries (businesses) engaged in the cooperation in between the countries.

The International working group on sanctions provided recommendations for business sector where the holding companies and oligarchs are present. Therefore, both of them as well as branches and other ones connected with the group of entities have to be restricted, sanctioned. This will help to close loopholes, possible sanctions circumvention.

Furthermore, the restrictive measures should target not only the UBO of the assets, but also any third party that was entitled to the same. As it can be seen from the information mentioned in the sub-chapters above, this is a usual practice for sanctions circumvention and therefore needs to be restricted. (*International working group on Russian sanctions, 22 November 2022*)

In addition, recently the European Commission proposed to criminalize throughout the EU violation of the EU restrictive measures and thus, strengthening criminal offences and penalties for such behavior. The Commission main focus is to make the investigation, prosecution and punishment of sanctions violations easier in all Member States in the same way, consequently closing loopholes and establishing consolidated approach of states in these procedural actions. This will help to deal with assets in cases as, for instance transferring ownership of sanctioned property to a non-sanctioned third party to hid their assets. Criminal offences will cover EU restrictive measures breached through bypassing or attempt to bypass them by concealing funds or concealing the fact that a person is the ultimate beneficial owner of the funds. In regards to common standards for the penalties, depending on the offence, the individual could be liable to a penalty of five years imprisonment. Companies could be liable to penalties of not less than 5% of the total worldwide turnover of the legal person in the business year preceding the decision of fines imposition. Therefore, a list of criminal offences, which violate restrictive measures imposed, will be provided. For instance, this may include offences for making funds or economic resources available for the sanctioned individual or entity. Also, this will concern failures to freeze these funds, entry of designated individuals to the EU Member State or transit through the same. The criminalization would apply to the entrance into prohibited or restricted transactions with third countries, providing such financial activities or trading such goods or services whose import, export, sale, purchase, transfer, transit or transport are restricted or prohibited by the EU sanctions regime. Furthermore, the provision of prohibited or restricted services, such as trust, legal advisory, tax consulting would also constitute a criminal offence. (*European Commission, press contacts to Christian Wigand, Katarzyna Kolanko, Christina Torres Catillo, 2 December 2022*); (*Council of Europe, press contact: Verónica Huertas Cerdeira, 30 June 2022*)

Therefore, criminalizing the certain actions, proper listings of them, new regulatory framework, laws adoption and caution from the businesses', companies' and individuals' side will lead to the effectiveness increase of the restrictive measures currently imposed.

2.3. Compatibility of restrictive measures with the principles of human rights, proportionality and necessity

It is important to ensure compliance of the 2022 EU sanctions framework against Russian Federation with the existing legal basis in order to prevent human rights violations. In this sub-chapter the most important criteria will be reviewed.

To start with, the Council Regulation 2020/1998 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses was adopted. It emphasizes that the restrictive measures imposed should include derogations, including for the humanitarian purposes such as delivering or facilitating the delivery of assistance, including medical supplies, food, or the transfer of humanitarian workers and related assistance or for evacuations as discussed above. Furthermore, according to the para. 1 of Article 4 of the same Regulation, the Member States may authorise the release of certain frozen funds or other economic resources if they are necessary to satisfy the basic needs of natural or legal person; are required for payment of provision of legal services; for maintenance of frozen funds or economic resources or are necessary for extraordinary expenses. Within two weeks the Member State should inform other states and the Commission of granting of such authorisation from para. 1 of the same Article. Also, restrictive measures must comply with the objectives of the common foreign and security policy set out in Article 21 TEU.

