Comment

The Increasing Extraterritoriality of EU Sanctions Law

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While the United States (US) has increasingly been applying its sanctions law extraterritorially since the mid-1990s, the European Union (EU) has traditionally taken the view that such an extraterritorial application of sanctions is contrary to international law and has opposed the US practice. Instead, the EU has previously based its sanctions strictly on the principle of territoriality (i. e. the authority to legislate and adjudicate over all persons, property, and acts within its physical borders) and the active personality principle (i. e. the authority to legislate and adjudicate on the acts committed by its own nationals, regardless of where the act was committed). However, in the wake of the tightening and expansion of EU sanctions against Russia in reaction to its full-scale invasion of Ukraine in 2022, the EU has been moving away from its previous position. Even though the EU formally maintains its position that sanctions should in principle not be applied extraterritorially, EU sanctions against Russia are increasingly designed to cover situations that have no genuine link to the EU. Against this backdrop, this comment reviews

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the EU's evolving sanctions policy and demonstrates that the scope of the EU sanctions that target Russia increasingly resembles the US sanctions law and practice.

The EU's move towards extraterritorial application is understandable in view of the goal of ensuring the effectiveness of EU sanctions regulations.[1] From the EU's point of view, it may be frustrating to impose far-reaching economic restrictions on itself in response to Russia's blatant violation of international law, while other countries or third-country companies financially profit from this situation. The increasing extraterritorial application of EU sanctions against Russia is thus a response to the realisation of the difficulty for the EU in enforcing its sanctions effectively without exerting a certain amount of pressure on actors from third countries. However, the increasing extraterritorial expansion of EU sanctions is a double-edged sword.

It is argued here that this new approach is incompatible with the legal opinion previously held by the EU regarding the illegality of extraterritorial application of sanctions under international law. Although the EU's extraterritorial sanctions still fall short of those imposed by the US in terms of scope and content and due to their more cautious application, the mere fact of an increasing application of EU sanctions to certain extraterritorial situations is a slippery slope, as this bears the risk that other countries or regions will do the same in the future. This, in turn, would lead to a tangle of conflicting requirements and prohibitions that would ultimately make global trade impossible and force economic actors to confine themselves to specific regions.

I. Background

Traditionally, the EU and the US hold fundamentally different views on the scope of sanctions. While the EU has previously linked its sanctions law to a close territorial or personal connection to the territory of the Union (see 1.), the US has always applied its sanctions broadly and in some cases, the requirement of a nexus to the US is entirely waived (see 2.). The EU has criticised the extensive application of US sanctions law in the past as contrary to international law and has responded with blocking measures (see 3.).

[1] See ECJ, *Siegfried Aulinger v. Bundesrepublik Deutschland*, judgement of 8 March 2006, case no. C-371/03, ECLI:EU:C:2006:160, para. 34.

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1. Criteria for the Application of EU Sanctions

The EU has exclusive legislative competence in the area of embargo measures – an area that affects the foreign trade of the EU. As a result, EU economic sanctions based on decisions of the Council of the EU within the framework of the Common Foreign and Security Policy (CFSP) are regularly implemented through the adoption of EU regulations that apply directly and immediately in all EU Member States (see Arts 215 and 288 TFEU) and are enforced by the competent national authorities of the individual Member States.

Each EU embargo and sanctions regulation defines the scope of its application based on a standard clause in the Sanctions Guidelines of the Council of the European Union.[2] This standard clause stipulates that the regulation shall apply within the territory of the EU and on board any aircraft and any vessel under the jurisdiction of a Member State as well as to EU nationals and to legal persons, entities, or bodies (PEB) incorporated or constituted under the law of a Member State inside or outside the territory of the Union, and to those in respect of any business done in whole or in part within the Union.[3]

With regard to the scope of EU sanctions law, the Council of the EU states in its Sanctions Guidelines that 'EU restrictive measures should only apply in situations where links exist with the EU', as set out in the standard clause (para. 51). It further stresses that the EU 'will refrain from adopting legislative instruments having extra-territorial application' just as the EU 'has condemned the extra-territorial application of third country's legislation imposing restrictive measures which purports to regulate the activities of natural and legal persons under the jurisdiction of the Member States of the European Union, as being in violation of international law' (para. 52).

