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Master's Thesis

**Legal analysis of the EU restrictive measures (sanctions) against the Russian Federation
imposed in the aftermath of the Russia war of aggression against Ukraine**

**ES ribojamųjų priemonių (sankcijų), įvestų prieš Rusijos Federaciją po jos įvykdytos
karinės agresijos prieš Ukrainą, teisinė analizė**

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ABSTRACT AND KEY WORDS

Presented work examines the legal bases and nature of European Union restrictive measures imposed against Russia after the full-scale invasion of Ukraine. In particular, thesis aims to analyze the legality of restrictive measures, their conformity with the principle of proportionality and their impact. Besides, the work analyzes the limits and necessity of judicial review of restrictive measures. In addition, in order to examine the current outcomes and achievements against Russian aggression the work examines the cases of sanctions evasion, anti-circumvention tools of the EU. In the end the thesis highlights some challenges and provides some recommendations for further improvements.

Key Words: restrictive measures, sanctions, circumvention of sanctions, anti-circumvention measures, principle of proportionality, element of necessity, judicial review, international cooperation.

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LIST OF ABBREVIATIONS

CFSP	Common Foreign and Security Policy
CJEU	Court of Justice of the European Union
EU	European Union
TFEU	Treaty on the Functioning of the European Union
TEU	Treaty on the European Union
UN	United Nations
UNSC	United Nations Security Council

INTRODUCTION

Relevance of the topic: Since 2014 in opposition to Russian aggression against Ukraine, the European Union has imposed restrictive measures under the Common Foreign and Security Policy (CFSP), which is the major tool of the Union against the aggressor. Adopting restrictive measures is the peaceful way of the EU to limit Russia's abilities and to resolve threats to world peace and security. After the full-scale invasion of Ukraine in 2022, the EU imposed really comprehensive restrictive measures and targeted almost every sector or fields of Russian Federation including trade, economy, energy, media and etc. The EU maintains imposing measures against Russia and further develops their scope and list of targets. Besides, the EU institutions try to address modern ways of warfare, like information warfare and some cyber threats since the aggression against Ukraine is conducted not only by the military operations but some novel methods of warfare as well. However, after two years the war is still in progress and there are not any significant impacts on Russia, therefore, there is an ongoing debate in relation to the impact and effectiveness of imposed restrictive measures, their legality and whether they are capable of achieving desired outcomes regarding Russia and its aggression. The facts that after imposing various restrictive measures, Russia still has abilities to maintain war and the Union still seeks to develop and impose new restrictive measures indicate the high relevance of the topic. The main reasons for choosing the topic were its great importance for future of the world and high interest of assessing the impacts of the EU's CFSP towards Russia and possible changes for future developments. I would like to point out that since the Restrictive measures usually are referred to as 'sanctions' as well in academic articles, books or the EU publications, these terms will be used interchangeably in the presented work.

The objects of this thesis are restrictive measures which have been imposed by the EU since 2022 after the full-scale invasion of Ukraine. My work mainly focuses and analyzes fourteen package of sanctions, which target the financial and trade sectors, energy-related sanctions and sanctions against disinformation and Russian interference campaigns. The thesis mostly focuses on and overviews sectoral restrictive measures but some parts of the work also discuss targeted sanctions in order to provide full picture on the judicial review of sanctions and some drawbacks of monitoring system of sanctions enforcement.

The aim of my research is to discuss and analyze legal bases of imposed restrictive measures, their legality and conformity with the principle of proportionality, their impacts and effectiveness.

The objectives of the presented thesis are to overview and analyze the scope and content of imposed restrictive measures, their legal bases and legal nature; to overview and analyze the obligations of member states based on the fundamental treaties of the EU and adopted restrictive measures; to discuss and evaluate the monitoring framework of the EU for sanctions enforcement and implementation; to analyze the current methods and cases of sanctions circumvention, related complexities due to international law provisions and anti-circumvention policy of the Union; to analyze the legality and necessity of criminalizing violation and circumvention of sanctions; to analyze the conformity of restrictive measures with the principle of proportionality and its necessity element; to discuss and analyze the impact and effectiveness of EU restrictive measures, current challenges and to provide recommendations for future improvements.

The tasks of my thesis are 1) to overview and examine imposed restrictive measures related to the sectors of trade, finances, energy and disinformation based on the decisions and regulations of the EU; 2) to evaluate the enforcement and implementation of restrictive measures and the monitoring framework of the EU; 3) to identify methods of sanctions evasion based on studies, their legal triggers within international law and evaluate anti-circumvention measures of the EU; 4) to analyze the restrictive measures in relation to the principle of proportionality and based on the case-law identify and analyze the competence and approach of the Court of Justice of the European Union; 5) to identify current challenges and existing and future possible impacts of restrictive measures based on recommendations and analysis of legal experts; 6) examine and provide ways and recommendations for enhancing impact of sanctions.

Methods:

Doctrinal legal research is used for analyzing legal bases of restrictive measures and Common Foreign and Security policy of the EU. Besides, to examine the legal nature of CFSP norms and related obligations for member states. This research method is also used to examine the proportionality principle, balance between the fundamental rights and imposed restrictive measures, the competence of CJEU and the Council of EU.

Analytical legal research is used further examine and analyze legality of restrictive measures, CJEU approach and judicial review limitations in practice, the legal bases and legality of criminalizing the sanctions circumvention.

Historical analysis method is used to examine the bases of imposing restrictive measures against Russia and external policy of the EU.

The synthesis is used to identify and analyze the existed challenges regarding the external policy towards Russia, to consider and discuss different views and recommendations on the possible developments in CFSP of the Union.

Secondary research is used to provide some data and research to discuss and analyze the current challenges and the impact of restrictive measures.

The novelty of the research is that it overviews and analysis some complexities in relation to international law and how it hinders the process to effectively combat the sanctions circumvention in specific cases and highlights the importance of international cooperation to achieve desired outcomes which may be a long-term process but is really essential. Besides, the thesis analyzes some recent case of CJEU in order to further examine the limits of judicial review and analyzes the importance of granting broad discretion to the Council in political matters.

Main sources: while working on the thesis different types of sources were used in order to achieve its aim and objectives. Specifically, following sources were used mainly: decisions and regulations of the EU in relation to its CFSP, fundamental treaties of the EU, the case law of the CJEU, academic articles and books, online articles and research. In order to examine the CFSP of the EU, its competence, legal bases for restrictive measures, also to examine general principles and limitations commentaries published by the Oxford Academic, on the Treaties of the Union and charter of fundamental rights were used. Besides, commentaries on the UN convention of on law of the sea were examined in order to identify and examine the loopholes for sanctions circumvention. in order to examine the judicial review limits in practice recent cases of CJEU were examined where the court also provides its interpretation regarding the discretion of the Council in political matters. Besides, research articles like “Challenging EU sanctions against Russia: The Role of the Court, Judicial protection, and Common foreign and security policy” by Luigi Lonardo was used to examine the proportionality principle test and the balance with imposed restrictive measures. Also in order to identify challenges, drawbacks

and to investigate cases of circumvention sources like EU studies conducted by Clara Portela, some online articles and data analysis were used.

CHAPTER I:

LEGAL FRAMEWORK OF EU AND THE OVERVIEW OF RESTRICTIVE MEASURES (SANCTIONS) IMPOSED ON THE RUSSIAN FEDERATION

1.1. Overview of EU restrictive measures (sanctions) imposed following the Russian full-scale invasion of Ukraine

Since 2014 the European Union has addressed the Russian aggression against Ukraine with a variety of sanctions. In order to limit Russia's abilities and power EU imposed different type of restrictive measures connected to the fields of economy, trade, media, energy and etc.

In opposition to the Russian aggression against Ukraine sanctions policy is the main mechanism of EU which aims to peacefully resolve threats and challenges to world security and impact Russia's illegal behavior.

In March 2014 the EU imposed its very first sanctions on Russia following the illegal annexation of Crimea and Sevastopol. Initial set of sanctions were targeted restrictive measures which were directed to the representatives of the Russian government, individuals and entities who were accountable for the Russian policy and also to the pro-Russian activists in Ukraine. Mentioned package of sanctions was the initial step of EU foreign policy towards Russian aggression and mainly included restrictive measures like asset freezes and travel bans, since the first response EU eventually extended the scope of sanctions and target list.

Following Russia's full-scale invasion of Ukraine, in February 2022, the EU imposed new set of restrictive measures and extended the list of sanctioned individuals and entities. EU sanctions policy since 2022 has been labelled as 'sanctions revolution' since its wide scope and scale targeted the key parts of Russian economy, trade which resulted in serious challenges for the country and members of the Russian elite. (Caprile, Delivorias, 2023, p.1).

Since 2022, at the time of writing this thesis, EU has adopted fourteen package of sanctions against Russia which target almost every sector and field of the Country through the measures like travel bans, asset freezes, trade restrictions, arms embargoes and etc.

Apart from imposing sanctions against Russia, EU also adopted measures against allied countries of Russia, like Belarus, Iran, North Korea, as a response to their cooperation in aggression.

1.1.1. Overview of the financial and trade sector measures (sanctions)

As a response to the Russian aggression, financial and trade sector measures have been used as one of the essential mechanisms within EU's foreign policy. Since 2014 EU adopted several financial and trade sanctions against Russia which included imposing asset freezes on entities which were supporting illegal annexation of Ukraine, bans on export of dual-use goods and technology for military use, restriction of the import of goods from Sevastopol and Crimea and etc.

Based on the mentioned above it is quite clear that from the initial stage the EU targeted Russia's economy sector. However, Financial and trade relations between the European Union and Russia has significantly altered following the Russia's full-scale invasion of Ukraine in 2022.

On the 23rd of February in 2022 EU imposed the first package of restrictive measures against Russia which mainly targeted the financial sector of the country. Sanctions were aimed at Russian government and central bank, also at individuals, legal entities and enterprises which supported military actions of the aggressor. In particular, banks located within the area of European Union were prohibited to grant new loans or to finance mentioned subjects.

Based on the first package of sanctions, Russia's access to EU's financial and capital markets was eliminated, also Russia lost access to foreign exchange reserves in EU banks. In order to avoid inflation and tumble of the national currency Russian government was forced to adopt countermeasures like: interest rate hike and capital control.

One of the toughest financial sanctions imposed on Russia includes a ban on the SWIFT system. It should be noted that before the adoption of sanctions more than 300 financial institutions in Russia were connected to the SWIFT system. (Abely,2023, p.28).

After adopting the third package of restrictive measures, seven Russian banks (VTB bank, Bank Otkritie, Sovcombank, Rossiya bank, Novikombank, Vnesheconombank, Promsvyazbank) were eliminated from SWIFT financial messaging system. (The Council Regulation (EU) 2022/345, 2022, Annex XIV).

It is essential to point out that initial measures did not exclude Russia's largest banks from SWIFT system. Subsequently, when the sixth package of sanctions was adopted, three additional banks were added to the list including Sberbank which is the largest bank of Russia. However, it should be noted that Gazprombank, which is the main entity in gas trade from Russia, still is not excluded from the system.

Mentioned sanctions were pending from the EU therefore, as a response, Russian Central Bank created the alternative version of SWIFT system in 2014. In particular, as a countermeasure Russia had developed specialized financial messaging system (SPFS) before the full-scale invasion of Ukraine. However, based on the recent, fourteenth package of EU sanctions, it is outlawed to use the mentioned system and EU banks are prohibited to make any transactions with sanctioned banks through this alternative messaging system of Russia.

Furthermore, according to the third package of sanctions EU investment or participation was banned in projects that were financed by the Russian Direct Investment Fund. Besides, EU prohibited to provide euro banknotes to any legal or natural person in Russia and banned transactions with the Central Bank of Russian Federation.

