

International Economic Sanctions.
Part 2. Sanctions Policy of the European Union Towards Russia:
Problems of Implementation

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Abstract

The relevance of this study lies in examining the process of formation and development of the European Union's sanctions policy, focusing particularly on the theory and practice of applying restrictive measures against Russia in response to its aggression against Ukraine. The purpose and objectives of the research involve analyzing and synthesizing information related to the development of the theory and practice underlying the European Communities'/European Union's application of economic sanctions, comparing approaches to shaping a general sanctions policy and the specific sanctions policy toward Russia (referred to as a "sanctions revolution"), as well as formulating the author's conclusions and recommendations for both theoretical and practical application. A broad range of research methodologies and approaches was employed in the study. The formal-legal method facilitated the formulation of key terms, concepts, characteristics, and constructs, as well as the development of various classifications. The historical method proved useful in examining the establishment and evolution of the EU's sanctions policy. The systemic method aided in elucidating the mechanisms by which the EU imposes, modifies, and lifts economic sanctions against Russia. Additionally, the comparative-legal method was employed to evaluate the legal regulation of economic sanctions during different phases of European integration. The results of the study are reflected in the characterization of the European Union's autonomous economic sanctions as a system of restrictive measures introduced by EU institutions within the framework of the Common Foreign and Security Policy, without a mandate from the UN Security Council. The Art. concludes that the scope and depth of the EU's numerous sanctions regimes indicate that the Common Foreign and Security Policy is not merely an aspirational construct; rather, it actively promotes the development of legal norms and processes within the EU's internal legal order. In contemporary EU foreign policy, sanctions have effectively evolved into one of the Union's most favored instruments of external action. The Art. further argues that achieving member-state consensus on formulating a common sanctions policy demonstrates not only the Europeanization of national foreign policies but, more importantly, the formation of a genuinely pan-European foreign policy. It concludes that the EU's autonomous sanctions aim to penalize Russia, whose policies violate international law and threaten both regional and global security, by inflicting maximum damage. International law does not prohibit states or their unions, such as the European Union, from imposing unilateral economic restrictive measures if justified by security considerations. Finally, the Art. acknowledges imperfections in the EU's sanctions policy, evidenced by the widespread circumvention of its anti-Russian sanctions. Recognizing this reality compels EU institutions and the governments of its member states to develop additional instruments to combat the evasion of existing restrictive measures.

Keywords: sanctions; restrictions; sanctions policy; Russian aggression; sovereignty; security; EU law; Ukraine.

Міжнародні економічні санкції.

Частина 2. Санкційна політика Європейського Союзу щодо Росії: проблеми реалізації

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Анотація

Актуальність дослідження полягає в розгляді процесу становлення та розвитку санкційної політики Європейського Союзу, зокрема теорії та практики застосування обмежувальних заходів стосовно Росії як відповіді на агресію проти України. Мета та завдання дослідження передбачають здійснення аналізу і синтезу інформації, пов'язаної з формуванням теорії та практики застосування економічних санкцій Європейським Співтовариством/Європейським Союзом, порівняння підходів до формування загальної санаційної політики і санаційної політики стосовно Росії, яку ідентифікують як санкційну революцію, а також формулювання авторських висновків із визначеної проблематики, рекомендацій для теоретичного та практичного використання. У процесі дослідження використовувався широкий перелік підходів і методів дослідження, зокрема: формально-юридичний метод дав змогу сформулювати основні терміни, поняття, ознаки, конструкції та провести класифікації; історичний метод став у пригоді при аналізі процесу становлення й розвитку санаційної політики ЄС; системний метод – при з'ясуванні механізмів накладання, зміни та скасування економічних санкцій стосовно Росії; порівняльно-правовий метод використано під час оцінювання підходів до правового регулювання застосування економічних санкцій на різних етапах європейської інтеграції. Отримані результати дослідження полягають у визначенні автономних економічних санкцій Європейського Союзу як системи обмежувальних заходів, запроваджених інститутами ЄС в рамках *Common Foreign and Security Policy*, за відсутності мандату Ради Безпеки ООН. У статті сформульовано висновок, відповідно до якого широта і глибина численних санкційних режимів, що використовуються ЄС, свідчить про те, що *Common Foreign and Security Policy* є не просто прагненням, а сприяє розвитку права і правових процесів в середині правопорядку ЄС. У сучасній *Common Foreign and Security Policy* ЄС санкції фактично перетворилися на один з найулюбленіших інструментів зовнішньої політики ЄС. У статті аргументовано тезу про те, що досягнення згоди держав-членів в питанні вироблення загальної санкційної політики є свідченням не лише європеїзації національних зовнішніх політик, але й, що особливо важливо, формування загальноєвропейської зовнішньої політики. Сформульовано висновок про те, що автономні санкції ЄС спрямовані на покарання Росії, політика якої порушує міжнародне право та загрожує регіональній та глобальній безпеці шляхом заподіяння максимальної шкоди. Міжнародне право не забороняє державам та їхнім об'єднанням, наприклад, Європейському Союзу, вводити односторонні обмежувальні заходи в економічній сфері, якщо вони виправдані міркуваннями безпеки. У статті констатовано недосконалість санкційної політики ЄС, що проявляється в масовому обході антиросійських санкцій. Усвідомлення цього факту спонукає інститути ЄС і уряди держав-членів розробляти додаткові інструменти боротьби з обходом наявних обмежувальних заходів.

