



# Tackling Circumvention of EU Sanctions

EUROPE IN  
THE WORLD

POLICY BRIEF  
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On June 24, 2024, the EU adopted its 14<sup>th</sup> sanctions package following Russia's illegal invasion of Ukraine, including several measures with a strong anti-circumvention angle as previously anticipated by Executive Vice President of the European Commission Valdis Dombrovskis in April 2024<sup>1</sup>. At a time when Western support for Ukraine – including from the US – is weakening, it is essential to reflect on all the restrictive measures the Union has adopted so far, to understand their weak points and what should be done to maximise their effectiveness. Europe should be particularly aware that supporting Ukraine should be its foremost objective for collective security. The consequences of a Ukrainian defeat are uncertain, but it is highly likely that such an outcome would be extremely negative for the rest of the continent.

Circumvention refers to avoiding existing prohibitions or making any effort to render them ineffective. Legally, this means “*signi-*

*ficantly frustrating those provisions*”. It is easy to understand the rationale behind such actions on both sides of the conflict. If on one side any Russian business or individual wishes to avoid such restrictions to continue “business as usual” and obtain the needed goods, on the other hand, European business have a double incentive. They both want to keep “business as usual” and not lose any established revenue and be further incentivized by the fact that as soon as these restrictions are imposed, they would immediately gain a risk premium by keeping trading with the persons subject to such restrictions. In other words, as the number of suppliers decreases because of the sanctions while demand remains constant (or even increases), successfully circumventing controls can lead to a higher price due to the increased risk and difficulty.

However, circumventing these restrictions further contributes to the destabilisation of

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<sup>1</sup> Press corner. (2024). European Commission - European Commission.  
[https://ec.europa.eu/commission/presscorner/detail/en/speech\\_24\\_1929](https://ec.europa.eu/commission/presscorner/detail/en/speech_24_1929)

Ukraine and to the undermining of its territorial integrity, sovereignty and independence. The question remains whether the anti-circumvention norms currently in force should effectively increase the impact of EU sanctions. As designed, they have an inherently limited scope and, consequently, limited effects. The EU has always aimed to respect international law and has historically been opposed to secondary sanctions as applied by the United States. This stance led the Union to adopt the “Blocking Statute” in 1996, a regulation aiming to impede any EU person to comply with foreign laws that conflict with EU interests. Moreover, even if the EU was to adopt secondary sanctions similar to those applied by the US, these would lack the same deterrent effect as the strength of US sanctions largely comes from the dollar in international trade and the threat of cutting access to the American financial market. Businesses often comply with sanctions not because of their binding value<sup>2</sup>, but because of the operational risk they pose<sup>3</sup>.

Trying to tackle the circumvention challenge, the EU appointed in January 2023 Ambassador David O’Sullivan as International Special Envoy for the Implementation of EU Sanctions to “ensure continuous, high-level discussions with third countries to avoid the evasion or even the circumvention of the unprecedented restrictive measures that have been imposed on Russia since the start of its war against Ukraine”<sup>4</sup>.

The question to be asked, therefore, is what kind of measures the Union should adopt to increase the effectiveness of its sanctions? There are three main mechanisms to do so:

- improving domestic compliance;
- improving foreign compliance;
- mitigating external sanctions busting<sup>5</sup>.

Improving domestic compliance should be the Union’s first priority and, fortunately, some steps have been taken in this direction, with the recent adoption by the European Parliament of a Directive aiming to harmonise penalties across member states for violations of EU sanctions<sup>6</sup>. However, more actions could be implemented. Indeed, the implementation and enforcement of these measures remain too diverse among member states, with approximately 160 competent authorities being in charge of it<sup>7</sup>.

Following Enrico Letta’s call for a stronger and reformed Single Market, actions in this field should also focus on the centralisation and harmonisation of measures and practices. The Single Market is the most relevant framework to implement and enforce EU sanctions, and while it is no equivalent to the US dollar and financial market, it would still be an incentive for businesses to comply if repercussions across the whole market were to be menaced.