Secondly, the personal sanctions have to comply with the principles enshrined in the ECHR. The fundamental rights of the sanctioned parties have to be maintained. Notably, the principle of proportionality, protection of property, right to fair trial, etc. have to be ensured. The right to protection of property can be derogated for the purposes of public interest, subject to the conditions provided for by law and by the general principles of international law (Art. 1 of Protocol 1, ECHR). These and many procedural aspects (for instance, the rights of the defence and the right to effective judicial protection) have to be satisfied in order to prevent or reduce cases of annulment of sanctions. According to the Article 263 of TFEU, the Court of Justice of the European Union can review the legality of acts of the Council, of the Commission. The grounds for the review are as follows: lack of competence, infringement of an essential procedural requirement, infringement of the Treaties or of any rule of law relating to their application, or misuse of powers.

Other criteria is set in the Article of the year 2018 by Authors cited below. The

meaning of the principle of proportionality is seen as that the state aligning sanctions must limit itself to those restrictive measures that can achieve the objective they seek. Therefore, this is a so-called balancing tool which indicates the measure and its possibility of acquiring the results expected. And the States can not chose the measures that in their opinion are necessary, but the same should be evaluated on its future effect in achieving of the objective.

Furthermore, I agree with the authors that if the economic sanctions do not pass the necessity test, of the general EU principle of necessity, they are deemed as illegal. The necessity test reflects whether the measures imposed are necessary in a democratic society or community and whether the objectives pursued are legitimate under the international law. The answers to the criteria questions are presumed affirmative after the multiple violations by Russian Federation of international law, human rights frameworks and the need of change in the aggressor state's politics.

In further criteria, the authors note that the restrictive measures are normally used in the aftermath of conflicts and in order to coerce countries to stop infringement of the state sovereignty of a country. (*Gutmann, Jerg; Neuenkirch, Matthias; Neumeier, Florian; Steinbach, Armin, 2018*)

Therefore, the 2022 EU restrictive measures framework is set according to the legal principles of proportionality and necessity and does not violate EU and international legal provisions.

CHAPTER III

Comparative analysis and complex implementation of the sanctions in the example of the Kaliningrad transit

3.1. The complexity of implementation of sanctions by the EU Member States in case of Kaliningrad region transit issue

To start with, it is important to understand the complexity of restrictive measures and how far it can get in practice. The resources online and offline on this topic are limited, however, it is important to analyze the situation on the surface and try to provide a summary with opinions, proposals on this matter.

In July 2022 the Republic of Lithuania restricted transit for the trains and trucks from the Republic of Belarus following restrictive measures regime imposed by the EU. Russian Federation's representatives misunderstood and falsified the event calling it a blockade, even though the trains entering the border of the Republic of Lithuania contained mostly goods which were on the sanctions list. The Republic of Lithuania maintained the requirements set by the European Commission as the ban of transit of sanctioned goods was provided on 17th of June 2022 when restrictive measures entered into force as per fourth package adopted on 15 March 2022. The list included concrete, wood, alcohol and alcohol-based industrial chemicals. On 11 July 2022 the Republic of Lithuania expanded restrictions on the transit of goods. On 13 July 2022 the EU Commission passed new guidelines for the transit of goods (steel, iron for instance) from Russian Federation through the Republic of Lithuania by train to Kaliningrad region confirming the legality of Lithuania's actions (*European Commission: Sanctions adopted following Russia's military aggression against Ukraine, 2022*). Nevertheless, the European Commission decided to allow the transit of certain goods to Kaliningrad through rail transit and not road at the end of July after revision of its sanction recommendations. Consequently, the Commission changed its approach, created further loopholes by setting Guidelines which establish such exception for rail transit from the Council Decision clauses. As mentioned above, the exceptions create the possibilities to circumvent sanctions.

According to the Article 29 of TEU and Article 215 of TFEU, the Council has a right to impose sanctions on third countries. Furthermore, both Council Decisions and Regulations enter into force as legal acts. Council Decision establishes a proposal for

Council Regulation on a scope for sanctions implementation. The regulations apply automatically towards all Member States. The application of restrictive measures is for each country to implement in its own jurisdiction.

As the Commission adopted Guidelines at the end of July which allow rail transit, it is important to review their nature and legal effect. Under the Article 292 of the TFEU the European Commission can issue guidelines for better understanding of the legal provisions indicated in its decisions. The Article 288 of TFEU provides that recommendations and opinions should have no binding force, in fact.