Ключові слова: санкції; обмеження; санкційна політика; російська агресія; суверенітет; безпека; право ЄС; Україна.

Introduction

From the inception of the European integration process in 1951, a united Europe has been regarded as one of the world's most stable and attractive regions, as evidenced by the rapid expansion of its membership. However, the unprovoked aggression of the Russian Federation (RF) against Ukraine

in 2014, which escalated into a full-scale invasion in 2022, resulted in the first high-intensity war in Europe since World War II. Thus, Russian aggression and its associated consequences have become key factors in the redistribution of economic, legal, and political relations, as well as in the reconfiguration of goods and services supply chains across the EU.

It was entirely expected that the European Union, which began developing its own sanctions policy in 1994, would respond to Russian aggression: the EU introduced unprecedentedly large-scale sanctions against the RF. These measures complement the individual and economic sanctions imposed against Russia from 17 March 2014, following the annexation of Crimea and the occupation of parts of Donbas [1], as well as due to Moscow's non-compliance with the Minsk Agreements¹.

In connection with the introduction of the European Union's sanctions policy against Russia, it has become evident that EU member states hold differing attitudes toward Moscow. One group (the Baltic States and Poland, the Nordic countries, Romania, and the United Kingdom) adheres to a "hawkish" approach, which entails a more stringent application of this policy. By contrast, other states (Austria, Bulgaria, Greece, Spain, Italy, Cyprus, Slovakia, Portugal, and Hungary) are inclined to maintain a certain level of engagement with Russia due to longstanding economic, cultural, and religious ties. In this situation, France and Germany have assumed a more moderate stance [2-4].

Restrictive measures were introduced by the European Union in February 2022 in response to Russia's decision to extend recognition to territories in the Donetsk and Luhansk regions of Ukraine not under government control, treating them as independent entities, and to deploy Russian troops there. In October of that same year, these measures were extended to include the non-government-controlled territories of Zaporizhzhia and Kherson. These measures will remain in effect until 24 February 2025.

As of December 2024, the European Union has introduced 15 packages of sanctions [5; 6] against Russia. According to clarifications provided by the Council of the EU, the imposed sanctions include targeted restrictive measures (individual sanctions)², economic sanctions³, and restrictions on the issuance of visas by EU member states⁴ [8]. However, in December 2022, the sanctions packages were supplemented by provisions allowing Western companies to continue operating in Russia, despite existing sanctions. This step was intended to assist Western companies seeking to withdraw capital from Russia but unable to do so for various reasons. Experts believe that certain firms exploit this loophole, using it as political cover to remain in Russia. To prevent the

¹ In March 2014, the Council of the EU decided to freeze the assets of individuals responsible for the misappropriation of Ukrainian state funds. Restrictions on economic cooperation were introduced by the EU for the first time in July 2014 and included the following measures: the European Investment Bank was asked to suspend the signing of new financial operations; EU member states agreed to align their positions in the Board of Directors of the European Bank for Reconstruction and Development with the aim of suspending the financing of new operations in Russia; and the implementation of EU bilateral and regional cooperation programs with Russia was reviewed, resulting in the termination of certain programs.

²Individual sanctions target persons responsible for supporting, financing, or implementing actions that undermine the territorial integrity, sovereignty, and independence of Ukraine, or those who benefit from such actions. These EU restrictive measures apply to a total of 1706 individuals and 419 legal entities. The list of legal entities includes: banks and financial institutions; companies in the military and defense sector; companies in the aviation, shipbuilding, and mechanical engineering sectors; armed forces and paramilitary formations, including the Wagner Group; political parties; the "All-Russia People's Front" movement; telecommunications companies; and media outlets responsible for propaganda and disinformation. Sanctions against individuals include travel bans and asset freezes, while sanctions against legal entities consist of asset freezes. This means that all accounts belonging to the listed persons and organizations in EU banks are frozen. It is also prohibited to directly or indirectly make any funds or assets available to them [7].

³These sanctions target the financial, trade, energy, transport, technology, and defense sectors.

⁴ Since February 2022, the EU has decided that Russian diplomats, other Russian officials, and businessmen can no longer benefit from visa facilitation provisions. In September 2022, the Council of the EU decided to suspend the EU-Russia visa facilitation agreement.

circumvention of sanctions, certain Russia-controlled entities based in the illegally annexed territory of Crimea were included in the list. In addition to the EU's collective sanctions, more stringent sanctions have been imposed, for example, by Estonia¹, Latvia, Lithuania, Poland, the Czech Republic, and Finland². Since 2014, diplomatic sanctions have also been in effect against Russia³.