Furthermore, having 27 different implementation systems creates loopholes and encourage “forum shopping” by malign actors, who can go carry out their circumvention activities in the member state most convenient for them. This difference thus also creates an unfair level playing field among EU businesses, providing greater opportunities for businesses in certain member states to seek the risk premium discussed above. Ensuring uniform enforcement of EU sanctions is not only a matter of responsibility towards common security or

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- 2 Beaucillon, C. (2021). Research Handbook on Unilateral and Extraterritorial Sanctions. In Edward Elgar Publishing. <https://www.e-elgar.com/shop/gbp/research-handbook-on-unilateral-and-extraterritorial-sanctions-9781839107849.html>
  - 3 Jaeger, M. D. (2021). Circumventing sovereignty: extraterritorial sanctions leveraging the technologies of the financial system. *Swiss Political Science Review*, 27(1), 180–192. <https://doi.org/10.1111/spsr.12436>
  - 4 EU appoints David O’Sullivan as International Special Envoy for the Implementation of EU Sanctions. (2022, December 13). Representation in Ireland. [https://ireland.representation.ec.europa.eu/news-and-events/news/eu-appoints-david-osullivan-international-special-envoy-implementation-eu-sanctions-2022-12-13\\_en](https://ireland.representation.ec.europa.eu/news-and-events/news/eu-appoints-david-osullivan-international-special-envoy-implementation-eu-sanctions-2022-12-13_en)
  - 5 Early, B. R. (2021). Making sanctions work: promoting compliance, punishing violations, and discouraging sanctions busting. In Edward Elgar Publishing eBooks. <https://doi.org/10.4337/9781839102721.00015>
  - 6 EU sanctions: new rules to crack down on violations | News | European Parliament. (2024, March). <https://www.europarl.europa.eu/news/en/press-room/20240308IPR19002/eu-sanctions-new-rules-to-crack-down-on-violations>
  - 7 Olsen, K. B., & FASTERKJÆR KJELDEN, S. (2022). Strict and uniform: Improving EU sanctions enforcement. DGAP. <https://dgap.org/en/research/publications/strict-and-uniform-improving-eu-sanctions-enforcement>

support for Ukraine, but also a matter of fair competition in business.

This paper aims to take stock of the existing framework for adopting and more importantly implementing and enforcing EU sanctions ('restrictive measures'). It focuses in particular at the anti-circumvention measures adopted to enhance the enforcement of these sanctions and analyses why these may not be the most effective tools to maximise EU sanctions' effectiveness. The paper calls for greater efforts towards having a centralised implementation system at the EU level, as this would significantly reduce the grey zones and opportunities for circumvention. Therefore, we should aim to achieve a Single Market for EU sanctions.

### • Adopting and Implementing (differently) Sanctions in the EU

The EU defines sanctions – or restrictive measures – as “an essential tool in the EU’s common foreign and security policy (CFSP), through which the EU can intervene where necessary to prevent conflict or respond to emerging or current crises. [...] They are intended to bring about a change in policy or activity by targeting non-EU countries, as well as entities and individuals, responsible for the malign behaviour at stakes”<sup>8</sup>. They are adopted, renewed or lifted following a decision of the EU Council – Art. 29 of the Treaty on European Union (TEU) – upon proposals of the High Representative of the Union for Foreign Affairs and Security Policy, and they are implemented following joint proposals for regulations by the EU Commission and the High Representative, on the basis of Art. 215 of the Treaty on the Functioning of the European Union (TFEU).

After the EU Council adopts Council Regulations aimed at implementing CFSP Decisions, these regulations require transposition into national legislation, leaving implementation completely in the hands of member states. This mechanism has led some scholars to argue that, despite being adopted as Regulations, EU sanctions actually have more qualities of Directives<sup>9</sup>. This clearly implies that the Union ends up having 27 different systems of implementation and enforcement, which significantly undermines the effectiveness of the measures. Over 160 competent national authorities have been identified across the 27 member states, each with varying mandates, human capital, financial resources and methods for implementing and enforcing EU restrictive measures<sup>10</sup>. These enforcement asymmetries could be exploited to engage in arbitrage and “forum shopping” activities, with clear impacts not only on the sanctions’ effectiveness but also on the Single Market<sup>11</sup>.