At a later stage, EU also issued the Compliance package of sanctions, which extended the scope of prohibition on financing and included crypto-assets. Specifically, package states that ban on granting loans, credits or transferable securities also signifies ban on crypto-assets.

In addition, subsequently when the eighth package of sanctions was adopted the scope of prohibition on crypto-assets extended as sanctions banned all crypto-asset wallets, services or accounts regardless of their amount. Initial sanctions in 2014, allowed mentioned e-wallets or accounts up to the amount of 10,000 euros.

The mentioned specifications were crucial to avoid circumvention. In the course of time the scope of prohibitions was extended so as to exclude any alternatives or digital methods for Russia to access European financial market.

Additionally, within the scope of financial sanctions fourth package of measures imposed the ban on transactions with certain Russian state-owned enterprises which initially excluded banks, the maritime shipping register and railways. However, under the following package of sanctions EU widened the scope and included maritime shipping register and three additional Russian banks, which included the Russian Regional Development bank.

In order to limit the access to financial services for the Russian government and legal entities EU also imposed prohibition on providing business services in fields like auditing, accounting, tax consulting and etc. (European Commission, 2022).

Apart from financial sanctions EU also adopted trade bans in order to hinder the development of Russian economy and its ability to continue war. In particular, since 2014 export controls and import restrictions have been imposed on goods which originate from Russia and can be used for military purposes.

After the massive full-scale invasion in 2022, referred sanctions have been tightened and the scope of trade prohibitions has been expanded significantly. In particular, banned goods included not only the dual-use items or materials but also advanced technologies which can be used for military operations.

Tightening the export control measures aimed to limit Russia's ability to obtain goods which can be used to carry on military actions. As for the import restrictions the main purpose was to reduce the financial capabilities.

To start with import restrictions, the EU sanctions ban imports of iron, finished or semi-finished steel products and other metal items from Russia. Besides, list of referred banned goods include rubber products, cement, wood, seafood, textiles, vehicles, jewelry and etc.

Apart from this, according to the compliance package of EU, it is banned to import gold which is originated or exported from Russia. Import restrictions also apply to diamonds and it should be noted that EU sanctioned the Russian diamond firm Alrosa which was the largest diamond company in the world.

Imposing restrictions on diamond import from Russia was the part of G7 countries diamond restrictions which aimed to terminate essential revenue source for Russia which approximately amounted to four billion euros per year. (The European Union, 2024, p.4).

Most essential trade restrictions apply to oil import as the most valuable export materials for Russia are energy-related products. The EU imposed first oil import restrictions based on the sixth package of sanctions. Sanctions prohibited to import the crude oil and some petroleum products which originated or were exported from Russia into the union. However, considering the geographical location of some member states and their dependence on imported Russian oil as an exception, EU decided to temporarily not apply these restrictions to certain member countries.

Within export sanctions most restrictions are imposed on technologies and machineries in order to limit the access of Russia to European advanced technologies. Considering that Russia is highly dependent on EU technological resources such trade bans aimed to target vulnerable fields of Russia. For instance, list of banned goods from export include transport equipment, computers, machineries, cars and etc.

Termination of access to technology was also challenging and high-value decision for EU member states because as reported by the European Commission since 2022, the EU has restricted more than 48 billion Euros worth of goods that could have been exported to Russia. (The Council of the EU, The EU Council, 2024).

To summarize, it should be noted that financial and trade sector sanctions are the main parts of the EU restrictive measures against Russia. In order to limit Russia's abilities to wage war its financial and trade fields were the main targets of the EU and even though the Union lost quite amount of revenues because of sanctions, it still continues to target mentioned sectors and financially depart from the aggressor.

1.1.2. EU restrictive measures (sanctions) related to energy

Imposing sanctions on energy sector of Russia can be considered as the most challenging task for the EU. Throughout the history Russia was the main energy supplier for European countries and for many years, energy was used as a major political weapon by Russia.

Due to the fact that European countries were highly dependent on Russian energy, sanctions imposed on this sector included more exemptions. The EU had to consider the needs of certain member states which did not have any suitable alternatives because of the geographical location. However, the EU still managed to limit the oil import from Russia by 90%. (The European Union, 2024, p.2).

To begin with, based on the fifth package of sanctions the EU imposed restrictions on the import of Russian coal and other fossil fuels. Besides, referred package prohibited the export of jet fuel to Russia.

Afterwards, the EU adopted sixth package of restrictive measures and prohibited the import of crude oil and petroleum products which were originated from Russia. Certain member states were derogated from this prohibition since there was not an alternative for Russian energy. Special exemptions from this prohibition temporarily were applied to Bulgaria and Croatia since considering their geographical location they needed seaborne crude oil and vacuum gas oil imports from Russia. (Council regulation (EU) 2022/879, 3 June 2022, Paragraph 18).

One of the major restrictions of the EU included price cap mechanism which was also implemented by G7 countries.

Within the scope of the eighth package of sanctions, the EU set price cap for maritime transports that shipped Russian oil to third countries. Price cap mechanism was adopted in order to enable EU companies to provide transportation of crude oil from Russia to third countries while ensuring that the set maximum price for oil is not exceeded.

As of now, three price caps are set. Specifically, price cap for Russian crude oil is set at 60 dollars per barrel. Additionally, the EU set two price caps for petroleum products, specifically, for petroleum products that are traded at a lower price than crude oil, the price cap

is set at 45 dollars per barrel and if the trade price of these products exceeds the price of crude oil the cap is set at 100 dollars per barrel. (Council of the EU, 4 February 2023).

Price cap mechanism can be suggested as an essential tool for regulating Russian oil price which was important to protect countries from the arbitrariness of Russia and to limit major revenues for the aggressor.

Apart from mentioned sanctions, energy-related restrictive measures also include the prohibition of new European investments in the mining sector of Russia. Besides, based on the 10th package of sanctions the EU restricted Russian entities and individuals to book gas storage capacity in the territory of the union.

Recent, fourteenth package of EU sanctions, include ban on Russian liquefied natural gas (LNG). LNG was also an important source of revenues for Russia. Initially it was exempted from prohibited list of energy products but gradually the EU decided to cut off mentioned product from EU markets.

Referred package of sanctions, prohibited new investments regarding the Russian LNG projects. Besides, the package restricted the import of LNG and the use of EU ports for LNG shipment.

Imposing energy-related sanctions is a complex process but it can be deemed as the measures which have the most potential to result in important outcomes by reducing crucial revenues for Russia. It is obvious that EU actively works to develop these measures though desired changes are not produced yet.

1.1.3. Restrictive measures (sanctions) against the Russian interference campaigns and disinformation

Disinformation and war propaganda are the modern vital tools of foreign interference which were actively used by Russia since 2014. After the insurgences of Donbas and Luhansk regions in Ukraine, local media structures were completely modified as Russia aimed to use propaganda mechanism against Ukraine.

Information manipulation and propaganda also played essential role after the full-scale invasion of Ukraine in 2022. In order to justify its illegal and aggressive actions against Ukraine, Russia engaged in active propaganda and tried to manipulate civil society with distorted information. (The Council (EU),2022, Para. 17). Spreading disinformation by media platforms served as a mechanism for Russia to legitimize its aggression against Ukraine.

Therefore, apart from military operations, the conflict between Russia and Ukraine included information warfare. Russian war propaganda was hazardous for the EU democracy

and security, also it would have caused potential threats for maintaining the global support for Ukrainians that's why imposing countermeasures against disinformation was very essential.

On the 2nd of March in 2022 the Council of the EU adopted initial measures against Russian propaganda. Particularly, based on the third package of sanctions, two Russian media outlets were prohibited to broadcast in the EU member states. (Russia Today, Sputnik and their branches). (The Council regulation (EU) 2022/350, Article 1, Annex XV).

Subsequently, the EU gradually extended the list of sanctioned entities and involved twelve additional Russian media outlets. (Rossiya RTR/RTR Planeta, Rossiya 24/Russia 24, TV Center International, NTV/NTV Mir, Rossiya 1, REN TV, Pervyi Kanal, RIA FAN, Oriental Review, Tsargrad, New Eastern Outlook, Katehon). (The European Union, 2024, p.5).

Notably, the EU also took fundamental rights into consideration and in order to protect the right to information, the right to the freedom of expression and opinion, the EU did not prohibit referred media outlets to carry out interviews or research in member states. (European Commission, 2024).

Besides, the EU also sanctioned entities which were responsible for creating fake social media accounts and fake web pages in order to spread disinformation. Restrictive measures were imposed on several entities and individuals for engaging in the digital information manipulation campaign. Restrictive measures were imposed on online media outlets and Russian IT companies. They were prohibited from operating or carrying out broadcasting activities in the union. For instance, one of the online outlets sanctioned was Inforos which was responsible for creating more than 270 media online outlets that were supporting Russia's war propaganda. (Council of the EU, 2023).

Subsequently, the EU also extended the list of banned online media outlets and included media platforms like Voice of Europe, RIA Novosti, Izvestia and Rossiyskaya Gazeta. (European Commission, 2024).

Apart from suspending broadcasting licenses the EU also decided to prohibit financing or donation from Russia in order to prevent its interference campaigns. In particular, the EU adopted the 14th package of sanctions against Russia which prohibited political parties, non-governmental organizations, alliances or foundations, registered in the union, to accept financing, donation or any other type of support from Russia. (The Council of the European Union, 2024, Decision (CFSP) 2024/1744, Para. 21).

It should be noted that one of the major determining factors of adopting mentioned sanctions were accusations against Russia for funding fair-right political parties in the EU.

Therefore, there was increased fear of possible Russian interference in the elections for the European Parliament that's why the EU adopted countermeasures against possible threats before the elections.

As a part of countermeasures against Russian interference, the Council of the EU recently introduced the framework of new restrictive measures that will allow the EU to address hybrid threats from Russia which include the use of disinformation, foreign information manipulation and interference (FIMI). Specifically, the EU will be able to impose prohibitions on individuals or entities engaged in different methods of hybrid warfare. (Council of the EU, 2024).

From the points mentioned above it can be concluded that Russian aggression against Ukraine include not only traditional military activities but also some modern methods of warfare among which the use of propaganda is one of the most dangerous. Therefore, the EU started to prepare new countermeasures to tackle modern ways of a war of aggression.

1.2. Legal bases and procedural framework for imposing EU sanctions- Common Foreign and Security policy

Originally, the European Union was established on the basis of three major pillars: The European Community, The Common Foreign and Security policy (CFSP) and the cooperation in the fields of justice and home affairs. (Maciejewski, 2024). After the Treaty of Lisbon entered into force in 2009, those foundations were significantly modified. Specifically, the Treaty of Lisbon amended two fundamental treaties, the Treaty on the European Union (TEU) and the Treaty establishing European Community which was renamed as a Treaty on the Functioning of the European Union (TFEU). (Pavy, 2024, p.1). Treaty of Lisbon granted the EU "full legal personality", replaced the term "Community" by the "Union", modified the ways EU exercised its powers, the decision-making processes and created new institutional framework so as to strengthen the participation of citizens, transparency, democratic accountability, parliamentary control and etc. (Pavy, 2024, pp. 1-3).

It can be briefly stated that, Lisbon Treaty formally abolished the initial pillars of the EU. However, it can be said that the Common Foreign and Security policy of the Union still remained procedurally and legally distinct from other EU policies.

According to the Article 2(4) of the TFEU, CFSP is the competence of the EU. However, due to its specific nature it cannot be classified unambiguously as one of the general competences of the EU. (Ramopoulos, 2019, p. 214). As the TEU directly states, the CFSP is the subject of special procedures and rules. (TEU, Article 24(1)). Specifically, based on the amendments of the Lisbon Treaty, the decision-making processes of many EU policies were

changed and qualified majority voting applied. However, due to the sensitive nature of some policies including CFSP, they remained subject to Unanimity voting. (European Union, Summaries of EU legislation).