Confronted with unprecedentedly large-scale sanctions, the RF employs various mechanisms to circumvent these restrictive measures, for instance, by using complex financial schemes, falsifying the nature or origin of traded goods, or relying on the jurisdictions of third countries. Individuals and legal entities included in sanctions lists also make efforts to conceal their assets [9]. Moscow's development and use of such mechanisms require the rapid refinement of the EU's sanctions policy and that of individual member states. For Ukraine, this task is critically important, as the Russian Federation's economic capacity to continue its aggression depends on it.

Ukraine, for its part, is also implementing a sanctions policy. The President of Ukraine periodically issues decrees containing annexes listing sanctions against Russian legal and natural persons involved in supporting Russia's military apparatus. Efforts are underway to synchronize Ukrainian sanctions with corresponding decisions made by partner states. Beginning on 31 January 2024, the National Security and Defense Council of Ukraine has been forming the State Sanctions Register – an information and communication system that ensures free public access to up-to-date and reliable information on all subjects against whom Ukrainian restrictive measures have been applied. The purpose of maintaining this register is to provide public access to current and reliable information on the entities against which restrictions have been imposed [10].

Literature Review

There is a significant body of scholarly research on international sanctions. However, the EU's sanctions activities have not been systematically compiled into a single database, even considering many years of experience in this domain. Over the last decade, this situation has begun to change: an increasing number of authors are examining the European Union's restrictive measures (G. Felbermayr [11]; F. Giumelli [12; 13]; J. Kreutz [14]; C. Portela [15]).

Only relatively recently have scholars started paying particular attention to variations in the types and structures of sanctions (M. Hedberg [16]; E.V. McLean, T. Whang [17]; C. Portela [18]). In his research, F. Casolari focuses on the hybridization of the legal instruments of the European Union's sanctions policy, i.e., their modification in the face of changing threats confronting a united Europe, with the aim of preserving its strategic autonomy [19].

Sanctions the EU against Russia brought about an unprecedented emphasis on sanctions implementation and enforcement, which have traditionally relied on a decentralised system. This has resulted in a mosaic of practices across the EU, involving more than 160 designated competent authorities within Member States. While reflecting the principle of subsidiarity, this by triggering practical confusion and contradictory legal interpretations of key sanctions provisions between Member States. Under these conditions, The EU should design a new horizontal sanctions regime to

¹Thus, in 2023, against the backdrop of a migration crisis at the Estonian-Russian border, Estonia decided to restrict operations at its border crossing points, halted issuing visas to Russians, and is developing a legal mechanism for transferring frozen Russian assets and those of its sanctioned citizens to Ukraine.

²Finland did not limit itself to economic sanctions against Moscow. In July 2022, the Finnish Parliament passed a law allowing for the installation of barriers along the border with Russia and the closure of the 1,300-kilometer-long border. In November 2023, against the backdrop of a sharp increase in the flow of migrants at the border with the Russian Federation, Finland closed all checkpoints on the Finnish-Russian border. In April 2024, the Finnish authorities halted traffic for pleasure craft on the Saimaa Canal through Nuijamaa, and the Haapasaari and Santio maritime checkpoints were also closed indefinitely.

³ In 2014, the EU-Russia summit was canceled, and EU member states decided not to hold regular bilateral summits with Russia and to suspend bilateral talks with the Russian Federation on visa matters. Instead of the G8 summit in Sochi on 4–5 June 2014, a G7 meeting took place in Brussels. Since then, meetings have continued in the G7 format. EU countries also supported suspending negotiations on Russia's accession to the Organisation for Economic Co-operation and Development (OECD) and the International Energy Agency.

counter circumvention [20]. The legal regulation of relations aimed at preventing the circumvention of sanctions is an important area of research within the EU's sanctions policy. However, it has received attention only in recent years. Studies by E. Kaca [21]; K. Meissner, C. Graziani [22; 23] cover the full history of Council decisions, regulations, and annexes concerning the EU's restrictive measures.

Russia's aggression against Ukraine, launched in 2022, has prompted researchers to examine the European Union's sanctions policy specifically toward Russia (M. Onderco, R. van der Veer [24]; P.M. Silva, Z. Selden [25]; V. Szép [26]; P.A. van Bergeijk [27]; I.V. Yakoviyk, Ye.A. Novikov, A. Turenko [28-30]). Yet, a systematic and comprehensive account of the full record of EU sanctions imposed on Russia is missing, especially in Ukrainian scholarship.

Materials and Methods

In the twenty-first century, the breadth and depth of studies on international sanctions are expanding faster than ever before, with serious implications for the theory and practice of their application. Since the end of the Cold War, regional organizations, including the European Union, have increasingly used sanctions against states experiencing democratic crises.