Few decisions were passed by the Court of Justice of the EU (CJEU) that provide some clarifications on the Guidelines and their force. In the case of *Polska Telefonia (2010) (Polska Telefonia (C-99/09) (2010) ECR I-06617)* Polish Supreme Court turned for the ruling to the CJEU with queries regarding the applicability of guidelines to individuals, however by incident, the Court additionally offered some orientation regarding the binding force of such measures for national authorities. Therefore, the Court mentioned that those guidelines are not binding and we can see it by that they were published in the “C” series of the Official Journal, which is “not intended for the publication of legally binding measures, but only of information, recommendations and opinions concerning the EU”. However not binding, the Court noted that as per usual practice, guidelines should be taken into consideration by national authorities as they summarize case-law and effect competition policy on the state level. Furthermore, there is a case of *Ijssel-Vliet Combinatie (1996) (Ijssel-Vliet Combinatie (C-311/94) (1996) ECR I-5023)* which concerned the status of the Commission guidelines in the implementation of national aid schemes. Therein, the Court stated that Member States if accepted the Guidelines provisions, are bound by them. Thus, in this case, the criteria was about the existence of a specific duty of cooperation based on a specific legal basis and the acceptance of the soft law measure by the Member State concerned. In the later decision of *Germany v. Commission (2000) (Germany v. Commission (C-288/96) ECR I-8237, paras 64–65)*, the Court overruled the Ijssel case by adding that only approval on the side of the Member State confirms the binding force of the given soft law measure for the Member State concerned (*Petra Lea Láncoš, 2018*). Therefore, the Republic of Lithuania maintained the EU law and could further escalate the case of non-transit of sanctioned goods by trains through its territory to Kaliningrad. As in the cases mentioned above the opportunities exist not to follow soft law with non-binding force, Commission’s guidelines. However, at the same time, we can see that CJEU sets different criteria with

individual approach towards each case and exceptions to the rule enshrined in TFEU. European Commission could file a lawsuit against the Republic of Lithuania, escalate infringement procedure under Article 258 of TFEU and the ending of this case would be hard to predict as special attention could be given to the European Commission's position.

Thus, the Republic of Lithuania imposed restrictions on the freight train transit targeting transportation of iron, steel, cement, alcohols and other materials. This production is mentioned, indicated in the consolidated version of Regulation № 833/2014, June 2014 (*Council Regulation (EU) No 833/2014 of 31 July 2014*). According to the Article 3g) it is prohibited to import and transport iron and steel products. Furthermore, there is a prohibition to import, export, purchase or transfer goods such as cement, alcoholic liquids under Annex XXI (Art. 3i, para 1a and 1c). Articles 3g and 3i are effective from June 17th and 10th of July 2022. In this respect, the Republic of Lithuania maintained its obligations by imposing the ban as per specified Articles of the Regulation on the transport, import, transfer of goods. The Articles mentioned above lack "transit of goods" term denotation. And in Article 31 (para 1) it is stated that "it should be prohibited for any road transport established in Russia to transport goods by road within the territory of the Union, including in transit". However, further going, the Article 31 contains a loophole (para. 2) noting that "the prohibition in paragraph 1 shall not apply to road transport undertakings transporting goods in transit though the Union between the Kaliningrad Oblast and Russia, provided that the transport of such goods is not otherwise prohibited under this Regulation". Therefore, as there is no other Article that regulates transit, it is possible to argue and the Russian Federation did, that all forms of transit, including restricted goods by train, are not prohibited. This is a major loophole that the Republic of Lithuania encountered. In the Guidelines adopted the Commission is referring to the Article 31 indicating that transit by rail should be allowed and "the Member States should check whether the transit volumes remain in the averages of the last 3 years to avoid circumvention of the sanctions".