EU sanctions are thus based on the principle of territoriality and the principle of active personality, i. e., EU sanctions law is linked to actions that take place either within the territory of the EU (e. g., exports from the EU, imports into the EU, or the provision of services in the EU) or outside the EU by natural or legal PEB that are subject to the jurisdiction of an EU Member State on the basis of its nationality or its establishment or registered office. Third-country subsidiaries of EU parent companies are therefore not bound by EU sanctions law with regard to transactions they conduct outside the EU, as they are not legal PEB established or registered under the law of a

2 Council of the European Union, Sanctions Guidelines, Doc. no. 5664/18, 4 May 2018, para. 88, <https://data.consilium.europa.eu/doc/document/ST-5664-2018-INIT/en/pdf>, last access 11 March 2026.

3 See, for example, Art. 13 Regulation 833/2014/EU and Art. 17 Regulation 269/2014/EU.

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Member State within the meaning of the pertinent rules. Dependent branch offices of EU companies in third countries, on the other hand, are considered to be fully bound by EU sanctions.[4]

2. Criteria for the Application of US Sanctions

Two US authorities are primarily responsible for enforcing US sanctions: the Bureau of Industry and Security (BIS), which reports to the Department of Commerce, and the Office of Foreign Assets Control (OFAC), which reports to the Department of the Treasury. BIS sanctions are set out in Part 746 of the Export Administration Regulations (EAR)[5] and include restrictions on exports, re-exports, and in-country transfers of 'items subject to the EAR' within the meaning of Sec. 734.3 EAR to or within sanctioned countries[6] or to sanctioned persons listed on the Entity List. The Entity List lists companies from across the globe that are involved in activities deemed 'undesirable' by the US, which includes, weapons proliferation, supplying or supporting foreign military or intelligence end users, and human rights abuses. OFAC sanctions, on the other hand, are laid down in a variety of different laws, executive orders, and determinations, and include person-related restrictions (primarily listings on the US Specially Designated Nationals and Blocked Persons (SDN) List) as well as import, service, investment, and payment restrictions.

a) BIS Sanctions

The US sanctions restrictions administered by the BIS already have a very broad scope of application. According to Sec. 734.3 EAR, 'items subject to the EAR' are (1.) all items in the US, (2.) items of US origin wherever located, (3.) foreign-made commodities that incorporate controlled US-origin components above the *de minimis* threshold, and (4.) certain foreign-produced direct products of certain controlled US technology or software or of a plant that is a direct product of certain controlled US technology or software (Foreign Direct Product Rule, FDPR).

4 See Bärbel Sachs, 'Kapitel IV Sanktionen und Embargos der EU' in: Bärbel Sachs and Christian Pelz (eds), *Außenwirtschaftsrecht* (3rd edn, C. F. Müller 2023), para. 349.

5 Part 746 EAR – Embargoes and Other Special Controls.

6 Currently: Cuba, Iraq, North Korea, Russia, Belarus, the occupied territories of Ukraine, Iran, and Syria.

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Unlike EU sanctions, US restrictions are therefore not only linked to the export of items from the US, but also to the 'US nationality' of the items. Any subsequent re-export of items that were manufactured in, exported from, or transited through the US at any time are subject to the US re-export control restrictions of the EAR, including Part 746 EAR and the restrictions relating to entities listed on the Entity List.

Furthermore, items manufactured abroad can also be subject to US re-export control restrictions. This applies, on the one hand, if the items contain a certain percentage of US components in terms of value that would be subject to US export control restrictions, if exported separately to the destination country of the main item;[7] while the *de minimis* value threshold for exports to most countries is regularly 25 %, it is 10 % for some US embargo countries.[8] Additionally, foreign-produced items without US content are subject to US re-export control restrictions if the FDPR applies, i. e., if the items manufactured abroad are the direct product of certain controlled US technology or software or were manufactured in a plant that is itself the direct product of certain controlled US technology or software, and the foreign-produced items are supplied to certain critical countries or recipients.[9]

Although all restrictions under the EAR have a US nexus, this nexus is sometimes very weak, meaning that US re-export control restrictions under Part 746 EAR and the Entity Listings have a significant impact on transactions by non-US persons.

b) OFAC Sanctions

OFAC sanctions are even more far-reaching in terms of their extraterritorial scope. Regarding US sanctions administered by OFAC, a fundamental distinction must be made between primary sanctions and secondary sanctions.