The aspect of autonomy focuses on the capacity to act EU independently from the respective member states. The presentation of the legal framework and the practice of sanctions will provide indications on the degree to which EU institutions and member states can act independently from each other in the utilisation of such measures. This is also linked to the internal discussion within the EU, namely "the ability to formulate effective policies" in order to respond to "opportunity and/or to capitalize on presence". Looking at sanctions imposed can provide only a partial picture of EU action/inaction, but the increase in sanctions adoptions is certainly a strong indicator of the greater impact and reach of its international actorness [13, p. 5; 31, p. 97-101].

For a long time, research on economic sanctions examined the policy of sanctioning countries as a choice between imposing sanctions to gain concessions from the targeted country and taking no action. This is undoubtedly a simplified approach that should be replaced by an analysis of sanctions as a multifaceted foreign policy instrument of the European Union and its individual member states. In this article, we argue that regional economic sanctions cannot be viewed solely as tools for promoting democracy. Instead, the policy of regional sanctions reveals contradictions concerning the essence and limitations of democracy, as well as the processes of regional intervention into an area at the core of interstate conflicts. Building on studies of restrictive measures, one should conceptualize three potential drivers of these sanctions designs: humanitarian considerations; domestic considerations; and geopolitical considerations [23, p. 379].

Results and Discussion

The Formation of the European Union's Sanctions Policy

Until the 1980s, the European Communities did not impose their own sanctions; instead, member states took measures at the national level arising from the UN Security Council's sanctions policy concerning Rhodesia (1965) and South Africa (1977).

The member states of the European Community turned to the establishment of a sanctions policy in the early 1980s [32]. During this period, sanctions policy was only rarely mentioned in the context of discussions about structuring the external policy of the European Communities [33; 34]. Researchers believe that the development of an autonomous sanctions policy became possible after on 13 October 1981, in London, the Foreign Ministers of the Ten adopt a report on European Political Cooperation (EPC) that sets out a more coherent approach to international issues and to matters of security [35; 36, p. 7]. The Communities' sanctions against the Soviet Union in response to its invasion of Afghanistan marked the start of a coordinated European sanctions policy independent of the UN.

The next and final instances of an autonomous sanctions policy prior to the entry into force of the

Maastricht Treaty (1993) involved the introduction of arms embargo on Myanmar for the military coup (1988) and on China after the events of Tiananmen Squar (1989), as well as restrictive measures on the Democratic Republic of Congo (1993) and on Nigeria (1993). The significance of the Maastricht Treaty lay in its establishment of the Common Foreign and Security Policy (CFSP), which provided the EU with the authority to impose sanctions.

In the early 1990s, sanctions practice became more frequent and complex, giving rise to the notion of a European Union sanctions policy. In this context, EU sanctions are defined as restrictive measures introduced by EU institutions within the framework of the CFSP and in the absence of a United Nations Security Council mandate.

Paradoxical as it may seem, for the European Union—which at that time lacked the capacity to demonstrate its military might, did not implement a consistent and binding external policy for its member states, and was generally considered a "soft power" – sanctions became one of the most favored instruments of the united Europe's foreign policy. To some extent, this can be explained by the EU's growing self-perception as an active participant on the international stage.

Despite the relatively widespread practice of the European Union's use of sanctions, this realm of European foreign policy remains largely unknown to the general public, which explains the interest it attracts from both foreign and domestic researchers.

Sanctions are not clearly defined at the level of EU legislation, but they serve a purpose similar to that of the sanctions adopted by the UN Security Council. In the early 2000s, EU institutions developed a number of documents defining the Union's strategic security objectives. For example, the European Security Strategy (2003) identified the security threats to a united Europe and the measures for responding to them [37]. In addition to the Strategy, which was general in nature, documents addressing specific aspects of European security policy were also approved.

It is well known that UN obligations to prevent threats to international peace include preventing the proliferation of weapons of mass destruction. This provided the basis for UN and EU sanctions against the nuclear programs of Iran and North Korea. In 2003, the European Union adopted strategy against the proliferation of Weapons off mass destruction, in which sanctions were mentioned for the first time [38]. In 2004, the Council approved the "Basic Principles on the Use of Restrictive Measures (Sanctions)" [39], devoted to the introduction of autonomous sanctions by the Union.

In the "Basic Principles", emphasis was placed on the following points:

- the EU is devoted to the effective use of sanctions as an important way to maintain and restore international peace and security in accordance with the principles of the UN Charter and of our common foreign and security policy;
- the EU will apply measures within the UN, in line with Art. 19 TEU, to coordinate its actions related to sanctions. The Council will ensure full, effective and timely implementation of measures agreed by the UN Security Council;
- if necessary, the Council will impose autonomous EU sanctions in support of efforts to fight terrorism and the proliferation of weapons of mass destruction and as a restrictive measure to uphold respect for human rights, democracy, the rule of law and good governance. EU will do this in accordance with common foreign and security policy, as set out in Art. 11 TEU, and in full conformity with our obligations under international law;
- the Council will work to enlist the support of the widest possible range of partners in support of EU autonomous sanctions which will be more effective when they are reinforced by broad international support;
- the Council is committed to using sanctions as part of an integrated, comprehensive policy approach which should include political dialogue, incentives, conditionality and could even involve, as a last resort, the use of coercive measures in accordance with the UN Charter;
- sanctions should be targeted in a way that has maximum impact on those whose behaviour we want to influence. Targeting should reduce to the maximum extent possible any adverse

humanitarian effects or unintended consequences for persons not targeted or neighbouring countries;