It is important to note that international law framework can be investigated in order to deal with this situation, as after the above-mentioned discussed I agree that current EU restrictive measures regime does not provide grounds to stop the transit (*Finn-Ole Albers, supervisor: Kacper Gatlik, 8 November 2022*). The Commission guidelines refer to the Article 19 and Article 99 of the EU-Russian Federation Agreement on Partnership and Cooperation (PCA) (*Consolidated text, 01 April 2016*) that on grounds of public security, transit can be restricted and prohibited. Article 99 denotes that nothing shall prevent a

Party from measures to protect its security interests. Furthermore, Article 21 of the General Agreement on Tariffs and Trade (GATT) provides the possibility to restrict the trade of goods due to the security interests. Nevertheless, in the Guidelines the Commission refers to Article 5 GATT and Article 12 PCA which establish “a general principle of freedom of transit.” This principle still is in the priority for the European Commission. Also, the obstacle for the Republic of Lithuania can be that transit between Russian state and Kaliningrad is regulated by a Council Regulation from 2003 (No 693/2003) which set the conditions for Russian Federation transit (*Finn-Ole Albers, supervisor: Kacper Gatlik, 8 November 2022*).

It must be noted that, even though the soft law Guidelines were passed and the Commission sets pressure on the Republic of Lithuania to maintain them, Kaliningrad region transit settlements will depend on banks only and “challenges” Russian Federation may face during this process. Payments for Kaliningrad transit are beyond Government’s competence. States can not force banks in any way, it will depend on their decisions whether to continue processing payments for the transit settlement. (*Transport Minister, 3 August 2022*).

To sum up, the transit of sanctioned goods by road is not allowed according to the Guidelines. However, no such specific regime applies to the rail transport on the same route, without prejudice to Member States’ obligation to perform effective controls, in accordance with the EU law. The transit of sanctioned military and dual use goods and technology, as defined in Regulation (EU) 2021/821 (*13 July 2022*), is prohibited in any event.

Therefore, the EU Regulations could be amended to introduce prohibition of transit by rail. The provisions of the Council Regulation (No 693/2003) mentioned above and many more ones regarding relations with Russian Federation can be withdrawn by unified decision of the EU (*Finn-Ole Albers, supervisor: Kacper Gatlik, 8 November 2022*). The sanctions are complex in their nature as they go along with the existing legal acts, impose prohibitions and ideally should be clear and detailed with no further chances of circumvention.

3.2. Restrictive measures frameworks in the United Kingdom, the United States of America

As the EU, the United States of America (USA/US) and the United Kingdom of Great Britain and Northern Ireland (UK) have progressively imposed restrictive measures on

Russian Federation for violation of territorial integrity, international law, human rights, etc. of Ukraine and its people. Consequently, the US sanctions framework brief summary will be followed by the UK restrictive measures regime in this sub-chapter.

Since March 2014 the US imposed sanctions on transactions, new investment ban and trade embargo, authorization of certain transactions under general and specific licenses, penalties were imposed for violation of the same. Currently, in the USA, the President (Mr. J. R. Biden Jr.) issues orders. The administrative actions are taken by the Department of the Treasury’s Office of Foreign Asset Control (OFAC) as well as by the USA Department of Commerce’s Bureau of Industry and Security (BIS). The US listings of sanctioned include natural and legal persons which fell under the Specially Designated Nationals and Blocked Persons (SDNs) category. What is more, all transactions or assets kept by the US nationals for SDNs were blocked in 2022 and the parties were banned for such cooperation in the future. Additionally, the Treasury Department noted the importance for the Russian Federation economy of such financial institutions as Sberbank and Alfabank assigning them under the SDN category. Such first steps were beneficial especially for the businesses based in the US or international ones to consider withdrawal from the cooperation with the SDNs listed. As the US is a country with innovative technological production, new licenses and strict review called “policy of denial” were imposed on such goods to Russian Federation for the export. Furthermore, the restriction on the investment to the Russian Federation was upheld for obvious reasons (*Michael Volkov, 26 April 2022*). There is an extensive list of the production and goods for which licenses are required.

