

СЕКЦІЯ V. ПРАВО ТА МІЖНАРОДНЕ ПРАВО

GROUNDING: EUROPEAN UNION SANCTIONS AGAINST RUSSIAN AVIATION FOLLOWING THE INVASION OF UKRAINE

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Summary. *The sanctions implementation in relations with the Russian Federation became an urgent problem after the beginning of the occupation of Ukrainian Crimea and the beginning of military operations in Donbas but received a new level of actuality after the full-scale invasion in February 2022. The article highlights some fundamentally important tools of the European Union institutions for the effective implementation of restrictive measures to stop the military aggression of the Russian Federation against Ukraine. The main focus of the article is on the specifics of the application of restrictive measures to implement the goal of the Common Foreign and Security Policy of the European Union. The article examines the problems of sanctions implementation by the European Union in connection with preventing conflicts or responding to new crises, attention is drawn to the conditions and circumstances under which sanctions may be applied by member states. The article analyses the effectiveness and consequences of European Union sanctions on the applied bans of the aviation industry of the Russian Federation. The article states that the implementation of the sanction is one of the most effective ways to influence the behaviour of a state that violates international norms and rights and forces it to change its policy.*

In light of the military invasion of Ukraine by the Russian Federation (RF), research into the legal grounds for the implementation of international legal sanctions, particularly the restrictive measures (sanctions) of the European Union (EU) against the aggressor state, has become pertinent. The use of EU restrictive measures is the most complex for contemporary EU law. International documents do not provide a definition of the term "sanctions." The UN Charter uses terms such as "enforcement measures," "use of force," "measures against a violator state," "diplomatic relations severance," etc. EU acts use terms such as "restrictive measures (sanctions)," "joint or special measures," "necessary measures," and others. Restrictive measures are an important tool for achieving the objective of the Common Foreign and Security Policy, as stated in the Treaty on European Union [Art. 21, 1]. The objective encompasses the protection of Union values, support for international peace and security, as well as the consolidation and support of democracy, the rule of law, and human rights. The article aims to highlight certain crucial EU institutional instruments for the effective application of restrictive measures to halt RF military aggression, to characterize new proposed rules in the EU that will ensure the effectiveness of the detection, freezing, management, and confiscation of incomes obtained as a result of violating restrictive measures.

The Treaty on the European Union and the Treaty on the Functioning of the European Union (TFEU) define the powers of institutions involved in proposing, adopting, and

implementing EU sanctions. Member States are responsible for the proper application and enforcement of EU sanctions, as well as for detecting violations. Member States have a legal obligation to adopt national legal acts that provide effective, proportionate, and convincing sanctions that are applied in the event of a breach of the regulation on penalties. The European Commission performs a supervisory role, ensuring the proper implementation of restrictive measures in certain areas. The European Commission may initiate investigations against Member States for failure to comply with EU legislation [Art. 258, 2]. The TFEU provides the legal basis for the European Council to take necessary measures in the event of the adoption of EU restrictive measures [Art. 215, 2].

Firstly, the European Council implemented sanctions related to the violation of Ukraine's territorial integrity, sovereignty, and independence in response to Russia's actions in 2014. However, the full-scale Russian invasion on February 24, 2022, changed the international relations system. The EU condemned Russia's aggressive war against Ukraine and imposed sanctions aimed at promoting international peace and security, preventing conflicts, supporting democracy, the rule of law and human rights, and defending the principles of international law. Since February 2022, the EU has significantly expanded its list of sanctions due to Russia's unjustified military aggression against Ukraine. They include restrictions on finance, energy, technology, dual-use goods, industry, transport, and luxury items.

If an aggressor state refuses to cease its unlawful activities and voluntarily compensate for the damage caused, international legal sanctions are imposed as a negative reaction by the international community to the breach of international law. The UN Charter provides that international legal sanctions may be applied by the UN Security Council and international organizations, including in the field of civil aviation - the ICAO Council, the highest body of the International Civil Aviation Organization [Art. 41, 3]. Effective restrictive measures (sanctions) by the EU from the early days of the war were aimed at limiting Russia's aviation connection due to the obligations of its member states under the ICAO Statute. Together with the UK and the US, the EU took various measures in the aviation sector aimed at creating significant logistical and financial problems (with immediate consequences) for airlines operating flights to and from Russia, as well as for lessors and financiers cooperating with Russian airlines [4]. European intergovernmental organizations in the field of civil aviation have supported the international aviation community's demands to close the airspace for Russian aviation in order to provide support to Ukraine amidst military aggression. The European Union Aviation Safety Agency (EASA) published a list of restrictive measures in various sectors, including defence, energy, aviation, and finance on the EASA website [5]. The EASA has suspended the validity of all certificates if the certificate holder is located or resident in Russia, affecting the rights and obligations of aviation companies in accordance with aviation safety rules falling under the scope of EU Regulation 2018/1139 [6]. The regulation pertains to licenses for air carriers for products, spare parts, equipment, licenses for technical aviation services, as well as licenses for training centres for organizations and training devices for flight simulation. Aircraft without the appropriate certificates are not allowed to operate flights in the EU airspace.