- the Council will work to further refine sanctions and to adapt the instrument to the new security environment. In this context, the Council stands ready to impose sanctions, where necessary, against non-state actors;
- the Council aims to deploy all its instruments flexibly and in accordance with needs on a case-by-case basis;
- in all cases, our objectives should be clearly defined in the enabling legal instruments. Sanctions should be regularly reviewed, in order to ensure they are contributing towards their stated objectives. Sanctions should be lifted according to their objectives being met;
- the European Union will work to further develop the instrument of sanctions in the light of lessons learned and to improve their implementation, both internally and within the UN [39].

Despite the obligations to respect human rights enshrined in its Charter, the UN Security Council rarely imposes sanctions for human rights violations, primarily due to the resistance of Russia and China, which regard such issues as "internal affairs". In contrast to the UN, human rights and democracy constitute the dominant theme in most of the EU's autonomous sanctions against certain states, such as Belarus, Burundi, China, Guatemala, Guinea, and Venezuela, as well as former regime leaders accused of the misappropriation of state funds (e.g., Tunisia's Ben Ali). The EU has established a separate Global Human Rights Sanctions Regime, one of the four horizontal EU sanctions regimes [40].

In the European Union, a regulatory framework has evolved to govern the application of EU sanctions: first, sanctions are imposed in accordance with the principles set out in the "Basic Principles" (2004); second, sanctions are devised and imposed in accordance with the targeted approach defined in the "Guidelines" (2018); third, pursuant to the "Best Practices" (approved in 2018 and progressively updated), which ensure the uniform implementation of EU decisions across member states [13, p. 6].

In the 21st century, sanctions have become one of the central elements of the Common Foreign and Security Policy. As of 2018, the European Union had 42 sanctions programs, placing it second only to the United States in terms of active use of restrictive measures. While comprehensive trade embargoes were once preferred, over the past two decades the EU has moved towards asset freezes and visa bans targeted at individual persons and companies, aiming to influence foreign governments while avoiding humanitarian costs for the general population. Among other measures in the sanctions toolkit, one should note arms embargoes, sectoral trade and investment restrictions, as well as the suspension of development aid and trade preferences [41].

EU Anti-Russian Sanctions (Restrictive Measures)

In the context of the European Union's common foreign and security policy (CFSP), Art. 29 of the Treaty on European Union allows the Council of the EU to adopt a decision to impose restrictive measures (sanctions) against non-EU countries, non-state entities or individuals. These measures, which must be consistent with the objectives of the CFSP, as laid down in Art. 21 TEU, are imposed to bring about a change in policy or activity by the target party responsible for the behavior that is at issue (not respecting international law or human rights, or pursuing policies that do not conform with the rule of law or democratic principles). The Council takes decisions to adopt, renew, or lift sanctions regimes by unanimity, on the basis of proposals from the High Representative of the Union for Foreign Affairs and Security Policy (Art. 29 TEU). The economic and financial aspects of such decisions are implemented by regulations adopted by the Council on the basis of Art. 215 TFEU, upon a joint proposal by the High Representative and the European Commission [42; 43].

The EU's sanctions policy toward Russia began on 17 March 2014, when, following the contentious Crimean referendum, the United States, the European Union, and Canada imposed targeted sanctions. On 31 July 2014, the Council of the EU adopted Regulation No. 833/2014 [44]

(subsequently amended multiple times) concerning the introduction of economic sanctions (aka restrictive measures¹) in connection with the actions of the Russian Federation that destabilize the situation in Ukraine. These EU measures aimed to weaken the aggressor state's economic base by depriving it of critical technologies and markets, thereby significantly limiting its capacity to wage war. Both European and American policymakers tend to view sanctions as a low-risk instrument, especially when compared to military solutions.

On 28 June 2016, the European Union updated its doctrine to enhance the effectiveness of the defense and security of the European Union and its member states by adopting the EU Global Strategy (which replaced the European Security Strategy (2003)). The global strategy emphasized: a stronger Union requires investing in all dimensions of foreign policy, from research and climate to infrastructure and mobility, from trade and sanctions to diplomacy and development. Long-term work on pre-emptive peace, resilience and human rights must be tied to crisis response through humanitarian aid, CSDP, sanctions and diplomacy. Therefore, "Restrictive measures, coupled with diplomacy, can play a pivotal role in deterrence, conflict prevention and resolution. Smart sanctions, in compliance with international and EU law, will be carefully calibrated and monitored to support the legitimate economy and avoid harming local societies. To fight the criminal war economy, the EU must also modernise its policy on export control for dual-use goods, and fight the illegal trafficking of cultural goods and natural resources" [45].