Table 3. Overview of sanctions imposed in 2022

| Regulatory framework | Description |
|--|--|
| Executive orders (Legal framework for the sanctions) | 14065 - Blocking Property Of Certain Persons And Prohibiting Certain Transactions With Respect To Continued Russian Efforts To Undermine The Sovereignty And Territorial Integrity Of Ukraine (21 February 2022) |
| General licenses | <ul style="list-style-type: none"> • Number 18 - Authorizing the Exportation or Reexportation of Agricultural Commodities to the Coronavirus Disease 2019 Pandemic; • Number 19 - Authorizing Transactions Related to Telecommunications and Mail; • Number 20 - Official Business of Certain International Organizations and Entities • Number 21 - Authorizing Noncommercial, Personal Remittances and the Operation of Accounts |

| | |
|--|--|
| | <ul style="list-style-type: none"> • Number 22 - Authorizing the Exportation of Certain Services and Software Incident to Internet-Based Communications (21 February 2022) • Number 23 - Certain Transactions in Support of Nongovernmental Organizations' Activities (11 March 2022) • Number 24 - Transactions Related to the Provision of Maritime Services (18 March 2022) • Number 25 - Journalistic Activities and Establishment of News Bureaus in Certain Regions of Ukraine (24 March 2022) • Update to the List of Medical Supplies for Ukraine-/Russia-Related Sanctions (31 May 2022) |
|--|--|

Source: based on – US Department of Treasury: Ukraine-/Russia-related Sanctions, 2022

To conclude the United States legal framework, firstly executive orders by the President and the Congress public laws statutes are passed. Then their provisions are incorporated into the Code of Federal Regulations (CFR). The further alterations are added to the Federal Register. The legal acts undertaken, supplemented in the US are Executive orders, Determinations, Statutes, Federal Register Notices, Code of Federal Regulations (*US Department of Treasury: Ukraine-/Russia-related Sanctions, 2022*). Furthermore, the impact of restrictive measures and export controls on the Russian Federation from the US side as summarized by the Treasury Department is notable. (*US Department of State: The Impact of Sanctions and Export Controls on the Russian Federation, 20 October 2022*)

Therefore, the US main focus of sanctions on Russian Federation is directed towards export regulation and import controls. The enforcement order of respective institutions, imposing and implementation of sanctions are noted. Although the US is composed of multiple states, it is still represented and united as one single country in comparison with the EU and the Member States. Consequently, CFR and other hard law legal acts are undertaken, maintained by the all states in the US. Additionally, the United States is enhancing the sanctions partnership with the ex-EU Member State discussed further, the United Kingdom, as stated by the Department of Treasury. (*U.S. Department of the Treasury: Enhancing the US-UK Sanctions Partnership, 17 October 2022*)

The United Kingdom has proceeded with restrictive measures adoption more strictly as has frozen the assets of those natural and legal persons that the US did not target, for example billionaire Roman Abramovich. However, there are many similarities in between these two countries frameworks, for instance regarding sanctions applied towards trade and economic resources imposed (*Michael Volkov, 26 April 2022*). The Russia (Sanctions) (EU Exit) Regulations 2019 came in force at the end of 2020. Since then and especially in

2022 further regulations amending and supplementing the Regulations 2019 were issued. The latest one is the Amendment № 16 to the Regulations imposed (*GOV.UK: UK sanctions relating to Russia, 2022*). Moreover, the UK Sanctions List is published by the UK Government and contains hundreds of natural, legal persons and ships sanctioned. The list contains the types of measures imposed on the sanctioned parties and the statement of reasons for such designations. The 2020 United Kingdom sanctions framework was created according to the Restrictive measures itself and Anti-Money Laundering Act 2018 (*GOV.UK: The UK Sanctions List, 2022*). It is important to note that it is possible for the sanctioned party to challenge the decision and apply for the revision of the designation by submitting Sanctions review request form. This can be done if the party does not satisfy the criteria set out in the Resolutions or for any other reason may not be eligible for designation in the UN sanctions list. Revocation of the same is even possible if the date of birth is indicated incorrectly. In fact, often the sanctioned parties manage to succeed in these cases further in the courts by relying on the legal provisions of the peaceful enjoyment of possessions, protection of property. (*GOV.UK: How to request variation or revocation of a sanctions designation or review of a UN listing, 2022*); (*ECHR with Protocol 1, Art. 1*)