In principle, US primary sanctions only apply to US persons. 'US persons' are defined as US citizens and permanent residents regardless of their place of

7 Items that are not listed on the US Commerce Control List (so-called 'EAR99' items) are generally not considered 'controlled' content that must be included in the *de minimis* calculation. The only exception to this rule is if the destination is Cuba, Syria, North Korea, or the occupied territories of Ukraine, in which case 'EAR99' items must also be included in the calculation of the controlled US value share. However, 'EAR99' items listed in the supplements to Part 746 are not to be included in (re-)exports to Russia and Belarus.

8 See Sec. 734.4 EAR. The 10 % value threshold applies to re-exports to Cuba, Syria, North Korea, and Iran.

9 Sec. 734.9 EAR.

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residence, persons residing in the US, and companies/institutions organised under US law or the laws of a US jurisdiction, including foreign branches. Third-country subsidiaries of US companies are generally not subject to US primary sanctions. There are, however, two exceptions to this principle: the US Cuba sanctions[10], and the US Iran sanctions[11], which also apply to third-country subsidiaries of US companies. The dependent branch offices of US companies are always bound by US sanctions law.

In principle, non-US persons are not to be bound by US primary sanctions. However, non-US persons who cause a US person to violate US sanctions can be held liable for violating US primary sanctions.[12] Since electronic payments in USD require clearance by a US financial institution – and thus a US person – this also triggers the application of US primary sanctions.

In addition, the US claims the right to prohibit transactions that have no nexus whatsoever to the US in certain cases and to impose sanctions on non-US persons who engage in such transactions (so-called 'secondary sanctions'). The US first adopted such secondary sanctions in 1996 as part of the Cuban Liberty and Democratic Solidarity Act (Helms-Burton Act) and the Iran and Libya Sanctions Act (ILSA). Subsequently, further secondary sanctions were imposed. Currently, the US has far-reaching secondary sanctions in place with regard to Iran, Russia, Belarus, and the occupied Ukrainian territories.

The US justifies its jurisdiction with a very broad interpretation of the principle of territoriality. According to the US understanding, secondary sanctions can always be imposed if the conduct of non-US persons in matters unrelated to the US could potentially have an impact on the US territory. Accordingly, non-US persons are prohibited from conducting transactions with certain countries in certain economic sectors or with certain SDN-listed persons.

While violations of the EAR and US primary sanctions carry significant civil and criminal consequences, violations of US secondary sanctions generally result 'only' in administrative penalties, with the most serious administrative penalty being the inclusion on the Specially Designated Nationals and Blocked Persons (SDN) List. Such an SDN listing has significant implications. Not only does it lead to complete exclusion from the US market and the USD-dominated financial system, but many non-US companies, espe-

10 See Sec. 4305 Trading with the Enemy Act of 1917, 50 USC 4305.
11 See Sec. 218 Iran Threat Reduction and Syria Human Rights Act of 2012, 22 USC 8725.
12 See IEEPA Enhancement Act, Pub. L, No. 110-96 (2007).

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cially banks, will also be unwilling to continue business relationships if their business partner is listed on the SDN List.

3. EU'S Reaction to the Extraterritorial Application of US Sanctions Law

As clarified earlier, the EU has always taken the view that the extraterritorial extension of a sanction regime is contrary to international law.

It was in response to the first US secondary sanctions in 1996 that the EU adopted Regulation 2271/96/EC[13] ('Blocking Statute'). The Blocking Statute prohibits EU persons from complying actively or by deliberate omission with requirements or prohibitions based directly or indirectly on the laws listed in the Annex (Art. 5 Blocking Statute). Furthermore, it grants EU persons the right to compensation for damages incurred as a result of the application of the laws (or the resultant measures which are based on these laws) listed in the Annex to the Blocking Statute (Art. 6 Blocking Statute). The Annex to the Blocking Statute originally listed three US laws and regulations concerning Cuba[14] and one law concerning Iran and Libya.[15] After the US terminated the Joint Comprehensive Plan of Action (JCPOA)[16] in May 2018, which resulted in the full reinstatement and subsequent tightening of extraterritorial US sanctions against Iran, the Annex to the Blocking Statute was supplemented in August 2018 to include the current US laws and regulations against Iran,[17] thereby reactivating the Blocking Statute. In the recitals of the Blocking Statute, the EU states that 'a third country has enacted certain laws, regulations, and other legislative instruments which purport to regulate activities of natural and legal persons under the jurisdiction of the Member State' and that these laws, regulations and other legislative instruments 'by their extra-territorial application' violate international law.