According to the TEU, CFSP of the Union should be defined and implemented unanimously by the Council and European Council, except where treaties state differently. (TEU, Article 24(1)). Apart from this, it should be noted that Court of Justice of the European Union (CJEU) has a very limited jurisdiction regarding the CFSP norms. Based on the Article 24(1) of the TEU and 275 of the TFEU, the court does not have jurisdiction regarding the CFSP provisions and acts adopted based on this policy. (Terlinden, 2024, p. 308) However, the treaties make exceptions based on which, the CJEU can conduct the judicial review of legality of decisions which impose restrictive measures against natural or legal persons or review the compliance with Article 40 of the TEU which defines the competences among the CFSP and other areas of the Union law. (TEU, Articles 24 (1), 40, TFEU, Article 275).

The CFSP can be considered as a special competence of the Union which seeks to ensure the security of the EU and the protection of its fundamental values. Conducting CFSP is quite challenging process and is connected with complex political topics. Therefore, the scope of judicial review on CFSP acts is very limited. Apart from the treaties, the past and recent case law of the CJEU provides some essential and novel findings regarding the limits of judicial review which will be further analyzed in the thesis.

Restrictive measures (sanctions) are important tools of the CFSP. (European Commission, 2022). Imposing sanctions, especially after the full-scale invasion of Ukraine, has become the major tool of the EU's external policy against Russia.

“Restrictive measures, coupled with diplomacy, are key tools to bring about peaceful change. They can play pivotal role in deterrence, conflict prevention and resolution”. (Council of the EU, 2016, p.32).

Based on the above-mentioned, it can be concluded that both, the Treaty on the European Union (TEU) and the Treaty on the functioning of the European Union (TFEU) with the changes introduced by the Lisbon Treaty are highly relevant and essential bases for conducting CFSP and imposing restrictive measures.

To start with the TEU, based on article 28 of the treaty, the Council of the EU is permitted to adopt necessary decisions when the international situation requires operational actions from the EU. The Council should indicate their objectives, implementation conditions, the extent, tools or if necessary also duration of their decision. (TEU, Article 28).

The referred right of the Council is also guaranteed by the article 29 of the treaty. In particular, this article grants the Council of the European Union the right to adopt decisions regarding the external matters of the union. More specifically, according to the article, the Council has the right to adopt decisions in order to establish approach of the EU regarding the matters of a thematic or geographical nature. Besides, article includes the obligation of member states to comply their national policies with the position of the EU.

Referred articles do not indicate or mention directly the common foreign and security policy or the term restrictive measures. However, those are one of the main legal bases which are commonly used by the EU when adopting new relatable sanctions within their external policy.

The CFSP should be carried out according to established principles and guidelines in the treaties. The article 24 of the TEU defines the scope of the policy and states that “it shall cover all areas of foreign policy and all questions relating to the Union’s security”. (TEU, Article 24 (1)). The policy should enter into force by member states and the High Representative of the Union for Foreign Affairs and Security Policy. (TEU, Article 24 (1)).

Considering the articles mentioned above, it can be concluded that EU legislators have extensive competence to conduct CFSP. However, as it was previously mentioned, this policy should be conducted unanimously, the Council cannot carry out CFSP single-handedly, it can make decisions on external policy together with the European Council, High Representative of the Union and member states.

Apart from the TEU, the competence of the EU to implement common foreign and security policy is directly indicated and guaranteed in the 2(4) article of the Treaty on the functioning of the EU. In particular, referred article grants the Union the competence to determine and implement the CFSP in agreement with the provisions of TEU. (TFEU, Article 2(4)).

Additionally, the competence of the Council is also ensured based on the article 215 of the TFEU. According to the article, the Council has the right to impose restrictive measures against natural and legal persons, non-state entities and groups. (TFEU, Article 215 (2)).

Article 215 of the TFEU is also commonly used by the EU to adopt restrictive measures. The majority of restrictive measures which are adopted based on the article 215 cover the areas related to the financial and economic measures, trade, financial restrictions, services and etc. (Zagel, 2015, p.11).

It should be noted that certain restrictive measures require double legal basis. Specifically, article 215 of the TFEU should be applied together with TEU provisions like Article 24 in order for EU to impose restrictive measures in relation to the interruption or reduction of economic or financial relations with third country, or against natural or legal persons. (TFEU, Article 215 (1), (2)).

Besides, opposite to the mentioned article 24 (1) of the TEU which refers to the importance of unanimity, article 215 (1) indicates that the Council acts by a qualified majority based on the proposal from the Commission and High Representative of the Union.

The EU adopts sanctions in three different ways. Specifically, in some cases the EU measures of the United Nations Security Council (UNSC) are transposed in the EU law or as a second way the EU may reinforce the imposed measures of the UNSC.

The third regime of sanctions include autonomous sanctions which are solely adopted by the EU. Sanctions imposed against Russian Federation are autonomous types of measures which are created by the Union against Russian aggression.

Adopted sanctions should comply with fundamental principles which are included in the Treaty on the European Union. Article 21 of the treaty lists principles and objectives which should be considered by the EU when making decisions regarding its external policy.

To specify, the main principles that should be considered by the EU include: democracy, protection of human dignity, equality and solidarity, rule of law, universality of fundamental human rights and freedoms, also the principles of international law and UN charter. (TEU, Article 21 (1)). Additionally, major objectives that should be pursued by the Union involve protection of peace, fundamental values of the Union, independence and integrity, ensuring the international and the EU security and etc. (TEU, Article 21 (2)).

In brief, based on the treaties, the EU is obligated to consider fundamental values of the Union when making decision within the CFSP framework. Procedure of adopting sanctions may differ based on the types of measures. However, in most cases unanimity and the agreement between the EU entities and member states are essential and should be considered regarding the external policy of the EU.

CHAPTER II:

ENFORCEMENT OF THE EU RESTRICTIVE MEASURES (SANCTIONS) AND MONITORING SYSTEM OF THE EU

2.1. Obligations of the EU member states and monitoring framework of the EU

The European Union institutions carry out their competencies through adopting legal acts. According to the article 288 of the TFEU, the legal acts of the Union include decisions, regulations, directives, recommendations and opinions. (TFEU, Article 288).

Restrictive measures against Russia are imposed through decisions and regulations.

According to the TFEU, both, decisions and regulations of the Union, are binding legal acts in their entirety. (TFEU, Article 288). The binding nature of the CFSP norms is clearly indicated in the treaty. (Wessel, 2015, p.16)

The EU regulations are directly applicable to all member states. On the other hand, decisions of the Union are binding on their targets. (TFEU, Article 288). Therefore, differing from regulations, decisions of the Union are not universally applicable to every EU member country but only to the specific addressees.

Decisions adopted within the CFSP have limited applicability but they are obligatory for the member states. Specifically, member states are obligated to implement adopted decisions into their national legislation. Usually the Council decisions state whether the implementation of decision needs any more actions from the Union or member countries. (Zagel, 2015, p.28).

Obligation of the EU member states can be derived from other articles of the treaties. For instance, article 29 of the TEU, which is one of the major legal basis for the EU decisions, indicates the responsibility of member states to ensure the compliance of their national policy with the position of the Union. (TEU, Article 29).

Article 28 of the TEU also refers to the obligation of Union countries. In particular, it can be derived from the article that the member states are obligated to comply their positions with the position of the Union and also they should carry out their actions in accordance with the decisions of the EU. (TEU, Article 28 (2)).

Considering above-mentioned articles, it is quite clear that based on fundamental treaties, EU member states are not granted much discretion regarding the implementation of the Union decisions. Member states do not have the right to act contrary to the adopted decisions, they are obligated to adapt their national policies to the agreed unanimous decisions. (Wessel, 2015, p. 16).

It should be noted that the CFSP of the Union also has some soft law characteristics since within its framework the EU often adopts opinions and recommendations which are not legally-binding for member states and without imposing obligations, they allow Union and its institutions to issue a statement, establish the framework for the EU policy norms implementation or to recommend some necessary actions for national competent authorities of member countries.

Besides, one of the key soft law features of the CFSP is that the Court of Justice of the EU has quite limited jurisdiction over the matters related to CFSP. Specifically, as it was previously referred, CJEU can only intervene in cases related to delimitation of CFSP and other EU policies, or in cases regarding the violation of human rights within the CFSP. Therefore, even if EU member states breach some EU CFSP decisions, hard legal responsibilities would not arise, unlike in other EU policy areas.

Based on the mentioned points, CFSP of the EU is sometimes regarded as a part of just soft law. However, based on the fundamental treaties of the EU it can be concluded that this policy has hard law elements as well and regarding the external policy of the Union, the Council, in most cases, adopts binding legal acts like regulations and decisions. Specifically, in recent years the Union mainly adopted legally-binding acts to target different sectors of Russia and individuals responsible for the aggression.

In addition, it can be noted that the regardless of the “soft” or “hard” nature of the CFSP measures, they can be seen as “legal facts” that cannot be ignored by the member states. (Wessel, 2015, p.16). Sanctions imposed within the CFSP framework, irrespective of their nature, represent the position of the European union and form the framework of its external policy. Therefore, it can be inferred that member states, as a part of the Union, should share its position and comply with all the binding or non-binding legal acts of the EU.

Adopting sensible and appropriate restrictive measures is really essential task. However, the effectiveness of sanctions is mainly defined by the quality of the process of implementation and enforcement. Imposition of sanctions and adoption of legal acts is a centralized process whereas the system of enforcement and implementation is decentralized. Specifically, the EU operates two systems within its CFSP framework, centralized system of the sanctions adoption and decentralized system of the enforcement and implementation of sanctions among which the latter one is strongly dependent on the performance of the member states (Portela, Olsen, 2023, p.14).

Decentralized system of sanctions implementation and enforcement is established based on the principle of subsidiarity. This principle is set out in the Article 5 (3) of the Treaty on the European Union and defines the competence of the EU. Principle of subsidiarity mainly aims to allow the member states to make decisions and take actions within the areas in which the EU does not hold exclusive competence and to ensure that the power is used as close to the Union citizens and as open as possible. (European Parliament, 2024, p.1).

The EU provides guidelines for member states to help with the process of enforcement and implementation of sanctions. Two major EU documents establish the system of enforcement and implementation, “Guidelines on implementation and evaluation of restrictive measures in the framework of the EU” and “Best practices on effective implementation of financial restrictive measures”. Both documents define the common meaning of legal instruments and phrasings in order to simplify the implementation and enforcement process in member states’ national legislations. (Portela, Olsen, 2023, p. 14).

Additionally, it is also essential to note that based on the “Guidelines on implementation and evaluation of restrictive measures in the framework of the EU”, the importance of exemptions is highlighted. Specifically, according to the guidelines, legal instruments should include appropriate exemptions within financial restrictions, admission restrictions and other restrictive measures in order to consider humanitarian needs or international responsibilities and etc. For the autonomous restrictive measures exemptions are granted by the national competent authorities (NCAs). (Council of the EU, 2018, p. 12). Competent authorities should inform the Council regarding the made exemptions and other member states also have the right to object them in which case, the Council makes decision in relation to appropriate exemptions.

For instance, recently the EU introduced the humanitarian exception to asset freeze measures, based on which humanitarian actors like the ones which are partners of the EU are allowed to make transactions with sanctioned individuals or entities without initial authorization in order to provide humanitarian assistance or support basic needs of people in need. (Council of the EU, 2024).

Considering the competence of the member states regarding the sanctions enforcement and implementation system, it can be concluded that these processes are greatly reliant on the performance of member states and their national competent authorities. The EU member states, based on their national legal systems, have different approaches to the process of sanctions implementation and enforcement therefore these phases of EU sanctions policy are quite

challenging. Supervising the process of sanctions enforcement and implementation is really essential in order to achieve the desired results against Russian aggression.