In the aftermath of the war in Ukraine, the United Kingdom particularly sanctioned hundreds of natural and legal persons that are in any way related to the Russian Federation government. As denoted in the № 5 of Part 2 (designation of persons) of the The Russia (Sanctions) (EU Exit) Regulations 2019 (*№ 885*), the Secretary of State may designate persons by name for the purposes of any of the activities enumerated therein, including aircraft, immigration, etc. This process is alike to the one existing in the United States with the OFAC's restrictive measures database. These sanctions apply on the whole territory of the United Kingdom. Also, restrictive measures laid down in the particular Regulation additionally apply towards legal persons incorporated or constituted under the law of the UK and also entities established in the UK or branches overseas. Along with the economic sanctions, certain bans on export and import ones were imposed with the prohibition of import of any production from non-governmental controlled Ukrainian oblasts. Also, import prohibitions of arms, iron and steel products from the Russian Federation were imposed. Concerning the export, total prohibition was established on the energy-related, luxury goods to the Russian Federation and certain production related to infrastructure for non-governmental controlled oblasts of Ukraine (*Michael Volkov, 26*

April 2022). As in the US framework, licenses would be needed to carry out certain activities in the UK. Also, in the Regulations imposed, accounting, business and management consulting services are prohibited for any person connected to Russian Federation. (*Hannah McAslan and David Harris, August 2022*)

It must be noted that the UK additionally aims to impose further restrictive measures on the Russian Federation. The Amendment № 17 was adopted on trade and financial sanctions. The sanctions legal framework with the Regulations laid down contains clarifications and definitions to the restricted business practices, activities as well as the exemptions to the same. For instance, General License № INT/2022/2448692 was issued that permits for a 7 day wind down period in respect to financial prohibitions in Regulations 16, 17 and 18B of the Russia Regulations in regards to securities, loans and investments in Russia. (*Amendment No. 17, Regulations 2022, № 1331*); (*Sunny Mann, Andrew Rose, Dimitris Mourkas, 2022*)

Also, the United Kingdom imposed and froze assets of hundreds of natural and legal persons, ships, therefore can further proceed with the confiscation to redirect the same for the victims in Ukraine. The United States of America started the creation of the legal framework, polices. Under the current the UK, US legal frameworks, it is not possible to confiscate the frozen assets. So, the legal basis should be created for the same. (*Redress, June 2022*)

Therefore, the US and UK also introduced sanctions, and these complement the EU's sanctions regime. More coordination is needed between these allies – both when designing new sanctions and when aligning them to prevent circumvention and to maximize sanctions' impact.

CONCLUSIONS

Based on the above analysis, one can conclude that the EU should prioritize closing loopholes and continue to expand the restrictive measures framework. All of the tasks mentioned in the introduction are covered.

1. In the first chapter the timeline, packages adopted and their legal basis were defined. The emphasis was on the existing adverse derogations, exemptions from the sanctions imposed and possibilities to use them as tools to circumvent restrictive measures.

2. In the second chapter it is noted that the sanctions should be strengthened, especially the periods for economic sanctions have to be prolonged. Also, adoption of further export restrictions is required particularly in oil and gas sectors. In nuclear, IT sectors sanctions regulatory framework should be initiated. The agreements with Russian Federation adopted before the 2022 restrictive measures framework should be denounced as they are in force and have adverse impact, enable to circumvent 2022 sanctions regime. The current loopholes are also identified, as well as the ways in which Russian Federation can evade restrictive measures and what legal provisions have to be taken to prevent them. The need of unity, regulatory framework for the enforcement practices throughout the EU is on the agenda. It can be improved by including the same into upcoming regulations in 2023. The EU principle of subsidiarity will not be breached, instead the EU framework on restrictive measures will be enhanced.