13 OJ EC 1996, L 309/1.

14 Cuban Democracy Act 1992, Cuban Liberty and Democratic Solidarity Act of 1996, Cuban Assets Control Regulations.

15 Iran and Libya Sanctions Act of 1996.

16 The 2015 JCPOA stipulated that Iran would submit to technical restrictions and control mechanisms to ensure that its nuclear program was exclusively for peaceful purposes; in return, existing EU and US sanctions against Iran would be gradually lifted.

17 Commission Delegated Regulation 2018/1100/EU of 6 June 2018 Amending the Annex to Council Regulation 2271/96/EC Protecting Against the Effects of the Extra-Territorial Application of Legislation Adopted by a Third Country, and Actions Based Thereon or Resulting Therefrom, OJ 2018 L 199 I/1.

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In its Guidance on the Blocking Statute,[18] the European Commission states that the Blocking Statutes 'aims at countering the unlawful effects of third-country extra-territorial sanctions' on natural and legal EU persons, and that its main purpose is thus 'to protect EU operators engaging in lawful international trade and/or movement of capital as well as related commerce activities with third countries in accordance with EU law'.

II. EU Sanctions Against Russia

The first EU sanctions against Russia were imposed in 2014 in response to Russia's annexation of Crimea and its incitement of unrest in eastern Ukraine. Based on Regulation 269/2014/EU of 17 March 2014[19] (REG 269/2014), 21 individuals were listed in Annex I of that regulation on the grounds that they were involved in actions undermining or threatening the territorial integrity, sovereignty, and independence of Ukraine. Such a listing by the EU entails the freezing of assets of the listed PEB in the EU and a prohibition on making available funds and economic resources to them. In addition, Regulation 833/2014/EU (REG 833/2014) of 31 July 2014[20] imposed items- and services-related restrictions against Russia. In response to Russia's recognition of 'statehood' of Donetsk and Luhansk and Russia's invasion of the whole of Ukraine in February 2022, there has been an incremental expansion and tightening of sanctions against Russia through a total of now 19 sanctions packages, and the addition of more PEB to Annex I of REG 269/2014.[21]

While the initial focus of the sanctions packages was on imposing additional restrictions on the import and export of items, the provision of services and the financial and capital markets, eventually, the prevention of circumvention and frustration of existing sanctions increasingly became the centre of attention. To this end, the EU has extended the import restrictions to goods originating in third countries that incorporate certain products originating in Russia (see 2. a)), is putting pressure on third-country companies and governments not to circumvent or frustrate EU sanctions (see 2. b)), and is increasingly requiring EU companies to demand compliance with EU sanctions from

18 European Commission, Guidance note – Questions and Answers: Adoption of the Update of the Blocking Statute, OJ 2018 C 277 I/4.

19 Council Regulation 269/2014/EU of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, OJ 2014 L 78/6.

20 Council Regulation 833/2014/EU of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, OJ 2014 L 229/1.

21 Currently, almost 2,000 natural persons and almost 700 legal entities are listed in Annex I to Regulation 269/2014/EU.

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their contractual partners and their subsidiaries in third countries (see 2. c)). These new sanctions provisions have an increasingly extraterritorial effect.

1. Extension of Import Restrictions

Like previous EU embargo regulations, REG 833/2014 lays down prohibitions to import certain goods that originate in Russia or that have been exported from Russia. The prohibition to import goods that 'have been exported from Russia' applies to goods that are imported directly from Russia into the EU, regardless of their origin.[22] The import of goods that 'originate in Russia', on the other hand, is also prohibited if the goods are first exported to a third country and from there imported into the EU. The origin of goods is determined based on Art. 60 of the Union Customs Code. Under this provision, goods that have been wholly obtained in a single country are considered to have their origin in that country. Goods whose production involves more than one country are considered to originate in the country where they underwent their last, substantial, economically-justified processing resulting in the manufacture of a new product or representing an important stage of manufacture. For example, wood grown and cut in Russia initially has Russian origin. Its import into the EU is therefore prohibited, regardless of the country of dispatch. Yet, if the logs are subsequently transported to Turkey and processed there into wooden chairs, they become a new product and thus acquire Turkish origin and therefore are no longer subject to the import ban on wood originating in Russia.

With regard to some products whose import into the EU is prohibited if they originate in or have been exported from Russia, it was found that these sanctions were significantly undermined by exporting the sanctioned goods from Russia to third countries, processing them there in a manner that conferred origin, and then importing them (lawfully) into the EU. In response, the EU extended the import prohibitions for certain goods to also include goods originating in third countries if certain materials originating in Russia were used in their manufacture. Such import prohibitions for goods originating in third countries were laid down for iron and steel products[23], petroleum products[24], gold[25], and diamonds[26].