At the end of 2022, several initiatives were launched to harmonize the enforcement of EU restrictive measures across the Union and, more importantly, the Single Market. In November 2022, the European Commission added the violation of restrictive measures to the list of EU crimes Article 83(1) of TFEU. A proposal for a Directive to harmonise criminal penalties across member states was tabled in December 2022 and was adopted by the European Parliament during its March 2024 plenary session. The Commission’s proposal for the Directive arguably aimed to shift what has traditionally been a national responsibility to a collective commitment by the EU member states<sup>12</sup>.

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- 8 Overview of sanctions and related resources. European Commission. [https://finance.ec.europa.eu/eu-and-world/sanctions-restrictive-measures/overview-sanctions-and-related-resources\\_en](https://finance.ec.europa.eu/eu-and-world/sanctions-restrictive-measures/overview-sanctions-and-related-resources_en)
- 9 Giumelli, F., Geelhoed, W., De Vries, M., & Molesini, A. (2022). United in Diversity? A study on the implementation of sanctions in the European Union. *Politics and Governance*, 10(1), 36–46. <https://doi.org/10.17645/pag.v10i1.4702>. EU regulations have immediate legal force across all member states without the need for national implementation. The idea is for them to apply uniformly across the Union to ensure consistency. Directives, on the other hand, define goals and standards that all member states must achieve, but allows each of them to choose how to implement such objectives in their national legal frameworks.
- 10 See note 7 (DGAP).
- 11 See note 9 (Giumelli, 2022).
- 12 Finelli, F. (2023). Countering circumvention of restrictive measures: The EU response. <https://klowerlawonline.com/journalarticle/Common+Market+Law+Review/60.3/COLA2023050>

In response, a few calls for the establishment of a European sanctions' enforcement authority have been made by the Netherlands with a non-paper in 2023 and by the French Minister for the Economy Bruno Le Maire in 2018<sup>13</sup>. The Dutch Ministry of Foreign Affairs in particular called for “a platform for common analysis on individual cases of circumvention and possibly jurisdictions that facilitate circumvention to enable a common approach” and to “leverage the soon to be established EU Anti-Money Laundering Authority [...] for countering sanctions circumvention”<sup>14</sup>. However, no formal proposal has been tabled nor discussed so far, and it remains to be seen whether sanctions enforcement will fall under the remit of the newly established Anti-Money Laundering Authority (AMLA).

## • Hunting for Sanctions Busters

Looking in more detail at the measures adopted to strengthen sanctions enforcement, the Union introduced a new listing criterion with the eight sanctions' package on 6<sup>th</sup> October 2022. This criterion allows to freeze assets of individuals facilitating infringements of the provision against circumvention, as outlined in Article 3 paragraph 1(h) of Council Regulation (EU) 269/2014 and later amended with the eleventh sanctions package adopted on 23<sup>rd</sup> June 2023. Some have suggested that this measure indicates “the EU may be seen as taking light steps towards a secondary sanctions regime”<sup>15</sup> as the criterion seemed to lack a direct link to the EU jurisdiction. However, this link is justified by the fact that any circumvention effort by a third-party would also involve at least one EU person into the criminal scheme, thus providing the necessary legal basis for the criterion. Of course, the legitimacy of this justification will ultimately be assessed by the EU Court of Justice, the only

body competent to interpret EU law.

Another adopted tool is the so-called anti-circumvention mechanism which allow the EU “to restrict the sale, supply, transfer or export of specified sanctioned goods and technology to certain third countries whose jurisdictions are considered to be at continued and particularly high risk of circumvention. [...] An exceptional and last resort measure when other individual measures and outreach by the EU to concerned third countries have been insufficient to prevent circumvention”<sup>16</sup>. Several businesses from foreign jurisdictions were already listed starting with the eleventh sanctions' package, including companies based in Iran, Hong Kong, Uzbekistan, United Arab Emirates, Armenia, Kazakhstan, India, Serbia, Thailand, Sri Lanka, and Türkiye. It is important to note that while these may appear to be extraterritorial secondary sanctions, they are not. This tool is essentially a formalised “naming and shaming” mechanism, whereby such companies are listed in an Annex of the relevant regulation<sup>17</sup> but are not subject to any direct restrictive measure. The restrictions only apply to EU businesses - and as such subject to EU jurisdiction - which are prohibited from exporting the covered goods to the listed companies.