3. In regards to confiscation topic, Ukraine has not only frozen, but implemented confiscation of assets into the national legislation. Other countries still work on legal mechanisms to implement the instrument of confiscation of sovereign and personal assets of those responsible for the invasion and facilitation of it. The main obstacle for this process is the need to ensure the legality of such procedure and its compliance with the principle of the rule of law. Moreover, obstacles related to sovereign immunity and private property protection, which are the key pillars of the legal systems of democratic states, need to be duly overcome by refining existing and designing new international law instruments. The Ukrainian draft law № 7194 on increasing the effectiveness of sanctions related to the assets of individuals based on which the law of Ukraine 2257-IX of 12 May 2022 was adopted and is already being implemented, will serve as important example for other countries to implement confiscation provisions. However, it also should still be

further improved to reduce the risk of human rights-based judicial challenges, f. e. in the ECtHR.

4. To prevent circumvention: criminalizing certain actions, proper listings, new additions to the regulatory basis and improving compliance and due diligence procedures on the businesses', companies' and individuals' side will lead to the effectiveness increase of the restrictive measures currently imposed.

5. The EU Regulations could be amended to introduce prohibition of transit by rail. The provisions of the Council Regulation from 2003 (No 693/2003) and many more ones regarding relations with Russian Federation can be withdrawn by unified decision of the EU. The sanctions are complex in their nature as they go along with the existing legal acts, impose prohibitions and ideally should be clear and detailed with no further chances of circumvention.

6. Concerning the State Sponsor of Terrorism (SST) designation, based on the EU Treaty (and the functions of individual EU institutions), the European Council could issue Conclusions declaring the Russian Federation a terrorist state and then call on the EU institutions to design and impose further relevant sanctions and other restrictions on Russian state.

7. The criteria for the evaluation of the proportionality, necessity of the current sanctions regime was outlined. There is no need to reduce the sanctions against the Russians.

8. The EU has extensive coverage of the sanctions, however it should further enhance it. The US and UK also introduced sanctions, and these complement the EU's sanctions regime. More coordination is needed between these allies – both when designing new sanctions and when aligning them to prevent circumvention and to maximize sanctions' impact.

To sum up, after analyzing the legal framework and different articles by various authors, I would like to emphasize the effectiveness of every EU sanction package and the need to further expand them and prolong their application, while in parallel addressing the issues related to their circumvention.

SUMMARY

Legal assessment of the EU restrictive measures (sanctions) against the Russian Federation and its subjects imposed in the aftermath of the war in Ukraine

Olena Uhryn

This Master Thesis provides analysis on the possible ways to strengthen the EU restrictive measures imposed in the aftermath of the escalation of the international armed conflict starting from 22 February 2022 in Ukraine by the Russian Federation. This work is focused on the 2022 sanctions regimes, however includes regulatory framework adopted from the year of 2014 as the basis for the amendments, supplements in 2022. Additionally, it contains briefly the sub-chapter on the best international practices in the field, however not in full as this is considered for the further extensive research. The problems of circumvention of sanctions, confiscation of the same and designation of the Russian Federation as state sponsor of terrorism are discussed as part of the restrictive measures imposition. The timeline, legislative basis of the EU framework and assessment of the conformity of the same to human rights fundamental principles are processed. The findings on the practical case showing difficulties in the implementation of the restrictive measures by the EU Member States are summarized. The topic is still on the agenda as each package of the restrictive measures adopted in sequence covered more and more provisions, lists, regulations on the topic.