From February 25, 2022, the EU adopted several packages of restrictive measures [7]. The first package includes a complete ban on the export of goods and technologies suitable for use in the aviation and space industries, as well as prohibits the provision of technical assistance and other related services for goods and technologies covered by this ban, the direct or indirect provision of insurance or reinsurance of aircraft and its parts/technologies to any person in the RF or for use in the RF, and the provision of any services related to aircraft or for use in the RF, namely: major repairs, inspections, replacements, modifications, or defect corrections regarding aircraft and aeroplane parts. The second package of sanctions prohibits Russian airlines or aircraft, regardless of their state of registration, from

operating flights to or over the territory of the EU or beyond its borders. The ban on the sale of all aircraft, spare parts, and equipment to Russian airlines will worsen one of the key sectors of the Russian economy since three-quarters of Russia's current commercial air fleet was built in the EU, the US, and Canada [8].

The EU has a system of various restrictive measures that complement the sanctions of the UN Security Council and international organizations in case of a threat to peace, breach of the peace or an act of aggression. Decisions on the adoption, extension, or cancellation of restrictive measures (sanctions) are approved by the European Council based on proposals from the European Commission and the High Representative of the EU for Foreign Affairs and Security Policy. The European Council makes decisions on EU restrictive measures (sanctions) unanimously, and their extension or cancellation is possible based on proposals from the High Representative of the EU. Initially, EU member states to reach a political agreement and develop necessary legal acts, and the European Council decision and accompanying regulation are coordinated with the European Commission before being submitted to the European Council for approval. All restrictive measures adopted by the EU fully comply with international law, human rights, and fundamental freedoms.

In some member states, the violation of restrictive measures is a criminal offence, while in others, it is an administrative offence that allows circumventing the restrictive measures. The internal legislation of individual countries requires changes so that victims of aggression can appeal to the courts of these countries with claims against the Russian Federation and its leaders. The European Commission has also argued the need to add violations of EU restrictive measures to the list of EU criminal offences. Therefore, on November 28, the EU Council decided to add the violation of EU restrictive measures to the areas of criminality set out in Article 83(1) of the TFEU [9]. This legislative change creates new legal mechanisms for protecting the rights of victims of aggression and allows for more effective sanctions against Russia. From now on, the violation of EU restrictive measures will be a basis for criminal prosecution in EU member states, which may have serious consequences for individuals who violate these restrictions. In particular, this may apply to Russian leaders who are involved in violating EU restrictive measures. The legislative change also increases the level of protection for the rights of victims of aggression, allowing them to appeal to the courts with claims against Russian leaders and their accomplices. Overall, this legislative change is a step towards ensuring legal responsibility for violating restrictive measures and protecting the rights of victims of aggression.

However, it should be noted that this change in legislation may also raise additional questions regarding its practical implementation and application. For example, it is necessary to ensure effective cooperation between EU member states in the criminal prosecution of individuals who violate restrictive measures. It is also important to ensure the protection of the rights of relevant individuals during criminal prosecution and to ensure adherence to the principles of justice during the consideration of such cases. In addition, it is necessary to consider the possible consequences for diplomatic relations between the EU and Russia. Even if Russian leaders are not criminally prosecuted in EU member states, such a change in legislation may lead to increased tension between the EU and Russia. It is important to find a balance between protecting the rights of victims and international stability and to promote peaceful conflict resolution. In conclusion, the change in legislation regarding the violation of EU restrictive measures is an important step towards ensuring legal accountability for such violations. However, it is necessary to ensure effective cooperation between EU member states, protect the rights of relevant individuals during a criminal prosecution, and balance the protection of victims' rights with international stability.

Conclusion. Therefore, violating European Union sanctions is a serious crime and should have significant consequences. This requires a set of common European rules. The

application of coercive measures, such as asset confiscation, increases the likelihood of compelling the aggressor state to cease the international breach of law and fulfil its obligation to compensate for the damages incurred. The new legislative act of the European Union will consider protecting the principles of international law and order. EU acts regulate the legal and organizational principles for implementing sanction measures, establish the authorities responsible for carrying out such tasks, and prescribe procedures for monitoring compliance with the prohibitions and restrictions established by the EU Council by national and state authorities.

Sanctions are definitely more effective if you involve the widest possible range of international partners. Given the negative impact of the war in Ukraine on the global economy, the EU can initiate proposals in international institutions such as the UN, World Bank, International Monetary Fund, Food and Agriculture Organization, and World Food Program, as well as G7 and G20, to increase pressure on Russia to stop the war and withdraw Russian troops from Ukrainian territory. In the event of a joint EU decision to use frozen assets in connection with corruption, sanction violations, and export control measures, this would be a good standard for future potential aggressors. They will understand that the international community will seize all their assets and pay the state that is defending itself against their aggression. To restore international law and order, the fundamental values are security, rule of law, and human rights.

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