22 ECJ, *Criminal Proceedings against S.Z.* judgement of 5 September 2024, case no. C-67/23, ECLI:EU:C:2024:680.

23 Art. 3g(1)(d) Regulation 833/2014/EU.

24 Art. 3ma Regulation 833/2014/EU.

25 Art. 3o(2) Regulation 833/2014/EU.

26 Art. 3p(3) and (4) Regulation 833/2014.

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This is the first time in EU sanctions law that there has been an extension of import prohibitions to goods originating in third countries that have been manufactured using materials from a sanctioned country. Such an extension had always been avoided in the past, as it significantly interferes with the economic freedom of third-country economic operators. Due to this extension, manufacturers from third countries are now forced to decide whether to continue to source the relevant materials from Russia and thus be excluded from the EU market, or to switch their sources of supply to be able to continue delivering their goods to the EU. As a result, they are, to a certain extent, forced to adhere to the EU embargo against Russia.

2. Obligations on Third-Country Corporations and Governments

With each successive sanctions package, the EU has increasingly tried to force companies incorporated in third-countries to comply with certain EU sanctions against Russia by threatening administrative measures in case of non-compliance. Furthermore, the EU reserves the right to completely prohibit the delivery of certain particularly sensitive goods to certain third countries if, at the EU's request, those third countries refuse to take measures to prevent the onward delivery to Russia.

a) Frustration of EU Sanctions as Grounds for Inclusion in Sanctions List

As part of the 8th sanctions package adopted on 6 October 2022, another ground for including a PEB in Annex I to REG 269/2014, which leads to an asset freeze and a prohibition of making available funds and economic resources, was added. According to the newly inserted Art. 3(1)(h) REG 269/2014, it has become possible to list PEB 'facilitating infringements of the prohibition against circumvention' of the EU sanctions against Russia or 'otherwise significantly frustrating those provisions'. In terms of wording, the reason for listing is similar to the possibility of listing a PEB on the US SDN list due to a violation of extraterritorial US secondary sanctions.

In contrast to the US Secondary Sanctions, there is still a certain nexus to the EU, as the new listing reason is intended to deter non-EU persons from participating in prohibited circumvention of sanctions by 'EU persons' within the meaning of Art. 13 REG 833/2014 and Art. 17 REG 269/2014. Nevertheless, the possibility of listing non-EU persons for participating in activities

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of EU persons that are prohibited under EU sanctions law but do not apply to non-EU persons is a departure from the principle of not applying EU sanctions extraterritorially.

b) Trade Restrictions on Companies with Links to the Russian Defense and Security Sector

REG 833/2014 provides for the possibility of listing PEB that have commercial or other links with or otherwise support Russia's defence and security sector in its Annex IV, with the result that the supply of goods listed in Annex I to the Dual-Use Regulation 2021/821/EU[27] and in Annex VII to REG 833/2014 (advanced technologies), as well as the provision of related technical or financial assistance to them, is prohibited under Art. 2b REG 833/2014. While originally only PEB based in Russia were included in Annex IV, the 10th package adopted on 25 February 2023 saw companies based outside the EU included in Annex IV for the first time. Initially, the listing of third-country companies was limited to Iranian companies. Gradually, however, companies from other third countries (Armenia, China, Hong Kong, India, Kazakhstan, Kyrgyzstan, Serbia, Singapore, Sri Lanka, Syria, Thailand, Turkey, United Arab Emirates, Uzbekistan, and Vietnam) were also included in Annex IV and thus made subject to sectoral trade restrictions, which are similar to restrictions imposed on companies listed on BIS's Entity List. Consequently, third-country companies were sanctioned for actions that did not fall within the territorial and personal scope of EU sanctions law and were legal under the national laws applicable to the third-country companies.

c) Transaction Prohibitions in Response to Certain Undesirable Behaviours

Art. 5ac(2) and Art. 5ad(2) that were inserted into REG 833/2014 as part of the 14th sanctions package adopted on 24 June 2024 are another example of the extraterritorial application of EU sanctions law. Under Art. 5ac(2) REG 833/2014, EU persons are prohibited to engage in any transaction with legal PEB listed in Annex XLIV, which shall include legal PEB established outside Russia that use payments systems established by the Central Bank of

27 Regulation 2021/821/EU 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, OJ 2018 L 206/1.

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Russia, the Russian state or any other Russian entity. Likewise, Art. 5ad(1) REG 833/2014 prohibits EU persons from engaging in transactions with legal PEB listed in Annex XLV that shall list PEB established outside the EU that provide crypto-asset or payment services to PEB listed by the EU or for operations that frustrate the purpose of REG 833/2014. Several third-country PEB have since been listed in Annexes XLIV and XLV.