In both these cases there are clear extraterritorial effects, but no extraterritorial application, as none of the norms apply directly or apply without a sufficiently strong link to the EU jurisdiction. Alongside these measures, the Council also envisages stronger cooperation with third countries through diplomatic engagement and the provision of technical assistance. The role of International Special Envoy for the Implementation of EU Sanctions was created precisely for this purpose. However, this initiative can be criticised within the existing framework. Indeed, one could question the legitimacy of such an Envoy might

13 Batmanghelidj, E., & Hellman, A. (2018, June 15). OFAC off. Foreign Policy.

[https://foreignpolicy.com/2018/06/15/ofac-off/#cookie\\_message\\_anchor](https://foreignpolicy.com/2018/06/15/ofac-off/#cookie_message_anchor)

14 Ministerie van Algemene Zaken. (2023, March 21). Non-Paper on Russia sanctions circumvention. Publicatie | Rijksoverheid.nl. <https://www.rijksoverheid.nl/documenten/publicaties/2023/02/20/non-paper-on-russia-sanctions-circumvention>

15 Noerr. EU adopts eighth sanctions package against Russia. <https://www.noerr.com/en/insights/eu-adopts-eighth-sanctions-package-against-russia>

16 Press corner. (2023, June). European Commission - European Commission. [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_3429](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3429)

17 In this case, Annex IV of Council Regulation (EU) 833/2014.

have abroad, particularly when sanctions implementation and enforcement are not necessarily functioning optimally at home. Additionally, the provision of technical assistance is somewhat very aleatory, given that the Special Envoy is attached to the European Commission, but all the Commission can do is provide guidance on the interpretation<sup>18</sup>, and not even guarantee that its guidance will be applied by all or a majority of member states. Who would be in charge of providing said technical assistance? A member state? If yes, which one? The Commission services? If yes, then why not establish an authority at the EU level where these competencies are aggregated, the interpretation is guaranteed and transparency is increased?

### • A Single Market for EU Sanctions

For the reasons outlined in the paper, the most effective available tool for the EU to enhance the impact of its sanctions and reduce Russia's ability to wage war is to centralise the implementation and enforcement at the EU level. This would significantly reduce the grey areas and opportunities for circumvention. Uniform interpretations of norms, penalties and similar competences and resources employed for investigating circumvention efforts would lead to the creation of a 'Single Market for EU sanctions', where rules are consistent for all businesses across Europe and there is not much room for avoidance via loopholes and bureaucratic grey zones. The complete closure of sanctions' loopholes would significantly improve these measures, effectively limiting Russian access to key technologies. Indeed, it should be considered that the supply of European and Western technologies has not simply been replaced by non-European/Western technologies, but rather significant efforts have been put in place in order for those goods to keep flowing via any possible means, or to expropriate and nationalise those technologies already available on the Russian territory.

Russia's ongoing reliance on European technologies must first be addressed by strengthening efforts within our own domestic jurisdiction, using every available tool to prevent technological leakage. It is clear that the existence of more than 160 national competent authorities does not exactly go in this direction, without mentioning the possibility to streamline activities, thus consolidating costs and improving final results, if we were to centralise implementation and enforcement.

Furthermore, a more united front in sanctions compliance would also allow the EU to have more legitimacy, and thus strength, when discussing sanctions cooperation with third countries. To what extent should a third country take seriously EU requests to increase their monitoring of circumvention schemes when the EU itself is struggling in doing so?

### Synergies with Economic Security

Sanctions policy is one of the available economic statecraft practices, i.e. the use of economic means to pursue foreign policy goals. It is likely also the economic statecraft practice with which the EU should feel more at ease, given the track record in this field compared to, for instance, export controls or foreign investments screening. As such, synergies with current economic security proposals and governance should be developed, as economic statecraft can work only as a coherent set of measures.