In accordance to the above-mentioned, different EU institutions conduct monitoring process within their field of work. Specifically, institutions supervise the sanctions enforcement and implementation processes into the national legislation of member states and also some of them, check the content and listings of sanctions to ensure they do not include some erroneous aspects which may breach the fundamental human rights.

Among the EU institutions, the main role in monitoring process is granted to the European Commission, which is often regarded as the guardian of the EU fundamental treaties. (Portela, Olsen, 2023, p.32).

The European Commission supervises the proper implementation of the EU sanctions and assesses if restrictive measures are enforced in accordance with the EU decisions and regulations. Commission monitors the effectiveness of imposed sanctions on addressees as well. Specifically, the Commission observes and gathers information on the national laws of the member states and their compatibility with the EU sanctions law. Besides, based on the EU directive on criminal liability for sanctions violations and circumvention, member states should set penalties for the violation and circumvention of the Union sanctions according to the framework established by the directive, the Commission also has the responsibility to check if imposed penalties are in alignment with the EU legislation.

It should be noted that under the Article 258 of the TFEU, if the Commission considers that member state could not fulfil its obligations based on treaties, it can provide opinion and within the defined time member state at fault should try to align with it. If the latter does not follow the provided opinion, then as a last resort, the Commission can start infringement procedure against the member state. In particular, the Commission has the right to submit the issue to the Court of Justice of the European Union (CJEU). (TFEU, Article 258). However, it can be deemed that the Commission would not be able to bring an EU member state to the CJEU for the breaches of CFSP-related legal acts. Considering that, based on the Article 24 of the TEU and Article 275 of the TFEU, the Court of justice has the limited jurisdiction in CFSP areas. Such a limitation may be considered as a weakness of the enforcement system of EU restrictive measures, since it also reduces Commission's monitoring powers and quality assurance.

Apart from the Commission, it is important to note that Directorate-Generals (DGs) also play vital role in the process of monitoring. Directorate-Generals can be described as specific sectors of the Commission which also supervise the implementation process.

For instance, the DG for trade (DG Trade) monitors the trade relationship between the sanctioned countries and the EU member states. Also, DG for Justice and Consumers (DG JUST) monitors the freezing of financial or non-financial assets owned by sanctioned entities or individuals. (Portela, Olsen, 2023, p.32).

The European External Actions Service (EEAS) also plays important part in the monitoring process. This EU institution is not a major monitoring entity. However, its competence includes the role of providing new lists of individuals or entities that based on the established criteria, may be put on the sanctioned list. Its role includes not only the proposal of names of potential targets but also provision of evidence and grounds for sanctioning. (Portela, Olsen, 2023, p. 35).

Besides, the responsibility of the EEAS includes the review of imposed targeted sanctions which is an important task within the sanctions monitoring process since if the listing of targets includes some erroneous aspects, subsequently it can become the subject of challenge at the Court of Justice of the European Union (CJEU). (Portela, Olsen, 2023, p. 36).

The Council of the EU also has a vital role in supervising implementation of restrictive measures. The council carries out this role through its competence to amend adopted legal acts of the Union with the aim of eliminating any flaws of the decisions.

In order to fulfill this function, the Council receives and overviews the information regarding the implementation of the EU legal acts in the member states' policies via certain feedback mechanisms. Working party of Foreign and Relations Counsellors (RELEX) is one of the most essential bodies within the Council which carries out the meetings of local sanctions coordinators of the member states, also the representatives of the Commission, the EEAS, the Council's legal service and NGOs. Mentioned meetings aim to overview and give feedbacks regarding the amendment of imposed sanctions. (Portela, Olsen, 2023, p. 37).

The Committee on Foreign Affairs (AFET) also has its role in the monitoring process of sanctions implementation. Specifically, it frames and inspects the implementation process of the CFSP and provides recommendations via adopting reports or sharing opinions.

The Committee adopts annual reports regarding the implementation of CFSP. The draft Annual report of 2024, that has not been finalized and adopted yet, emphasizes the seriousness of the challenges and threats to the EU security, the need for strong support for Ukraine and

necessity to provide military resources to the country. Besides, draft report underlines the importance of safeguarding the EU from hybrid threats and foreign interference based on which it can be assumed that apart from discussed measures which are already imposed, the new type of restrictive measures may be pending from the Union since hybrid threats are huge modern challenge for the democracy and stability of the EU. (The EU Parliament, Committee on Foreign Affairs, 2024, pp. 5-9).

Based on the above-mentioned it can be concluded that, majority of EU institutions have their specific authorizations to monitor the implementation and enforcement of imposed restrictive measures within their field of work in the Union. However, it can be assumed that monitoring system of the EU still needs to be better organized or structured within institutions. Besides, EU institutions need to have more formal powers in order to ensure the proper enforcement of sanctions.

According to the recommendations, one of the primary issues of the monitoring system is that even though the working parties of the EU council, evaluate the effectiveness and the outcomes of imposed sanctions in target countries, and focus on specific member states, still there is not an established common evaluative framework within the Union monitoring system, which can be used to track and assess the progress of measures and their outcomes more effectively. Besides, there is no organized system to collect the information regarding the past sanctions regimes and their outcomes or to share the experience or practices of the United Nations Security Council (UNSC) which can be really essential and valuable lessons for the Union for future improvements. (Portela, Olsen, 2023, p. ix).

Additionally, it should be noted that a well-established monitoring system is essential to review the evidence and legal bases of the adopted sanctions owing to the fact that, as it was already mentioned, erroneous aspects can result in the challenge of sanctions in the CJEU and also may cause the breach of fundamental human rights.

Erroneous aspects in the assessment of the Council recently has been the reason for the annulment of one of their imposed targeted sanctions.

Particularly, on 10th of April in 2024, the General Court of the Court of Justice of the European Union, decided to annul the involvement of two individuals, Petr Aven and Mikhail Fridman, from the list of the EU sanctions imposed between February 2022 and March 2023. (CJEU, Judgments of the General court, Fridman v Council, Aven v Council, 2024, p.1).

These two individuals who are share-holders of the Alfa group, which is one of the biggest banks of Russia, were put under individual sanctions, their assets and funds were frozen

by the Union. They challenged the imposed sanctions in the General court of CJEU and demanded to annul the decisions of the Council.

The General court decided that imposing sanctions on these individuals was not justified since it concluded that none of the grounds or reasons, that were provided by the Council in the initial or maintaining acts, were “sufficiently substantiated”. The court highlighted that the grounds listed by the Council may indicate the closeness between Petr Aven, Mikhail Fridman and Vladimir Putin. However, the provided evidence and grounds of the Council do not confirm the facts that Aven or Fridman were providing financial or material support to the ones responsible for destabilizing situation in Ukraine and undermining its independence. (CJEU, Judgments of the General court, *Fridman v Council*, *Aven v Council*, para. 44-85, 67-69).

It should be noted that mentioned individuals still remain on the list of the targeted EU sanctions, the judgment of the General court has not been yet enforced by the Council.

Discussed case of the CJEU and the fact that these individuals still remain on the sanctions list may represent some weaknesses of the monitoring system of the EU and its ability to effectively amend decisions regarding the sanctions policy. Limiting the abilities of Russia and responsible individuals is really essential and challenging task. However, monitoring of the sanctions and the amendments of regulations and decisions are really crucial processes in order to avoid violation of fundamental human rights like the right to property or the right to conduct a business.

2.2. Circumvention of restrictive measures (sanctions) and anti-circumvention measures of the EU

Monitoring the process of sanctions enforcement and implementation is crucial to avoid circumvention. Circumvention relates to avoiding imposed prohibitions and measures or trying to weaken their effectiveness. (Sibona, 2024, p. 1).

Circumvention of sanctions is quite a big challenge for the Union since it reduces the effectiveness of its external policy towards Russia.

In most cases evasion of sanctions is carried out by the following mechanisms: the use of shell companies to cover the ownership and control systems which involve sanctioned individuals or goods, the use of shadow fleets in order to carry out illegal shipping, illegal movement of financial or non-financial assets out of the jurisdiction of sanctions sender or to non-sanctioned individuals and disguised money transfers and payments to or from sanctioned individuals. (Portela, Olsen, 2023, p.30).

For instance, using shadow fleets enables Russia to circumvent energy-related sanctions, particularly, this mechanism allows the aggressor to breach oil price cap sanctions and additionally get extra revenues for oil export.

Energy-related sanctions are one of the most effective ways to target and limit Russia's energy profits which are the main source of revenues for the aggressor. Therefore, evading referred sanctions may be considered as the one of the biggest challenges for the Union which aims to reduce Russia's ability to wage war.

According to the institute of the Kyiv School of economics (KSE), during recent months, approximately, 70% of Russian seaborne oil, including the crude oil, was exported by shadow tankers without falling under the price cap which was defined by the EU sanctions law. (KSE institute, Hilgenstock, *et.al*, 2024, p. 2).

Besides, Russian shadow fleets may cause serious threats for the environment in Europe. Specifically, according to the KSE institute research, Russian shadow fleets are built from old ships and they are uninsured which will result in serious risks for the environment and it is particularly highly risky for the Baltic Sea, North Sea, Mediterranean and Black sea. (KSE institute, Hilgenstock, *et.al*, 2024, p. 3).

The control of shadow fleets is a challenging process for the Union since vessels can operate in high seas under the exclusive jurisdiction. Particularly, under the international law of the sea, ships are allowed to navigate in international waters over which none of the states have jurisdiction. By using this mechanism Russia is enabled to ship oil products and circumvent sanctions like established price cap for oil.

To examine in more specific details, based on the United Nations Convention on the Law of the sea, ships can be registered under the different countries' jurisdictions, irrespective of the nationality or the citizenship of the owner.

According to the article 91st of the convention, nationality of the ships is defined by the flag of the state they are entitled to fly. (UN Convention on the law of the sea, 1982, Article 91 (1)). Besides, according to the article 87th high seas are open to every country and they can exercise this right under the principle of the freedom of navigation. (UN Convention on the law of the sea, 1982, Article 87 (1) (a)).

The main aspect of the principle of the freedom of navigation is the genuine link between a state and a ship. However, this essential element of the principle is not clearly defined in the conventions. (Kuznietsov, 2021, p. 66). The "genuine link" element these days is not considered properly in practice and its importance is distorted that is represented by the cases

of Flag of Convenience (FoC) which refers to the situation when ship owners are allowed to register their vessels under different country's jurisdiction irrespective of their citizenship. (Kuznietsov, 2021, p. 66).

Additionally, based on the above-mentioned convention, on the high seas ships have exclusive jurisdiction which indicates that other states lack the competence to control them. (UN Convention on the law of the sea, 1982, Article 92, (1)). More specifically, jurisdiction over the ships that navigate in high seas, beyond the jurisdiction of a coastal country, is exclusive, which means that in ordinary situations, ships in international waters beyond national jurisdictions can only be boarded and inspected by its flag state or under consent of the owner state. (Kaye, 2020, p. 18).

The UN convention includes specific exceptions which allows warships to stop and board vessels navigating under foreign state's flag. Article 110 of the convention lists specific circumstances like when there are reasonable suspicions that the ship is engaged in piracy, the slave trade or unauthorized broadcasting, the ship is without nationality or irrespective of flying the foreign flag or refusing to show its flag, in reality it has the same nationality as the warship. (UN convention on the law of the sea, 1982, Article 110 (1)). Naval forces presently use referred article to exercise their "right of visit" on foreign-flagged vessels. Above-mentioned grounds for exercising this right cannot be extended or developed beyond the text of the article 110, except by the treaty or by the UN Security Council decision regarding the threats to the peace or acts of aggression. (Allen, 2019, p.4).