The concept of strategic autonomy, as part of the Global Strategy, concerns the European Union's ability to protect Europe and act without relying too heavily on the United States. This concept devotes significant attention to the hybridization of the legal instruments of the EU's sanctions policy, i.e., their modification in light of the changing threats faced by the EU, in order to preserve its strategic autonomy [19].

In its early stages, the EU's sanctions policy often entailed overly broad restrictive measures (for example, the embargo imposed on Argentine imports following that country's occupation of the Falkland Islands (1982) [46]). However, concerns about the negative humanitarian consequences of the UN trade embargo against Iraq (1990-2003) led both the UN and the EU to adjust their stance toward a more targeted approach: exerting maximum pressure on individuals (the political and military leaders of regimes) and organizations responsible for unlawful activities [46]. As a result, the European Union now more frequently resorts to measures such as visa bans, asset freezes and arms embargoes. These restrictions can cause significant inconvenience to targeted persons and entities while not affecting the broader population. The EU also uses economic sanctions, albeit less frequently. EU economic sanctions typically focus on one or more strategic activities of a given country rather than its entire national economy, thereby minimizing negative humanitarian repercussions wherever possible.

An exception to this rule has been the unprecedented scope and scale of European Union sanctions (some researchers describe them as a sanctions revolution [40; 47; 48]) aimed at Russia's economy and political elite. These measures are intended to significantly limit Russia's ability to carry out hostilities against Ukraine.

On the eve of Russia's aggression against Ukraine, the European Union undertook efforts to improve the legislative framework of its sanctions policy; the following documents were adopted:

- in 2018, the Council adopted an updated paper on EU best practices for the effective implementation of restrictive measures (basic principles on the use of restrictive measures (2004)) [49];
- Sanctions Guidelines (2018) [50];
- Council Regulation (EU) 2018/1542 of 15 October 2018 concerning restrictive measures against

¹ The sanctions and restrictive measures are used interchangeably in this article and shall have the same meaning. Treaties use the term restrictive measures (see Title IV of the Treaty on the functioning of the EU entitled "Restrictive measures"). However, in this scientific discourse, in the political lexicon and soft law act term "sanctions" is widely employed as a synonym for «restrictive measures».

the proliferation and use of chemical weapons [51];

- Council Decision (CFSP) 2018/1544 of 15 October 2018 concerning restrictive measures against the proliferation and use of chemical weapons [52];
- Council Regulation (EU) 2019/796 of 17 May 2019 concerning restrictive measures against cyber-attacks threatening the Union or its Member States [53];
- Council Decision (CFSP) 2019/797 of 17 May 2019 concerning restrictive measures against cyber-attacks threatening the Union or its Member States [54];
- Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items [55];
- Common Military list of the European Union adopted by the Council on 21 February 2022 (equipment covered by Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment) [56].

Between 2014 and 2021, the EU periodically expanded its sanctions against individuals and legal entities and imposed embargoes on arms and related materials, goods and dual-use technologies intended for military purposes or for military end-use. It also imposed bans on the import of arms and related materials, controls on the export of equipment for the oil industry, and restrictions on the issuance and trade of certain bonds, shares, or similar financial instruments. Economic sanctions directly targeting Crimea were also introduced. However, until 2022, anti-Russian sanctions remained relatively limited.

Russia's invasion of Ukraine on 24 February 2022 presented an unprecedented threat to both the European and international legal order. Enshrining in its Constitution the incorporation of Luhansk, Donetsk, Zaporizhzhia, and Kherson oblasts signaled an escalation of the conflict. In response to Russia's aggression against Ukraine, the European Union resorted to the most comprehensive sanctions it had ever adopted autonomously: it introduced the 15th package of sanctions against Russia, as well as separate sanctions packages against Belarus [57].

EU Efforts to Combat Sanctions Circumvention

The unprecedented scale and scope of anti-Russian sanctions have created new implementation challenges for the European Union. EU institutions and member states have concentrated their efforts on making the alignment of positions truly global and closing loopholes to prevent Russia from circumventing sanctions.

Under EU law, it is prohibited to "knowingly and intentionally participate in activities the object or effect of which is to circumvent the sanctions" [58]. Nonetheless, almost immediately after the introduction of anti-Russian sanctions, it became clear that Moscow was seeking and finding ways around them. An analysis conducted by Forbes experts suggests that Russia imports high-tech and other goods through third countries. In 2022, Turkey, Kazakhstan, Armenia, Uzbekistan, and Kyrgyzstan increased their trade flows with Russia the most. At the same time, there was a significant increase in exports to these countries from Western states. According to experts, the scale of the problem is such that Russians obtained all the goods they needed, and re-exports from neighboring countries almost completely neutralized all sanctions prohibitions¹. The process of closing loopholes is complex, and Ukraine is understandably dissatisfied with its speed.