Similarly to export controls and investments screening, sanctions also need some governance reform. A huge step towards addressing the issues discussed in this paper would be the establishment of an EU executive agency for sanctions implementation and enforcement, a proper EU 'OFAC', from the US Office of Foreign Assets Control which oversees sanctions policy in the United States. However, while this may

<sup>18</sup> As it is very clear from the cover page of the consolidated FAQs on the implementation of Council Regulation No 833/2014 and Council Regulation No 269/2014: "This document is a working document drafted by the Commission services to give guidance to national authorities, EU operators and citizens for the implementation and the interpretation of [...]. Only the Court of Justice of the EU is competent to interpret EU law. National authorities and economic operators may make use of this guidance based on the text, context and purpose of the aforementioned regulations, to achieve the uniform application of sanctions across the EU".



be a long-term objective given the political and resource constraints, a more realistic goal should be to harmonise national competent authorities, in order to reduce the total number of responsible bodies and increase coordination and cooperation between them. Discussions over a potential reorganisation of units currently dealing with sanctions policy within the EU institutions should also be held, as competences are currently divided among DG FISMA, DG TRADE and DG TAXUD of the European Commission, the External Action European Service (EEAS), the Foreign Policy Instruments Service (under the EEAS).

Similarly to supply chain resilience, export controls and investments screening, sanctions also require a systematic data collection capacity. This would help identify which sectors would have the greatest impact when sanctioned, which goods are most sought after by the sanctioned country, which criminal schemes are being used and where existing loopholes lie. Systematic data collection would enhance any future sanctions policies and allow for better planning of possible backfire, thus increasing overall resilience.

Sanctions also require improved data sharing between partners and confidence-building measures or forums, similar to supply chain resilience, export controls and investments screening. While data sharing between national authorities would have to happen mostly in the short-term period of harmonisation, once an EU executive agency is established data would also be mostly centralised. At the same time though, some degree of data sharing would have to happen between businesses and authorities, mostly to have a better mapping of potential sectors to target and of what countermeasures to apply to safeguard those sectors that would suffer the most from the application of sanctions.

Finally, sanctions would benefit from an increase in public-private partnerships, taking as example the Lithuanian Centre of Excellence in Anti-Money Laundering, which was established between Lithuania public authorities and private operators *‘to implement the best and most effective AML practices*

*in Lithuania’* and that has among its goals to *‘share information, [...] carry out research [...] to improve the AML/CTF framework in Lithuania, assist private sector entities in conducting internal risk assessments, strengthen the competence of public and private sector staff in the AML/CTF field [and] publish information on cooperation and implementation of AML/CTF measures’*<sup>19</sup>. This is a virtuous example of a public-private partnership in a highly regulated and quickly evolving environment and is of particular relevance given the several interconnections between Anti-Money Laundering and sanctions policy.

## Speed, Security, Solidarity

This paper advocates for the establishment of a uniform system for the implementation and enforcement of EU sanctions (‘restrictive measures’) within the EU, or, as proposed here, for the creation of a “Single Market for EU Sanctions”. This would ensure that implementation and enforcement are consistent from Lisbon to Helsinki and from Nicosia to Amsterdam, with a level playing field for businesses and no free-riding on others’ compliance to gain premium profits.

This is the best possible way the EU has at its disposal to step up its sanctioning efforts in general and against Russia in particular, and to thus better support Ukraine in its fight for our collective security. The EU has no intention nor means to adopt the extraterritorial secondary sanctions applied by the US and it necessarily needs to craft its own way in sanctions policy too.

The trio used by Enrico Letta in the report on the future of the Single Market might also be particularly fitting to conclude as we have to aim at having:

- speed, because we need to increase the speed of our sanctions’ enforcement efforts,
- security, because effective sanctions contribute to our collective security,
- and solidarity, because effective sanctions are the first proof of solidarity towards Ukraine and towards fellow European citizens.

<sup>19</sup> Centre of Excellence in Anti-Money Laundering.  
<https://www.lb.lt/en/centre-of-excellence-in-anti-money-laundering#ex-1-1>

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