Apart from this, the convention grants coastal states the rights to board and inspect foreign-flagged vessels within their territorial waters or exclusive economic zone, in cases when there are reasonable suspicions that the vessel is violating the national law or regulations of the state and it's essential to conduct investigation. (UN Convention on the law of the sea, 1982, Articles 27,73). Additionally, Within the framework of the international law, vessels can be boarded and inspected based on the grounds of environmental law violations, terrorism acts, illegal fishing and etc.

Considering the mentioned exceptions, it can be said that none of the grounds can support the sanctions enforcement process on the high seas.

Since according to the presented research, Russia still manages to ship oil by shadow vessels, it can be said that developing international cooperation between regional and international organizations is quite necessary to enhance the effectiveness of sanctions enforcement. However, it can be said that due to the Russia's status in the United Nations

Security Council (UNSC), developing international cooperation or establishing multilateral system to combat sanctions circumvention is a complex and long-term process.

Regarding to the methods of circumvention it should be additionally highlighted that third countries are also effectively used to evade sanctions.

In accordance with the commentaries of some experts, who are tracking the effectiveness of the EU restrictive measures against Russia, after the full-scale invasion of Ukraine, in 2022, there has been sudden increase in exports to the countries in Central Asia and Caucasus and since this increase in export is so large it cannot be targeting only local demands and necessities. As some of the experts indicate, there is a high possibility export boom is linked with the cases of transshipment to Russia. (Brooks, 2024).

Within the EU member states, Italy and Germany are considered as the main subjects of the transshipment trade among advanced economies. (Brooks, 2024). Apart from the size of transshipment, it's also crucial to consider the goods that are exported. For instance, according to the data of the German statistical office, Germany mostly exports machinery, motor vehicles and parts or other similar goods to the following countries: Turkey, Kazakhstan, Kyrgyzstan, Azerbaijan, Georgia and Armenia. (Brooks, 2024).

Mentioned goods, that are transshipped, may not specifically be banned under the EU sanctions policy. However, it is a quite reasonable view that, they may be considered as the part of the dual-use goods category. (Brooks, 2024). According to the EU Commission, dual-use goods can have both, civilian or military uses and in the wrong hands they can be used to conduct illegal activities and to breach human rights. Therefore, they are banned from being traded. (European Commission, n.d, Exporting dual-use items).

Research or databases do not directly point out the transshipment cases to Russia. However, the previously stated view that the increase in export from the Union to third countries may also support Russia can be considered as a reasonable point which should be monitored more effectively by the Union.

The EU has been working on increasing the effective enforcement of sanctions since 2014. Following the adoption of the initial restrictive measures against Russia, the Union also started introducing measures to avoid sanctions circumvention.

Initial anti-circumvention measures of the EU prohibited the participation in the process of sanctions circumvention. CFSP regulations include special provisions which forbid to “knowingly and intentionally” take part in activities that aim to circumvent imposed prohibitions under the regulations. (The Council Regulation (EU) 2024/1745, 2024, Article 1

(25)). Referred provision include the essential element of “participating intentionally” in the process of circumvention. Based on the recent fourteenth package of sanctions, the EU extended the scope of the provisions and additionally included the element of “indirect intention” when the person does not directly seek to achieve the result of sanctions circumvention but is aware of the possibility of that effect and yet still takes part in a suspicious activity and accepts the possibility of evasion. (The Council Regulation (EU) 2024/1745, 2024, Article 1 (25)).

Various CFSP regulations and decisions include specific provisions which aim to prevent and reduce the cases of circumvention. Specific CFSP provisions establish some mechanisms and ways to reduce the loopholes for evasion of restrictive measures.

Infringement of the provisions against circumvention is considered to be one of the criteria for imposing sanctions against individuals or entities. In particular, according to the eighth package of sanctions, any natural or legal persons, bodies or entities that facilitate breaching of the provisions of regulations against circumvention are sanctioned by the Union. (The Council regulation (EU) 2022/1905, 2022, Article 1 (1)). Establishing new criteria for sanctioning can be considered as an effective way to directly target specific individuals or entities that are responsible for simplifying the process of sanctions evasion.

Majority of initial EU sanction packages address the problem of circumvention, though this issue drew increased attention in recent CFSP norms.

Anti-circumvention measures of the EU mainly target the issues linked with trade and financial sanctions evasion. Specifically, the issues of transfer of funds, import or re-export, transshipment, transit to Russia.

As it was previously mentioned, the most complex issue that the EU has to face in the context of sanctions circumvention is that Russia still manages to evade restrictive measures on oil export or defined oil price cap. Besides, export of dual-use items which can be used for military purposes is also essential issues in the context of sanctions circumvention. Recent packages of the EU sanctions address referred challenge and aim to strengthen control over the export and import of sensitive dual-use goods and cooperation with third countries.

For instance, based on the 10th package of sanctions, as an-circumvention measures, transit through the territory of Russia of technology, dual-use items and arms, which were exported from the EU, was prohibited. (The Council regulation (EU) 2023/427, 2023, Article 1(2)). Subsequent package of sanctions extended the list and included goods and technologies

which might support the development of Russia's military, economic or technological sector and as a result its abilities to wage war.

In order to prevent severe interference in the fundamental rights, mentioned prohibition allows certain exceptions. Specifically, transit prohibition does not apply to dual-use goods or technologies which are intended for the humanitarian aim, environmental safety, health emergency and other similar purposes. It should be noted that imposed exceptions do not exclude the authorization requirements established by the Council and the EU Parliament for the control of export, transit or transfer of dual-use goods. Specifically, requirements for the EU local operators to verify and ensure that goods are not intended for military purposes or for the aim to breach fundamental human rights and their end-use is legitimate. National competent authorities are also granted the right to authorize the transit of goods through the territory of Russia after they ensure that goods or technologies are intended for purposes like maritime safety, maintenance, operation, cyber-security and etc. (The Council regulation (EU) 2023/427, 2023, Article 1(2)).

The EU sanction packages include additional anti-circumvention measures which aim to prevent indirect trade with Russia. The EU places significant importance on the cooperation with third countries since the process of sanctions circumvention is facilitated through third-country routes. Specifically, the 11th package of sanctions highlights the necessity of imposing individual measures against third country operators that assisted and streamlined the sanctions circumvention. The EU will engage in cooperation with the member state in order to ensure that the latter imposes proper measures to address the problem of sanctions evasion.

Mentioned package of sanctions as a last-resort measure introduced a new anti-circumvention tool in order to resolve cases when sanctions circumvention still continues via third country operators. In particular, the EU decision creates an opportunity to restrict export, sale, transfer of sensitive dual-use goods, technology, or other goods that might support the development of Russia's military, technological or industrial sector, to third countries which are used for facilitating sanctions evasion. (The Council decision (CFSP) 2023/1217, 2023, Para. 13).

The 11th package of sanctions additionally addresses the issue of using vessels to import Russian crude oil or petroleum products or transport these goods at a price which is above the defined price cap. To counter these issues, the EU prohibited access to the Union ports by the vessels conducting ship-to-ship transfers in case when the national competent authority has a reasonable suspicion that the vessel violates sanctions linked with above-mentioned goods and

price cap. Besides, irrespective of the flag of the vessel, when it navigates in the territory of any of the member states, it has the obligation to notify national competent authority 48 hours in advance before reaching its port. (The Council decision (CFSP) 2023/1217, 2023, Para. 31).

Based on the 12th package of sanctions, member states are also recommended to implement the obligation to notify national competent authorities about the sale of tankers which are used for oil transportation. In particular, if any Union national or legal entity decides to sell such a carrier to a third country national or entity, should notify local authorities, exceptions to sell a carrier to Russian entities or nationals are also allowed but under strict conditions. (The Council decision (CFSP) 2023/2874, 2023, Para. 17).

Recent 14th package of sanctions also addresses mentioned issues and imposes anti-circumvention measures. Specifically, recently the EU highlighted the fact that Russia manages to sell and engage in LNG (liquefied natural gas) trade which is the source of essential revenues. Therefore, as a counter-measure within the territory of the Union any transshipment, re-loading or support services for Russian LNG are prohibited except when these services are needed to import LNG to the member states. (The Council regulation (EU) 2024/1745, 2024, para. 10). Based on this anti-circumvention measure the EU tries to limit the loopholes for the LNG transshipment and prevent Russia from transporting its products to non-EU countries. Based on the 14th package of restrictive measures, the EU additionally used targeted sanctions directed at specific vessels which supported Russian aggression and prohibited their access to the ports of the Union member states and related services.

Apart from this, the EU anti-circumvention measures include other noteworthy obligations and prohibitions. In particular, EU operators, specifically, exporters are required to include contractual clauses in the contracts signed with third country parties, which prohibit the re-export of certain sensitive dual-use goods, technologies or other sanctioned items to Russia.

The EU also tries to control the certain financial transactions and the ownership or positions of Russian individuals or entities. Therefore, the Union imposed sectoral sanctions and established related prohibitions reporting obligations. Specifically, based on the 12th package of sanctions, within the EU member states any legal person or entities, whose more than 40% of ownership rights are held by the Russian national or resident, legal person or entity, should report to national competent authorities when they transfer funds outside the Union exceeding 100 000 Euros. (The Council regulation (EU) 2023/2878, 2023, Article 1 (24)). Additionally, Russian citizens and residents of Russia are prevented from holding

positions in the governing structures of legal person or entities which provide services like crypto-asset wallets, custody and account services to Russian nationals or residents. (The Council regulation (EU) 2023/2878, 2023, Para. 19).

The 14th package of sanctions against Russia, emphasizes the role of the EU operators to counter circumvention and states the necessity to implement due diligence mechanisms to control the risks of re-export of battlefield goods to Russia. Besides, referred package of sanctions require parent companies in the Union to control their subsidiaries outside the EU and assure that they are not engaged in sanctions evasion.

It is clear from the anti-circumvention measures and methods discussed above, that in the process of combating sanctions evasion, the EU attaches the great importance to the efforts of local EU operators. According to the EU commission, Union operators need to perform “due diligence” when conducting their business activities and should consider any possible risks in order to avoid circumvention. Each EU operator is responsible for developing, implementing and regularly updating the EU sanctions compliance program that presents their specific business models, geographic areas of their operations and risks assessed regarding the costumers and staff. (European Commission, 2022, p.1).

The EU operators of member states are often provided with some guidance, guidelines or recommendations which aim to support them in the process of sanctions enforcement.

For instance, the European commission published guidance for the Union operators to further explain the content of imposed sanctions and ways to prevent circumvention diligently that should be taken into account when they carry out specific transactions or activities during their work. Based on the mechanisms and cases of circumvention, commission tries to think of proper countermeasures and ways to tackle this challenge.

It can be assumed that providing guidance serves as a one of the anti-circumvention mechanisms of the EU which aims to help local EU operators to exercise due diligence when they conduct their business activities. Additionally, for the purpose of supporting exporters and customs to effectively comply their activities with sanctions and perform them diligently, also for the enforcement agencies of the partner countries to protect their territories from being used for sanctions evasion, the Commission created the list of Common high priority items and economically critical goods that are sanctioned under the CFSP norms. In particular, referred lists were created considering the found battlefield items in Ukraine and industrial goods which are reportedly the mostly traded items through specific third countries to Russia. (European Commission, 2023, p.1).

Provided guidance by the Commission focuses on the sanctions imposed on the export sector and supports operators to enforce export sanctions since as it was already discussed above, Russia managed to find various ways to circumvent trade bans through third countries or the high seas.

Pursuant to the mentioned 12th package of sanctions, guidance of the Commission includes noteworthy recommendations based on which, EU operators should ensure that the operations they make regarding the sanctioned goods are not rerouted to Russia. More specifically, the Commission states that the EU operators should examine and ensure how trustworthy their counterparts are and may even include specific contractual clauses in their contracts, signed with third-country business colleagues, that prohibits re-export of goods to Russia or Belarus and if necessary leads to accountability.