The Thesis main issues examined are the possibilities of improvements, additional packages of the EU regulatory framework on the restrictive measures; as well as the problems of existing loopholes creating possibilities of circumvention; further implementation of sanctions issue in the case of Kaliningrad-Russian Federation transit through the Republic of Lithuania; the need for the next stage of sanctions imposed in the form of confiscation of Russian Federation assets to help rebuild Ukraine.

ANNEX I

Table 4. Restrictive measures adopted in 2022

| Package № | Date of adoption (in 2022) | Description, types of restrictive measures |
|---|-----------------------------------|--|
| 1. | 23 February | Asset freeze, travel ban, prohibition from making funds available – apply to total of 555 individuals, 52 entities (351 members of Russian State Duma; 27 high profile individuals and entities); Restrictions on economic relations with non-governmental controlled areas of Donetsk and Luhansk; Financial restrictions to those responsible; import ban from those areas, on tourism, export; restrictions on trade and investments. |
| 2. | 25 February | Financial sector sanctions, including defence; energy sector (export of specific goods in oil refining); transport sector sanctions (ban on sale of aircraft and its parts); technology (dual-use goods export ban); visa policy sanctions (diplomats, related groups); total: 654 individuals, 52 entities. |
| 3. | 28 February | A ban on transactions with the Russian Central Bank; A ban on the overflight of EU airspace; additional listing; totally, 680 individuals, 53 entities. |
| | 2 March | Exclude key Russian banks from the SWIFT system; Restrictions on trade against Belarus; state-owned media restrictions on Russia Today and Sputnik' to broadcast in the EU; ban on provision of euro-denominated banknotes to Russia; ban on investing in projects co-financed by the Russian Direct Investment Fund; totally, 702 individuals, 53 entities. |
| Compliance package concerning the Republic of Belarus | 9 March | Towards the Republic of Belarus, totally 862 individuals, 53 entities. |
| 4. | 15 March | A full prohibition on transactions with the exception of State-owned banks, railways and the maritime shipping register; Ban on export of luxury goods; Prohibition on EU agencies to provide financial rating services to Russian companies; A ban on imports of iron and steel products with the exception of nuclear energy and the transport of energy products; totally, 877 individuals, 62 entities. |
| 5. | 8 April | Coal import ban; Financial measures: A full transaction ban and asset freeze on four additional Russian banks; Extending import bans; Additional import bans including cement, rubber products, wood, spirits (including vodka), liquor, high-end seafood (including caviar); Excluding Russia from public contracts and European money; Transport: A full ban on Russian and Belarusian |

| | | |
|---------------------------------|-------------|---|
| | | freight road operators working in the EU. Addition of further 217 individuals and 18 entities. |
| 6. | 3 June | Oil import restrictions: Seaborne crude oil embargo; Oil transport services; Financial and business services measures: appropriate exceptions have been laid down in a revised version of the provision (e.g. for humanitarian purposes or civil society), The provision of certain business-relevant services - directly or indirectly are now prohibited; Broadcasting suspension; Export restrictions. |
| 7. | 21 July | Gold import ban; Sanctioned people are now obliged to declare their assets, in order to facilitate the freezing of their assets in the EU; Port access ban; Financial sanctions; Food and energy security; Medical and pharmaceutical exemptions; Targeted export bans; Assets freeze: further 54 individuals and 10 entities. |
| 8. | 5 October | Sanctions circumvention new listing criteria; Financial, IT consultancy and other business services sanctions; Restrictions on State-owned enterprises; Implementation of G7 oil price cap; New import, export restrictions; Extension of restrictions to Kherson and Zaporizhzhia oblasts; additional listings. |
| 9. (not covered in this Thesis) | 16 December | Cutting access to drones for Russians; 4 additional bans on Russian media outlets; additional EU export bans; Transactions bans for 3 additional Russian banks; almost 200 additional individuals and entities entitled to a freezing of their assets. |

Source: Based on European Commission, 2022: Sanctions adopted following Russia's military aggression against Ukraine

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