The 19th sanctions package adopted on 23 October 2025 introduced the possibility of listing third-country ports and locks that are used for the transport of certain sanctioned goods in Annex XLVII, thereby making them subject to transaction prohibitions. So far, however, no third-country ports or locks have been listed.

These transaction prohibitions pursue the goal of forcing non-EU persons, who are not bound by EU sanctions, to comply with certain EU sanctions by threatening them with exclusion from the EU market, i. e. with similar implications as a USD SDN-listing (minus the asset freeze).

d) Export Prohibitions on Certain Items to Certain Third Countries

Art. 12f, which was inserted into REG 833/2014 by Regulation 2023/1214/EU[28] as part of the 11th sanctions package adopted on 23 June 2023, goes beyond the possibility of sanctioning third-country companies for undermining EU sanctions against Russia by excluding them from the EU market.

Instead, Art. 12f REG 833/2014 provides that the sale, supply, transfer, or export of certain particularly sensitive goods, and the provision of related services, funds and financial assistance, as well as the transfer of related intellectual property rights and trade secrets to natural or legal persons in certain third countries may be prohibited altogether. The goods-related restrictions applicable to individual third countries are to be listed in Annex XXXIII, and as Art. 12f(3) REG 833/2014 states:

> 'Annex XXXIII shall only include third countries that have been identified by the Council as having systematically and persistently failed to prevent the sale, supply, transfer or export to Russia of goods and technology, as listed in that Annex, exported from the Union, despite the Union's prior outreach and assistance to the country in question.'

28 Council Regulation 2023/1214/EU of 23 June 23 amending Regulation 833/2014/EU concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, OJ 2023 L 159 I/1.

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In the recitals to Regulation 2023/1214/EU, the Council provides lengthy explanations of the conditions under which third countries can be included in Annex XXXIII. According to these recitals, listing should be used as an 'exceptional, last-resort measures' against third countries 'whose jurisdiction is demonstrated to be at a continuing and particularly high risk of being used for circumvention' and where neither 'bilateral and multilateral cooperation through diplomatic engagement with, and the provision of increased technical assistance' to the respective third countries nor individual measures against individual PEB in those countries can effectively prevent the circumvention of EU sanctions.

Art. 12f REG 833/2014 represents a departure from the principle that EU export control law is linked to the export of an item from the EU and not to the 'nationality' of an item. Even without prior collusive collaboration with an EU person for the purpose of circumventing the EU sanctions against Russia, the onward delivery of certain goods that were previously exported from the EU to Russia is prohibited, and entire states can be subjected to trade restrictions if they do not take effective measures to enforce the EU sanctions relating to goods on their territory. Consequently, it is no longer only EU companies that are prohibited from (indirect) exports to Russia, and individual third-country companies that face consequences if they participate in sanctions circumvention. Instead, the EU's export control restrictions with regard to Russia can also be 'imposed' on third countries in the form of re-export control restrictions. This bears resemblance to the US re-export control restrictions and their risk-based classification of countries into country groups.[29] So far, the EU has refrained from including third countries in Annex XXXIII, presumably in recognition of the sensitivity of the issue in terms of foreign policy.

3. Obligations for EU Companies to Exert Influence on Third-Country Companies

In addition to the possibility to exert direct influence on third-country PEB and governments – which have so far been used only very cautiously – the EU's efforts to apply its sanctions as widely as possible increasingly focus on obliging EU companies to demand compliance with EU sanctions from their third-country contractual partners and subsidiaries.

29 Suppl. 1 to Part 740 EAR.

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a) 'No Russia' Clause

The obligation of EU companies to enforce EU sanctions law extraterritorially against third-country companies was first introduced as part of the 12th sanctions package adopted on 18 December 2023 and expanded in the course of the 14th sanctions package adopted on 24 June 2024.