Additionally, the Commission highlights that the re-export of sanctioned goods to Russia may be considered as a failure of EU operators to perform activities diligently and such failure should be considered as a violation of Union sanctions law by the national competent authorities of the member states. (The European Commission, 2023, p.7).

Besides, according to the guidance any suspicious activities regarding the sanctions circumvention should be notified to relevant national authorities like customs or border authorities and etc. (The European Commission, 2023, p.7).

Placing great importance on the national competent authorities and local operators in the process of sanctions implementation and enforcement and supporting their activities through guidance can be deemed as a really essential and reasonable approach since as it was previously stated, although sanctions are adopted within centralized system by the Council, the enforcement and implementation of many sanctions are significantly dependent on member states and their national competent authorities. Therefore, local authorities and operators of member states enjoy the most favorable opportunities to effectively monitor the process of sanctions evasion and avoid circumvention. Besides, guidance provides quite reasonable statement of the Commission that there is no unified “due diligence” mechanism that is compatible with every job sector, industry or other fields of the member states. Therefore, it is the responsibility of the EU operators to develop and update sanctions compliance mechanism that matches specificities of their field of work or area of business. Accordingly, the guidance sets requirements tracking the development of the EU sanctions policy and training employees to address the risks of circumvention and assess the possible threats. (The EU Commission, 2023, Para. V).

Effective enforcement of sanctions is really challenging and unattainable without the efforts of member states and their local operators therefore, setting some requirements and focusing on their performance are really essential. The guidance of the Commission is not legally-binding document, rather it has a recommendatory nature. However, it still should be considered as an impactful tool since it provides assistance and support for local operators of the Union. Besides, irrespective of the nature, consideration of the Commission guidance is really crucial for individuals, businesses or entities in the Union, to avoid violation or evasion of sanctions and related liabilities.

Within the EU's decentralized system for sanctions enforcement and implementation, imposing penalties for sanctions circumvention and violation is also in the hands of national competent authorities of the member states. Specifically, EU sanctions regulations usually include special provisions which require member states to determine rules on imposing penalties. For instance, according to the 14th package of sanctions, member states are required to establish rules on penalties for infringements which should be effective, dissuasive and proportionate. Provision also allows to consider voluntary self-disclosure of violation as a mitigating factor. (The Council regulation (EU) 2024/1745, 2024, Article 1(21)).

Granting discretion to member states resulted in some challenges. As the Commission stated in its proposal from 2022, national systems differed significantly regarding criminalization of violation and circumvention of EU sanctions law norms and related penalty systems. (The EU Commission, 2022, p.2). The Commission additionally highlighted the challenges of impunity and a lack of accountability for sanctions violation.

For the purpose of reducing mentioned challenges and harmonizing sanctions enforcement system, the Council approved the proposal of the Commission to include violation of EU restrictive measures in the list of crimes based on the criteria established in the Article 83 (1) of TFEU. Afterwards, in 2024 the directive on the definition of criminal offences and penalties for the violation of Union restrictive measures was adopted. Based on the directive, the Commission defined the violation and circumvention of restrictive measures, listed the related cases which should be constituted as a criminal offence and also established the framework for member states to impose criminal or non-criminal penalties.

Based on the directive, the EU legislators classified the violation and circumvention of restrictive measures as criminal offences. As the directive states, member states need to impose criminal or non-criminal penalties in order to address the cases of sanctions violation or circumvention. To do so, the directive include provisions which establish core principles that

should be ensured by member states and define minimum values of committed crimes and maximum terms for imposing penalties. Based on the provisions, within their discretion member states should impose penalties in their national legislations.

One of the crucial points is that, imposed penalties should meet the principles of effectiveness, proportionality and dissuasiveness. The principle of effectiveness indicates that the sanction should have the ability to achieve the desired aims. Proportionality principle requires that there should be compatibility between the seriousness of committed offence and imposed sanction. Principle of dissuasiveness requires that imposed sanctions should have proper deterrent effect to prevent future circumvention or violation of sanctions. (Kellerbauer, *et.al.*, 2019, p. 898).

Considering the provisions of the directive, it can be concluded that it is possible for member states to implement and impose proportionate penalties for sanctions violation or circumvention. For instance, the directive defines the maximum length of criminal penalties like imprisonment and minimum values of crimes in order to prevent exceeded or unjustified accountability measures. Specifically, according to one of the provisions, hiding the real ownership of funds or economic resources can be punishable by a maximum term of imprisonment of at least five years when the value such funds or economic resources amounts to at least 100 000 Euros on the when crime was committed. (Directive (EU) 2024/1226, 2024, Article 5 (3) (a)). Based on mentioned provision, directive establishes specific framework for member states in order to impose proportionate penalty for committed criminal offence.

Additionally, directive includes different types of penalties that can be imposed and also allows member states to make some exceptions based on the acts that include restrictive measures or the consent of national competent authority which can be considered as essential tools for member states to create proportionate system of penalties.

In the proposal to harmonize criminal offences and penalties for the violation of EU sanctions, the Commission also states that the directive meets the requirement for ensuring the principle of proportionality which is established in the TEU and definitions of criminal offences, types and levels of criminal penalties are defined properly to meet the criteria of proportionality. (The EU Commission, 2022, p. 9).

The Commission also justified the criminalization based on the grounds that violation or circumvention of restrictive measures may maintain threats to international peace and security, the rule of law, democracy or human rights in the Union and third countries. (Portela, Olsen, 2023, P. 41). Besides, the justifications indicated that such crime may even result in

“significant economic, social, societal and environmental damage”. (The Council decisions (EU) 2022/2332, 2022, Para. 10).

Based on the mentioned points, it can be concluded that the violation or circumvention of restrictive measures meet the criteria of Article 83 of TFEU and should be classified as a part of serious “Euro Crimes” with cross border dimension since they might result in serious international challenges and necessitate unified efforts.

Proposal of the Commission was a very essential and timely step which was very well welcomed by legal experts. However, some critical views were also expressed. Critics were mainly connected to the fact that the European Parliament gave its consent to the decision of the Council through urgent procedure without having a discussion with its Committee on Civil Liberties, Justice and Home Affairs (LIBE). In particular, according to the comments of the European Economic and Social Committee (EESC), even though urgent adoption of the proposal was determined by the significant geopolitical processes, it still should have been the subject for proper democratic scrutiny.

Apart from this, the committee and other legal experts also criticized the fact that the Commission did not conduct an impact assessment on the grounds that there was an urgent need to hold responsible individuals and legal persons accountable. (The EU Commission, 2022, p. 10). Specifically, many legal experts considered that conducting impact assessment was really essential for ensuring the principles of subsidiarity or proportionality. Besides, according to some scholars establishing an obligation for member states to implement criminal penalties for sanctions circumvention or violation needs to be justified by evidence. Legislator should provide empirical evidence that criminal laws are effective for implementing union policy norms and in some cases criminal penalties are more effective than non-criminal ones. (Oberg, 2015, p. 19).

Mentioned critic can be considered as reasonable views since the proposal of the Commission does not involve empirical evidence or assessment of risks that might have been caused by the criminalization of sanctions violation or circumvention. However, since the extent of the conflict between Russian and Ukraine is significant and essential for the whole world and needs urgent actions, the activities of the EU Parliament and the Commission can be deemed to be justified and even necessary in such circumstances.

As it was mentioned, the directive was finally approved and adopted in 2024, it can be said that we won't have a full picture of the impact of its provisions yet. However, this directive should be considered as an important anti-circumvention tool since it established unified

framework for penalty systems which will help member states to ensure the protection of fundamental principles and human rights.

Even though, the Commission did not conduct impact assessment, considering the provisions of the directive it can be concluded that it provides opportunities to ensure protection of basic principles. For instance, regarding the principles of effectiveness and dissuasiveness, it can be stated that since the directive includes both criminal or non-criminal penalties like imprisonment, fine, exclusion from entitlement, disqualification and etc. it is attainable to implement penalties which ensure mentioned principles. Since the choice of penalty types is quite broad, member states have the opportunity to impose proper accountability measure for the committed crime that can be effective remedy. Additionally, broad choice of penalties can create proper deterrent effect for individuals or entities.

As it was previously mentioned, the structure and framework of the directive also ensure that the proportionality principle can be maintained.

In brief, criminalization of sanctions violation and circumvention is really essential tool which can be used by member states to effectively and proportionally address the cases of infringements and evasion.

In conclusion, the EU actively tries to combat sanctions circumvention through specific measures and tools. However, evasion of sanctions still remains to be one of the biggest challenges within the Union's foreign policy. Apart from the need to develop and upgrade anti-circumvention measures of the Union, considering the methods used for evasion, it is quite clear that developing international cooperation with international organizations and the due diligence of member states are also crucial aspects.

CHAPTER III

CONFORMITY OF IMPOSED RESTRICTIVE MEASURES (SANCTIONS) WITH THE GENERAL PRINCIPLES OF THE EU

3.1. Conformity of imposed restrictive measures (sanctions) with the principle of proportionality and the element of necessity

As noted earlier in this thesis, the Common Foreign and Security policy is a crucial aspect of the Union's external policy. Specifically, based on the fundamental treaties the EU has the competence to impose restrictive measures and use them as a major tool for maintaining peace and security. Respectively, the EU uses restrictive measures to address Russian aggression.

Conducting CFSP is quite complex and challenging task since apart from being able to achieve major objectives, it should be adjusted to some legal limitations in order to prevent the breach of fundamental principles or rights. Owing to the fact that imposing sanctions against Russia developed in an unprecedented way, many questions have been raised regarding the conformity of restrictive measures with their objectives and fundamental principles of the EU. Besides, the matter concerning how fairly the EU addresses the wrong-doing of Russia has become subject of discussion and appeal.

Every decision or regulation adopted within the CFSP should be in alignment with the fundamental objectives of the EU. Pursuant to the Article 21 of the TEU, the Union's actions within its external policy should be based on the following principles: democracy, the respect for human dignity, the rule of law, the universality and indivisibility of human rights, equality and solidarity principles and the respect for the principles of the international law and United Nations Charter. (Treaty on the European Union, Title V, Article 21 (1)).

The EU should take into account aforementioned core values of the Union when conducting CFSP.

In order to further discuss the legal limitations and the legality of EU restrictive measures against Russia, it is crucial to examine the principle of proportionality which is one of the guiding and core principles in international and the EU law.

Within the scope of the international law, principle of proportionality governs the actions of states and international organizations. Specifically, proportionality requires that adopted acts against any state's wrongdoing should be rational and reasonable use of proper methods that aim to achieve a permissible goal, without breaching the fundamental rights of individuals or another state. (Crawford, 2011, Cited in Terlinden, 2024, p.306).

Proportionality principle is also crucial within the CFSP framework of the EU. It is the major basis for the EU acts, including regulations and decisions under which sanctions are imposed.

Initially mentioned principle was established in the case-law by the Court of Justice of the EU (CJEU) which aimed to protect rights of individuals and stated indicated that there should have been a proper balance between restricting the rights of individuals and protecting the public interest.

Subsequently, proportionality principle was also included in the TEU. Specifically, Article 5 (4) of the treaty establishes this principle and states that the form and context of the action of the Union should not exceed the limits of what is necessary to achieve the objectives

of the treaties. (TEU, Title 1, Article 5 (4)). It should be noted that, proportionality principle includes three major elements which should be examined in relation to Union's actions: suitability, necessity and proportionality *sensu stricto*. (Crawford, 2011, cited in Terlinden, 2024, p. 307). Within the element of suitability, it should be assessed if imposed restrictive measure is a proper tool to achieve a legitimate aim. Secondly, imposed measures should not exceed the limits of necessity required to achieve the aim. As a final point, balance should be maintained between the benefits of imposed measures and their negative effects on fundamental rights or protected interests. It should be determined that the benefits of imposed measure are more essential than the negative effects on fundamental rights. (Terlinden, 2024, p. 307).