¹In 2022, compared to 2021, the following countries increased their exports to Russia: Turkey by 62%, or USD 3,568 million; Kazakhstan by 25%, or USD 1,762 million; Armenia by a factor of 2.98, or USD 1,571 million; Uzbekistan by 53%, or USD 896 million; Kyrgyzstan by a factor of 2.46, or USD 571 million. They also increased their exports to: Kazakhstan: China by 17%, or USD 2,395 million Germany by 25%, or USD 1,325 million South Korea by a factor of 2.15, or USD 888 million Lithuania by a factor of 2.13, or USD 476 million Czech Republic by a factor of 3.01, or USD 462 million Uzbekistan: China by 28%, or USD 1,622 million Kazakhstan by 33%, or USD 916 million Germany by a factor of 2.05, or USD 723 million Hong Kong by a factor of 17.99, or USD 717 million South Korea by 16%, or USD 304 million Kyrgyzstan: China by a factor of 2.06, or USD 7,948 million Lithuania by a factor of 9.16, or USD 296 million Germany by a factor of 5.94, or USD 293 million South Korea by a factor of 3.31, or USD 260 million Turkey by 20%, or USD 153 million [59].

Nevertheless, it is taking place, and partner states are demonstrating the political will to close paths for sanctions evasion.

It is natural that EU member states have differing views on what constitutes a breach of restrictive measures (sanctions) and what penalties should be applied in the event of a violation. Clearly, this can lead to varying degrees of sanction enforcement and a risk of circumventing these measures. Potentially, this allows sanctioned persons to continue accessing their assets and supporting regimes targeted by EU measures. To put an end to attempts to circumvent sanctions, the EU Council noted that "signs of cases where EU sanctions prove ineffective" include "The fact that the main activity of a third country operator consists of purchasing restricted goods in the Union that reach Russia, the involvement of Russian persons or entities at any stage, the recent creation of a company for purposes related to restricted goods reaching Russia, or a drastic increase in the turnover of a third country operator involved in such activities". Thus, the EU Council provided non-exhaustive lists of red flags for identifying 'cases of frustrating' EU sanctions, which may lead to the inclusion of organizations or individuals on sanctions lists [60].

On 28 November 2022, the EU Council unanimously decided to add the violation of restrictive measures (sanctions) to the list of "EU crimes" included in the Treaty on the Functioning of the EU [61]. Council and European Parliament reach political agreement to criminalise violation of EU sanctions and Council gives final approval to introduce criminal offences and penalties for EU sanctions' violation [62].

Including the violation of restrictive measures in the list of "EU crimes" was the first of two steps towards ensuring a uniform degree of sanctions enforcement throughout the EU and putting an end to attempts to circumvent or breach EU measures. The next step involved the European Commission preparing a proposal for a directive setting out minimum rules concerning the definition of criminal offences and penalties for violating the EU's restrictive measures [63].

Stopping those who facilitate the circumvention of EU sanctions is a complex task, and member states and EU institutions have been rather hesitant and slow in their pursuit of a solution. It should be noted that every conclusion of the European Council since March 2022 [64] has called for action to prevent and counter the circumvention of EU sanctions against Russia. The European Parliament also expressed concern about the scale of trade sanctions evasion [65]. In response, the European Union adopted the 11th package of sanctions¹ (June 2023) [66], aimed at ensuring better enforcement and implementation of EU sanctions against Russia based on lessons learned over the past year. To this end, a special anti-circumvention instrument was included, which provides for:

- the EU plans to enhance cooperation with third countries and provide technical help. In cases where circumvention persists, the EU may resort to exceptional measures, such as restricting the sale of goods and technology to third countries at high risk of being used for circumvention;
- the EU has imposed a transit ban on goods and technology that could contribute to Russia's military and technological advancements. The ban includes items related to the aviation and space industries and jet fuel and fuel additives exported from the EU to third countries;
- the EU has imposed restrictions on road transport by prohibiting the entry of goods transported by trailers and semi-trailers registered in Russia. In light of deceptive practices in the shipping industry, vessels suspected of breaching bans on importing Russian crude oil and petroleum products or tampering with their navigation systems will be denied access to EU ports and locks;
- the European Council has amended the existing listing criterion regarding the circumvention of EU sanctions, or significant frustration of EU sanctions by third-country operators, including instances where the main activity of a third-country operator consists of purchasing restricted goods in the EU that reach Russia, the involvement of Russian individuals or entities, the recent creation

¹This package comprised: Council Regulation (EU) 2023/1214 amending Council Regulation 833/2014, covering the EU's sectoral sanctions on Russia; Council Regulation (EU) 2023/1215 amending Council Regulation 269/2014 (Regulation 269), covering the EU's asset freeze regime on Russia; and Council Implementing Regulation 2023/1216 added more individuals and entities to the asset freeze lists under Regulation 269.

of a company for purposes related to prohibited goods reaching Russia, or a drastic increase in the turnover of a third country operator involved in such activities [67].