Pursuant to Art. 12g REG 833/2014, EU persons are obliged to contractually prohibit the re-exportation to, or for use in Russia when selling, supplying, transferring, or exporting certain sensitive sanctioned items to most third countries and to ensure that the contractual agreement contains appropriate remedial measures in the event of a breach. According to FAQ 6 of the European Commission's FAQ[30] on the 'No Re-Export to Russia' clause, such appropriate remedial measures require the provision of a contractual penalty. In addition, the contractual partner must be obliged to undertake its best efforts to ensure that the purpose of the 'No Russia' clause is not frustrated by any third parties further down the commercial chain, including by possible resellers.

Consequently, Art. 12g(1) REG 833/2014 stipulates restrictions that are comparable to the re-export control restrictions under the EAR.[31] Just like under US law, the items-related restrictions shall no longer be linked to the export from the EU, but shall also apply to all future re-exports of goods that were exported from the EU at any point in time. The EU restrictions shall therefore be linked to the 'nationality' of the items, and the classification as 'EU item' will not be lost even in the event of subsequent re-exports. This represents a significant expansion of the scope of EU sanctions and a move closer to US re-export control restrictions.

However, a key difference from the US (re-)export control restrictions under the EAR is that the latter are legal prohibitions against non-US persons, which are enforced by the US authorities through criminal and civil penalties. The EU, on the other hand, shifts the obligation to enforce EU sanctions extraterritorially to EU economic operators by requiring

30 The European Commission has published an extensive list of FAQs on the interpretation of the EU sanctions against Russia. The Commission Consolidated FAQs on the Implementation of Council Regulation No. 833/2014 and Council Regulation No. 269/2014 are available online under <https://finance.ec.europa.eu/document/download/66e8fd7d-8057-4b9b-96c2-5e54bf573cd1_en?filename=faqs-sanctions-russia-consolidated_en.pdf>, last access 11 March 2026. These FAQs are intended to ensure uniform application of EU sanctions against Russia and to provide EU economic operators with practical guidance. They are, however, not legally binding.

31 See Sec. 734.14 and 736.2(b)(1) EAR and the re-export control restrictions in Part 746 EAR.

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them to enforce re-export control restrictions based on contractual provisions.

As part of the 14th sanctions package adopted on 24 June 2024, the obligation to implement a 'No Russia' clause was extended by imposing an additional obligation on EU economic operators through the newly-inserted Art. 12ga REG 833/2014, which requires these operators to contractually prohibit third-country contractual partners from using intellectual property rights or trade secrets related to goods listed in Annex XL to REG 833/2014 in connection with the delivery of Annex XL goods to Russia or their use in Russia, and to contractually oblige the third-country contractual partner to prohibit potential sublicensees from doing so as well. This provision ultimately amounts to a FDPR for Annex XL goods to be enforced contractually by EU economic operators, as the export of certain goods produced outside the EU on the basis of EU know-how to Russia is to be prevented.

b) 'Best Efforts' Obligation

A further significant extraterritorial extension of EU sanctions was brought about by Art. 8a REG 833/2024, which was added as part of the 14th sanctions package adopted on 24 June 2024. These impose an obligation on EU persons to

> 'undertake their best efforts to ensure that any legal person, entity or body established outside the Union that they own or control does not participate in activities that undermine the restrictive measures provided for in this Regulation'.

Compared to the original wording of Art. 8a REG 833/2014, which ultimately did not get incorporated into the final version of the 14th sanctions package, the extraterritorial effects have been significantly weakened. In the original draft, Art. 8a read:

> 'Natural and legal persons, entities and bodies shall be presumed to be responsible for any actions frustrating the provision of this Regulation that are performed by a legal person, entity or body established outside the Union that they own or control.'

This original wording would have meant that EU companies would have had to require their third-country subsidiaries to comply fully with EU sanctions law to avoid violating EU sanctions themselves.

The current wording only requires 'best efforts' which shall be understood 'as comprising only actions that are feasible for the Union operator in view of its nature, its size and the relevant factual circumstances, in particular the

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degree of effective control over the legal person, entity or body established outside the Union'.[32]

Although Art. 8a REG 833/2024 – as well as the similar-worded Art. 15a REG 269/2014, which was inserted with the 16th sanctions package adopted on 24 February 2025 – ultimately seeks to extend the EU sanctions against Russia to third-country subsidiaries of EU parent companies, it remains unclear what exactly is required of EU parent companies.

c) Ensuring the Implementation of a Risk Management System by Third-Country Subsidiaries

While scope and content of the 'best efforts' obligation and the consequences for EU parent companies that fail to comply remain unclear, Art. 12gb(3) REG 833/2014, which was also inserted in the course of the 14th sanctions package adopted on 24 June 2024, is more explicit in this regard.