Proportionality principle is also established by the Charter of fundamental rights of the European Union. Specifically, Article 52 (1) of the charter states that limitation on fundamental rights should be imposed based on law and in relation to the proportionality principle, such limitations should be made only if they are necessary for achieving legitimate aim of protecting general interest or the rights and freedoms of others. (CFR of EU, Article 52 (1)).

Based on the articles, it can be noted that the element of necessity is really crucial to impose restrictions on fundamental rights and adopt restrictive measures. Within the test of proportionality, it should be defined that no other alternatives or tools were proper to achieve a legitimate aim rather than the ones which are used. Interference with exercising fundamental rights can only be deemed as necessary when there is no less invasive tool or measure available to achieve a legitimate aim. (Kellerbauer, *et.al*, 2019, p. 2252).

Ensuring the proportionality of CFSP norms is really essential matter. However, the scope of judicial review over the CFSP norms is quite limited based on the treaties. In particular, pursuant to Articles 24 (1) of TEU and 275 of TFEU, the Court of justice of the European Union does not have the jurisdiction over the provisions of CFSP. Yet, the court has the right to review the legality of decisions which impose restrictive measures against natural and legal persons. (TFEU, Article 275). Based on the treaties, restrictive measures which have general application cannot be legally reviewed by the CJEU. For instance, in one of the cases the court states that it had no jurisdiction to review the legality of provisions since they were targeted to all operators and therefore were generally applicable. (CJEU, Case C-72/15, ROSNEFT, Judgement, 2017, Para. 97,98,99).

The main reason for such distinction is related to the fact that CJEU does not interfere with the political decisions of the Union. Specifically, according to the case law of the CJEU,

The European Union legislature should be granted ‘a broad discretion in areas which involve political, economic and social choices on its part, and in which it is called upon to undertake complex assessments’. (CJEU, Case C-72/15, ROSNEFT, Judgement, 2017, Para. 146). Within its judicial practice the court has concluded that the legality of measures which are adopted in relation to mentioned areas, can only be analyzed and affected when there is a clear indicator that the measure is ‘manifestly inappropriate’ compared to the objective which the institution is aiming to achieve. (CJEU, Case C-72/15, ROSNEFT, Judgement, 2017, Para. 146).

The sectoral sanctions of the EU in most cases are not subject to judicial review by the court. For instance, sanctions that target the oil sector, trade sector or media sector of Russia may be exempt from judicial review unless they significantly interfere with the fundamental rights of legal or natural persons in that case the measure may be analyzed by the court within the test of proportionality.

Considering the judicial practice of CJEU, many scholars indicate that the court does not conduct full proportionality test in practice. Specifically, the suitability element of the principle of proportionality is often overlooked when the restrictive measures are challenged. (Lonardo, 2023, p. 55). Besides, the court often does not differentiate between the necessity and proportionality *sensu stricto* elements and does not consider the possibility of imposing less demanding measures. (Tridimas, 2018, Gerven, 1999, cited in Terlinden, 2024, p. 307).

It can be said that the court usually examines whether the imposed restrictive measures of the EU is based on the sufficient evidence. In most cases the court dismisses the arguments that the Council’s decisions breaches proportionality principle and determines that imposed measures are necessary for achieving their specific objectives.

For instance, in one of the recent judgements of the General court, within the test of proportionality principle, the court mainly examined the balance between the imposed measure and the objective of the EU, the necessity of the used tool and grounds which indicated that the fundamental rights were significantly breached by the measure.

In particular, based on the eighth package of sanctions, the EU prohibited persons in the Union to provide legal advisory services to the government of Russia, legal bodies or entities established in Russia. Prohibition included exceptions and did not covered the legal advice services or representation regarding the judicial, arbitral or administrative proceedings. Rather prohibition applied to services like participating in the preparation of legal documents or commercial transactions, negotiations with third parties and etc. (Council Regulation (EU)

2022/1904, 2022, Para. 19). The main objectives of imposing such a measure were to increase the pressure exerted on Russia and its war of aggression against Ukraine. (Judgement of the General Court, Case T-797/22, 2024, Para.176).

Mentioned restriction was challenged by several bar associations based on the grounds that such measure infringed the fundamental right to access legal advice and interfered with the independence of lawyers and their role in ensuring the rule of law.

In the present judgement, the General court conducted quite limited judicial review of the challenged restrictive measure and it can be said that the court only conducted the test of 'manifestly inappropriate'. Specifically, the court highlighted that the prohibition on providing legal advice included exceptions therefore, the balance was maintained between the measure and the objective. The court concluded that the prohibition properly met the objective of increasing pressure on Russia and its war of aggression and it cannot be regarded as manifestly inappropriate measure which infringes the fundamental rights. (Judgement of the General court, Case T-797/22, 2024, Para. 176). The court also emphasize that the role of lawyers is not absolute and may be restricted in order to protect general interest of the Union. Besides, since there was no evidence provided which claimed the negative effects of the measure on the role of lawyers and their role or on fundamental rights, prohibition in question should not be considered inappropriate, therefore it may be deemed that the court also examined the proportionality *sensu stricto* element and could not find negative effects which outweighed the benefits of imposed measure.

In brief, it can be concluded that in the present case the court focused on the balance between the measure and its objective. It did not analyze the prohibition under the full test of proportionality which can be explained by the fact that the court granted the broad discretion to the Council in imposing measures in relation to political matters.

In contrast to the discussed case, the General court broadly examined the balance between prohibition on the broadcast of Russia media, RT France, and the freedom of expression and information. It should be noted that prohibition will be maintained till the end of aggression against Ukraine. As it was previously mentioned in order to tackle the challenges of propaganda and information warfare the EU imposes restrictions on the broadcast of some Russian media outlets.

In this case RT France required the annulment of the Union's decision as it stated that such prohibitions were opposed to fundamental rights like freedom of expression and information. In this case the court conducted the full test of proportionality principle and

concluded that all three elements were met. In particular, firstly the court indicated that imposing such prohibition was suitable measure and capable of protecting the public order, peace, international and union security and increasing the pressure on Russian authorities. (Judgement of the General court, Case T-125/22, 2022, Para. 193,194). Besides, according to the judgement other less restrictive measures like prohibition of specific content, or imposing obligation to display warning or banner would not be effective ways to achieve the desired objectives of the Union. (Judgement of the General court, Case T-125/22, 2022, Para. 197). The court also indicated that possible negative effects of the prohibition were not disproportionate to the objectives of the Union, therefore it concluded that general interests outweighed the disadvantages.

based on the present case, it can be noted that the court has different practice of conducting proportionality test. However, it can be concluded that the court prioritizes the objectives of the Union and mostly focuses on analyzing the balance between the imposed measure and the fundamental rights.

The practice and case law of the CJEU still develops. In one of the recent cases in which sanctions against Venezuela were challenged, the court shifted away from its past interpretations regarding the individual and general restrictive measures and defined that Venezuela was a legal person therefore the case was deemed admissible. Based on such approach, measures which have general application were included in the judicial review by the court. It concluded that the measures were necessary. However, the negative effects were not analyzed and the court could not review the conformity of the challenged generally applicable measures with the Charter of fundamental rights. Some scholars indicate that such changes may even enable Russia, Belarus, Ukraine or other countries to challenge restrictive measures though such challenge will not be admissible regarding every provision. (Lonardo, 2023, p. 48).

Developing such an approach and challenging measures of general application may be deemed necessary in order to monitor the legality of such measures and may even more effectively protect the rights of individuals who are citizen of sanctioned state. However, it would be more appropriate if the limits on the judicial review is maintained and political aspects or decisions of the Council is left out of it.

Overall CSFP norms of the EU against Russia can be deemed proportionate. As previously mentioned, Sanctions are the main tool of the Union to fight against Russian aggression without conducting military actions, using this method may need longer terms to

result in significant outcomes but it is capable of achieving the main aims which include to increase pressure on Russian sectors, to limit its abilities to wage war and put an end to war of aggression. Besides, within the element of necessity it can be stated that less restrictive measures would not be effective. Considering the facts that the conflict in focus is really complex and severe, there are many cases of circumvention and the Union should use peaceful ways against Russia, targeting different Russian sectors and imposing sanctions can be deemed as the most suitable and essential methods in order to achieve mentioned aims.

Finally, regarding the balance between the benefits and possible negative effects of the sanctions, it can be said that imposing sanctions resulted in some challenges for the Union member states and also restricted some fundamental rights of sanctioned persons. However, such negative effects cannot outweigh the benefits of reducing the power of Russian aggression and maintaining peace and security of the Union.

Besides, it should be noted that the EU decisions and regulations include exceptions which aim to maintain balance and protect the fundamental rights. Therefore, it can be concluded that imposed sanctions are not manifestly inappropriate, rather within existed political circumstances, they should be considered as essential tools which are the most appropriate and balanced in response to Russian aggression.

CHAPTER IV

ANALYSIS OF CURRENT CHALLENGES AND THE EFFECTIVENESS OF THE EU RESTRICTIVE MEASURES (SANCTIONS)

4.1. Analysis of effectiveness and impact of restrictive measures (sanctions) and drawbacks

As it was already mentioned several times after the full-scale invasion of Ukraine the EU imposed comprehensive restrictive measures against Russia which addressed almost every sector of the aggressor. However, after two years the war is still in progress which raised many questions regarding the capabilities of Union sanctions. Many consider that sanctions tool of the EU has already failed to accomplish its main goals since the aggression of Russia has not changed. Mentioned views are mostly based on the grounds that the economy of Russia did not crash after two years of being sanctioned.

It should be noted that the restrictive measures have not yet resulted in significant changes. However, it can be deemed reasonable to state that since imposed measures have

specific objectives and include exceptions in order to maintain balance with fundamental rights and proportionality principle, they cannot lead to significant outcomes in a short period of time.

It can be deemed a quite reasonable view that sanctions have some ‘invisible’ impacts on the ongoing conflict. (Giumelli, 2024, p.223). In particular, sanctions are capable to achieve their objectives in longer terms and cause future serious challenges for Russia.

For instance, due to the export bans of EU Russia’s access to western technologies is significantly limited. As some experts indicate even though the military actions of Russia still continue, its military abilities can be seriously reduced owing to lack of access to advanced technology.

As an alternative Russia started receiving military and economical supports from countries outside the Union. However, it can be assumed that receiving such supports may effect economic state of Russia since the necessity to receive military equipment or other related support from countries like North Korea or Iran may also indicate the negative impacts of EU sanctions. (Giumelli, 2024, p.223). Besides, as some research indicates due to export and economic sanctions Russia’s military and industry fields were pressured to find other costlier suppliers outside the Union countries. (Schott, 2023, p.1).

Based on the mentioned above it can be concluded that support from third countries hinder essential outcomes but imposed sanctions have the potential to gradually limit the financial and military abilities of Russia.

Additional hindering factors for significant results are the loopholes of sanctions. as it was previously discussed Russia manages to find different methods to circumvent sanctions. For instance, as it was mentioned energy-related measures like price cap for oil or bans on oil products, which are important source of revenues are evaded by using shadow fleets which can export Russian oil through high seas that are not subject to any countries’ jurisdiction. The EU mostly uses targeted measures to counter such circumvention cases, specifically by imposing individual measures on specific vessels. Such an approach can be deemed quite reasonable since due to the complexity of international law mentioned method of evasion is not properly addressed therefore, using targeted measures may be proper solution to have some control over such cases.