It should be noted that, in order to list an entity for facilitating the circumvention or obstruction of EU sanctions, the EU Council applies the standard of "reasonable suspicion" or "reasonable cause to suspect" (the United Kingdom follows a similar position [68]). The EU Council, as the institution applying sanctions, does not need direct evidence of circumvention to impose sanctions on entities for these reasons.

The fight against sanctions circumvention continued in the 14th package¹, adopted on 24 June 2024. The 14th package contains several measures aimed at the strengthening of anti-circumvention. In particular, the newly introduced Art. 8a of Regulation 833/2014 now requires EU parent companies to undertake "their best efforts" to ensure that their non-EU subsidiaries do not take part in any activities undermining EU sanctions. In accordance with the newly introduced Art. 12ga of Regulation 833/2014, EU operators which sell, licence or transfer IPR or industrial know-how related to certain items on the Common High Priority (CHP) list are now required to contractually prohibit their commercial counterparts in third countries from using those rights and know-how to manufacture CHP goods for RF or for use in Russia. Art. 12gb of Regulation 833/2014 obliges EU exporters of CHP goods to implement specific due diligence requirements to ensure that CHP goods do not reach RF, including through risk assessment, policies, controls and procedures. EU exporters of CHP goods must also ensure that their foreign subsidiaries trading in CHP goods implement the same measures. Both provisions require compliance from 26 December 2024 and Art. 12ga provides an additional six-month transitional period for pre-existing contracts.

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Finally, the existing anti-circumvention provision in Art. 12 of Regulation 833/2014 and Art. 9 of Regulation 269/2014 now clarifies that circumvention for these purposes includes participating in "activities the object or effect of which is to circumvent the [EU sanctions]," even "without deliberately seeking that object or effect but being aware that the participation may have that object or effect and accepting that possibility". This amendment codifies existing case law from the European Court of Justice in Case C-72/11 [69] and, in principle, should not make the anti-circumvention rules stricter than they already were [70].

On 24 April 2024, the European Parliament and Council adopted Directive (EU) 2024/1226 on the definition of criminal offences and penalties for the violation of European Union restrictive measures, and amending Directive (EU) 2018/1673. The Directive criminalizes the following sanctions violations: providing funds to sanctioned individuals, or failing to freeze their assets; breaching travel bans; entering into prohibited agreements with third states; transactions involving restricted-use goods; providing certain restricted services; circumventing EU sanctions; and violating the conditions of licenses issued by Member States [71].

This was the final step of a complex process during which, for the first time, the European Union added the violation of EU sanctions to the list of EU crimes. This is the first time since the Lisbon Treaty that the EU has expanded its list of EU crimes. The Directive introduced significant changes to EU sanctions enforcement by harmonizing the rules on sanctions violations and setting common definitions of criminal offences and penalties. It also introduces incentives for compliance, such as

¹ The 14th package consists of Council Regulation (EU) 2024/1745 amending Regulation (EU) 833/2014, and Council Regulation (EU) 2024/1746 and Council Implementing Regulation (EU) 2024/1746 which amend Regulation (EU) 269/2014.

reduced penalties for voluntary self-disclosure. The Directive entered into force on 20 May 2024, and Member States have until 20 May 2025 to implement it into national law [72].

Conclusion

There are three major types of EU sanctions. First, the EU grants these measures standing in European law through a Council decision under the CFSP, followed by the adoption of a regulation. The EU measures are thus “embedded” in universally applicable UN sanctions. Second, there are EU autonomous sanctions that go beyond UN sanctions – these are additional restrictive measures taken to strengthen UN sanctions regimes. Third, there are EU autonomous sanctions applied in the absence of UN sanctions. They also serve as an instrument of EU foreign policy, expressing concern about what is considered unacceptable behavior and reaffirming EU values on the international stage [73].

The EU has progressively imposed restrictive measures on Russia in response to: the illegal annexation of Crimea (2014); the full-scale invasion of Ukraine (2022); and the illegal annexation of the Donetsk, Luhansk, Zaporizhzhia, and Kherson regions of Ukraine (2022). So far, 15 packages of sanctions have been adopted. The EU's restrictive measures are designed to weaken Russia's economic base, depriving it of critical technologies and markets, and significantly reducing its ability to wage war.

EU sanctions tend to be imposed in conjunction with measures taken by other actors. In applying sanctions, the European Union focuses on perpetrators and seeks to avoid penalizing other participants, especially innocent people living under autocratic regimes.

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Suggested Citation: Novikov, Ye.A., & Yakoviyk, I.V. (2024). International Economic Sanctions. Part 2. Sanctions Policy of the European Union Towards Russia: Problems of Implementation. *Theory and Practice of Jurisprudence*, 2(26), 109-124. [https://doi.org/10.21564/2225-6555.2024.2\(26\).318091](https://doi.org/10.21564/2225-6555.2024.2(26).318091).

Submitted: 18.11.2024

Revised: 14.12.2024

Approved: 19.12.2024

Published online: 30.12.2024