Pursuant to Art. 12gb(1) REG 833/2014, EU economic operators that sell, supply, transfer, or export common high priority items as listed in Annex XL or sensitive goods listed in Annex XLVIII to REG 833/2014 (also) to third countries that are not Annex VIII partner countries, are required to identify and assess the risk of exportation to, or for use in Russia and to implement appropriate policies, controls, and procedures to mitigate and manage effectively these risks of exportation.

Pursuant Art. 12gb(3) REG 833/2014, EU economic operators are also required to ensure that legal PEB established outside the EU that are owned or controlled by them and that sell, supply, transfer, or export goods listed in Annex XL or Annex XLVIII to REG 833/2014 also comply with the requirements of Art. 12gb(1) REG 833/2014.

Unlike Art. 8a REG 833/2014, this is an obligation to achieve a specific result and not merely an obligation to undertake an effort. EU economic operators are only exempted from this obligation if they are unable to exercise control over a legal PEB due to reasons that they did not cause themselves (Art. 12gb(4) REG 833/2014).

The new Art. 12gb(3) REG 833/2014 is clear in its extraterritorial thrust. Third-country subsidiaries must be obliged by their EU parent companies not to supply certain goods to Russia, even if these have no nexus to the EU,

32 Recital 30 of Regulation 2024/1745/EU of 24 June 2024 amending Regulation 833/2014/EU concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, OJ 2024 L 1745.

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and even if no EU person is involved in the transaction. The EU thus intends to enforce compliance with EU sanctions from third countries (once again) in such a way that it does not place the obligation directly on the third-country subsidiaries, but on the EU parent companies. Ultimately, however, EU parent companies have no choice but to actively intervene in the business activities of their subsidiaries and oblige them to comply with certain EU sanctions legislation, even if there is no EU nexus, to avoid exposing themselves to the risk of criminal or administrative offenses. The new Art.12gb(3) REG 833/2014 thus represents a clear departure from the EU's previous position that sanctions shall not have extraterritorial effect.

III. Concluding Reflections

Given the legislative developments in the gradual expansion and tightening of EU sanctions against Russia, the EU itself no longer meets its own principle – that sanctions are not to be applied extraterritorially. However, while the US publicly advocates the view that it has the right to apply its sanctions extraterritorially, the EU has never formally abandoned its position that sanctions must not be applied extraterritorially. Instead, it uses a 'trick' to maintain the appearance of non-extraterritoriality of its own sanctions. While the US punishes violations of its (re-)export control restrictions and the causing of a US person to violate US sanctions with criminal and civil sanctions, the EU primarily imposes the obligation to enforce EU sanctions extraterritorially on EU economic operators by requiring them to enforce re-export control restrictions on the basis of contractual provisions. Such an approach by the EU to impose extraterritorial enforcement of EU sanctions law primarily on EU economic operators is to be rejected. The enforcement of EU sanctions falls within the competence of the EU Member States and must not be passed on to private actors. If the EU seeks to apply its sanctions extraterritorially, in deviation from its previous legal position, it should communicate this openly, as the US does, and ensure enforcement through the authorities of the Member States.

Whether the extraterritorial application of sanctions – albeit understandable in terms of intention – is ultimately desirable remains doubtful. Since the imposition and enforcement of sanctions for serious violations of international law such as Russia's aggression against Ukraine is not possible at the international level due to the current state of international institutions, the EU ultimately has no choice but to either apply its sanctions extraterritorially or to accept that they only have a limited effect. In view of the gravity of

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Russia's violation of fundamental principles of international law, the EU's action appears justified. In the long term, however, the EU's actions could weaken international law.

States and groups of states may have different motives for seeking to maximise the impact of their sanctions, which may not be shared by other states and groups of states. For example, many Arab states have attempted to enforce an extraterritorial boycott against Israel, against which many Western states have enacted defensive legislation. China, too, is increasingly attempting to apply its own export control laws and sanctions extraterritorially. The extraterritorial application of sanctions law could ultimately lead to the fragmentation of world trade in such a way that trade is only possible within certain like-minded states. Furthermore, sanctions could be used by economically strong countries as an excuse to impose trade rules on economically weak countries. Consequently, although the EU's intention behind the extraterritorial application of its sanctions against Russia is to enforce international law, this could ultimately accelerate the deterioration of the rules-based international order.

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