In order to limit circumvention and support for Russia, the EU also addresses third countries and mostly use targeted measures in order to ensure the proportionality principle. For instance, the Union imposed sanctions against some entities and individuals in Iran since the latter supported Russia’s aggression and provided military equipment like ‘drones’. (Council

of the EU, 2024). Similar measures are also used against Belarus which is an essential partner of Russia.

it should be noted that during the writing of thesis the EU adopted fifteenth package of sanctions against Russia, based on which it extended the scope of sanctions against third countries and targeted new entities by export restrictions from China, India, Serbia and United Arab Emirates. (Council of the EU, 2024).

Addressing specific entities from third countries or specific ships may need longer time. However, considering the complexities of international law and extraterritoriality, imposing such measures may be deemed as a proper solution to have some control over sanctions enforcement and circumvention outside the Union's jurisdiction.

Even though, EU sanctions are really comprehensive it is quite obvious that Russia still manages to get essential revenues and continue its aggression. According to the International Monetary Fund (IMF), based on the recent, 2024 indicator of Russia's Gross Domestic Product (GDP), it is expected that in the following year the economy of Russia may even grow faster than Germany or France. (Islam, Mullane, 2024). Considering the fact that sanctions against Russia is quite comprehensive such forecast was quite unexpected.

Apart from mentioned hindering factors, it should be noted that imposed measures have some serious drawbacks and resulted in some challenges for the Union. Specifically, due to the high dependence of some member states on Russian oil, Union still has not completely departed from importing Russian oil. Gazprombank, one of the largest banks of Russia, was also not excluded from SWIFT system since it receives payments for Russian oil. Gazprombank is a very essential source of energy-related revenues for Russia. Therefore, further sanctioning of this entity is really essential.

Additionally, enforcement of sanctions is also quite costly for the Union local entities. For instance, private or public entities need to hire and train specialists who will diligently monitor the process of sanctions enforcement and company's compliance with measures. (Giumelli, 2024, p.221).

It can be concluded that it is really challenging for the Union to expand the scope of sanctions in a short time and address every issue related to sanctions enforcement. As some analysis indicate several proposals of the Commission have been watered-down during the negotiations as some member states were asking from exemptions or longer time for transition which as a result increases the time to adopt new measures and extend the scope of sanctions. (Batzella, 2024, p.8).

Mentioned challenges highlight the need for enhanced international cooperation. Within the international law framework several amendments may be considered necessary to limit the circumvention of sanctions. However, as it was already noted due to the status of Russia in the security Council of UN, conducting such amendments are quite complex processes.

In brief, it can be concluded that imposed restrictive measures have not yet resulted in significant changes or outcomes, there are not many visible impacts on Russian aggression. However, EU sanctions caused Russia to have higher payments in order to create alternative methods and receive military equipment therefore, EU sanctions are capable to gradually change the recent state of Russia and significantly reduce its aggression.

4.2. Ways and Recommendations to improve restrictive and anti-circumvention measures against Russia

There is an ongoing debate on the ways to improve the impact and effectiveness of sanctions against Russia. Based on the overview of imposed sanctions it can be deemed that irrespective of its drawbacks and challenges still they are quite comprehensive and target almost every field. However, increasing the lists of sanctioned persons and the scope of measures is really essential and the Union should work on further developments based on its experience and new evidence.

Considering the mentioned above it can be stated that the majority of complexities are related to the process of sanctions implementation and enforcement. Therefore, it may be deemed necessary to focus on the development of sanctions monitoring and anti-circumvention measures.

As it was previously discussed in the thesis monitoring of sanctions enforcement is carried out by EU institutions within their work field, the main institution is the Commission which also publishes reports. However, establishing more organized system for monitoring sanctions can be considered as a reasonable recommendation. Besides, according to some scholars creating framework to evaluate the progress of sanctions and store information based on past experiences is deemed necessary since if specific entity focuses on the monitoring of enforcement and store information for future developments it may result in more effective and faster-paced policy-making against circumvention. (Portela, Olsen, 2023, ix).

Apart from this, it is essential to increase monitoring on measures against disinformation and propaganda. As it was mentioned earlier, the conflict in question includes not only the military actions but some hybrid threats out of which information warfare is the most critical. Even though, EU prohibited broadcasting of important Russian propaganda media outlets and

also imposed many targeted measures, still it may be deemed essential to control the propaganda on social media platforms and on the internet. Many social media platforms like Facebook or Instagram are officially banned in Russia and also these platforms are actively working to block disinformation. However, not all essential platforms are focusing on such matter and also there are already some alternatives which supports the illegal access to online platforms. Therefore, it can be considered necessary to work on some restrictive and anti-circumvention measures in order to limit the loopholes for spreading disinformation through the internet.

Additionally, in order to increase the quality of sanctions enforcement and implementation in member states, the Union can increase its efforts to provide proper guidelines for local operators. Specifically, apart from providing guidance through publications also conducting more trainings for operators can be considered reasonable idea.

Finally, the key factor to increase the impact and effectiveness of sanctions against Russia is developing further international cooperation. This is quite challenging task which may need longer terms. However, the Union, on its part, may try to enhance dialogues with third countries since if more countries will align to the sanctions against Russia the main aim to end the aggression against Ukraine and limit aggressor's abilities will be achieved in a faster-paced time. In brief, the main solution of this conflict can be deemed the enhanced international cooperation in relation to sanctions policy.

CONCLUSIONS

1) Based on the overview of imposed restrictive measures the thesis indicates that EU sanctions policy against Russia is comprehensive and mainly targets its financial, trade and energy sectors. Imposing sanctions is quite challenging for the Union especially in relation to energy sector due to the high-dependency on Russian oil. The EU also targets the propaganda threats and works on developments to further address modern ways of warfare. overall, it can be said that EU actively works on developing scope of sanctions and balancing its drawbacks for the Union.

2) Conducting the Common Foreign and Security Policy is quite complex task for the union as it should be in alignment with general principles and fundamental rights which are ensured in the Treaty on the European Union and the Treaty on the Functioning of the European Union. Based on the fundamental treaties, there should be a balance between the fundamental rights and restrictive measures. Measures within the external policy should be also adopted based on the agreement between the EU institutions and member states.

3) Regarding the monitoring framework for sanctions enforcement and implementation, the thesis examined that majority of EU institutions can monitor the sanctions enforcement and implementation within their field of work. According to one of the reasonable recommendations, EU needs to have centralized evaluative framework to assess the progress of sanctions, their enforcement and to store information regarding past experiences and regimes of sanctions which can be used for future developments. Establishing such framework may be deemed necessary to better focus on the sanctions enforcement which is a really complex process since it is decentralized system and is highly dependent on the member states performance.

4) Establishing improved monitoring system is also essential to prevent the breach of fundamental human rights and monitor some erroneous aspects of sanctions. The research analysis one of the recent CJEU cases, in which, grounds for sanctioning individuals were deemed insufficient and the court stated that proportionality principle was violated. These individuals still remain in the sanctions list which may represent some weaknesses of monitoring system of the EU and its ability to effectively amend erroneous measures within its sanctions policy.

5) Conducted research also revealed that there are many methods used by Russia in order to circumvent EU restrictive measures. Besides, specific methods circumvention through third countries is also the major way to evade sanctions. Additionally, thesis highlights the cases of using high seas for export for Russian oil and registering vessels under other countries' jurisdictions. This method of circumvention can be deemed as one of the most complex ones since it enables Russia to circumvent energy-related sanctions, like price cap and export bans and still maintain to get important revenues. As the analysis showed, this method of circumvention is hard to be tackled since under the Convention on the Law of the Sea, there are no exceptions which will enable EU member states to control such vessels even in their territorial waters for sanctions enforcement purposes. Besides, making amendments in international conventions in order to align it with sanctions policy is a quite complex task and long-term process since it needs the agreement of many countries outside the Union.

6) The thesis also analyzed the EU directive based on which violation and circumvention of sanctions were criminalized. Based on some examinations, it was identified that the directive was adopted through urgent procedure and therefore, was criticized by some legal experts. Specifically, the proposal of the Commission to criminalize sanctions violation, did not include empirical reviews or impact assessment which is opposed to the obligations of the Commission. However, adopting such measures in a short period of time may be deemed necessary considering the severe conflict between Russia and Ukraine. Besides, based on the analysis of the provisions of the directive it can be considered that they provide good framework for member states to impose effective, dissuasive and proportionate penalties for sanction infringements and circumvention which is also essential to more effectively fight against evasion of sanctions.

7) The thesis examined some cases of CJEU and analyzed the proportionality principle and its elements based on the Treaties, the Charter of Fundamental rights and interpretations of the court. According to one of the significant judgements of the CJEU, the European legislature is granted broad discretion to make choices in relation to matters like politics and measures which are adopted based on mentioned choices. Such decisions can only be subject of judicial review if they are 'manifestly inappropriate'. Based on the recent 'Venezuela' case of CJEU, as some scholars indicate, approach of the court may be changed regarding the limits of judicial review and discretion of the EU. However, it can be concluded that granting broad discretion to the

EU legislators and maintaining limits on judicial review is more appropriate and essential to enable EU to adopt timely and comprehensive sanctions in cases of severe political processes.

8) Apart from this, based on the established test of proportionality principle, the thesis concluded that restrictive measures against Russia should be considered proportionate. In particular, the imposed sanctions may be deemed suitable for achieving its objectives, they are capable to increase pressure on Russian sectors, limit its abilities and gradually put an end to war of aggression. Besides, they are compatible with the element of necessity, less restrictive measures against Russia would not be effective and since the Union tries to resolve conflict in a peaceful way, imposing sanctions may be deemed as a necessary and suitable tool. Imposing sanctions resulted in some challenges for the Union member states, and also at some level restricted the fundamental rights of some individuals. However, such negative effects cannot outweigh the benefits of reducing the power of Russian aggression such as maintaining peace and security.

9) There is an ongoing debate regarding the impact and effectiveness of restrictive measures. Considering the circumvention cases, statistics and the fact that war is still in progress, it can be concluded, that imposed restrictive measures have not yet resulted in significant changes or outcomes. Faster-paced processes are hindered by some drawbacks of the sanctions which makes it difficult for the Union to extend the scope of sanctions in a short time. However, there are still some indicators that sanctions put pressure on Russian economy and trade as the latter had to find other costly alternatives to circumvent sanctions and receive support, therefore, it can be deemed that sanctions can have effects but in longer terms. As the thesis concludes, the key solution to this is the enhanced international cooperation. This is quite complex task and long-term process but in order to have effective outcomes in shorter periods the EU needs more partner countries.

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I. Legal acts

1. International legal acts

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SUMMARY

Mari Tsulukidze

Presented thesis provides the legal analysis of the restrictive measures imposed by the EU against Russian Federation. Based on the overview and analysis of imposed restrictive measures the study indicates that measures are quite comprehensive but they still can be considered as proportionate since they include exemptions to prevent the breach of fundamental rights. Within the scope of the research, based on the examination of treaties, case law of CJEU and the established test of proportionality principle, restrictive measures overall can be considered to be suitable, necessary and beneficial tools against Russian aggression.

Based on the secondary research and analysis of certain articles and studies, thesis considers that the process of sanctions enforcement and implementation is quite complex. As the study has shown main challenges are connected with circumvention of sanctions, monitoring framework of the Union and lack of international cooperation. Based on the analyzed materials thesis concludes that sanctions have slow effect on Russian aggression and the key factor to increase the pressure on the aggressor is to strengthen international cooperation and enforcement of sanctions. The study has shown and highlighted that specific international law provisions create loopholes within imposed measures and as a result facilitate circumvention. Based on the analysis the thesis also underlines the issues related to the amendment of international treaties and the Russia's status in the Security Council of the UN. However, gradually it is essential to improve cooperation with third countries in order to have faster-paced results.

In conclusion, the EU CFSP is quite effective regarding the conflict in question. It is really essential for the Union to continue applying the sanctions policy, further expand its scope, improve enforcement and enhance international cooperation.