



**STRENGTHENING COOPERATION FOR CUSTOMS RISKS MANAGEMENT AT
EUROPEAN BORDERS IN THE NEW REGIONAL SECURITY CONTEXT**

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ABSTRACT

In the current security context of the Black Sea region, trade relations are affected by the imperative of international sanctions, which have imposed a series of restrictions that make it difficult for professionals to carry out commercial contracts. Through the 12 packages of restrictions established by the EU, following Russia's invasion of Ukraine, the supply of raw materials from the East and exports to these destinations are largely blocked. The risk of fraud is evident as long as production facilities are designed for the use of certain categories of goods in the supply chain, which are currently under economic embargo or directed toward specific markets. Integrated border management is a priority for authorities, and consolidating cooperation for customs risk management involves adopting exceptional measures. This study aims to identify the gaps in the Union's regulatory framework regarding risks and the critical knowledge of control authorities regarding the processes defined for processing customs and commercial documents within import-export operations at the Union's external eastern border. The scope, interpretation, and effects of European and international legal provisions constitute a separate analysis of the exceptional nature of international sanctions.

Keywords: security, risks, sanctions, Ukraine, Russia, Black Sea

INTRODUCTION

Before analyzing the importance of the Black Sea region in international relations, we will attempt to define its strategic significance for regional stability [1], as well as its major role in connecting the European continent with the Middle East and Asia.

Since the 1990s, the European Union and the USA have developed a particular interest in this region, believing it can offer economic and military advantages beyond just Russia. The area holds some of the world's most crucial energy resources, and the Black Sea extends not only to the countries directly bordering it but also includes regions spanning the Balkans and Central Asia [2]. The Black Sea is linked to the Mediterranean Sea through the Bosphorus and Dardanelles straits, to the Sea of Azov through the Kerch Strait, and, through the Danube-Rhine-Main canal, it connects Eastern and Western Europe.



Even under these circumstances, Western leaders have not yet developed a predictable strategy for the Black Sea region, whether it pertains to political, social, or economic developments or the integration of nearby states into European or Euro-Atlantic structures. Even after Russia annexed Crimea in 2014, there was no immediate response, but rather timid attempts through the adoption of community acts to impose some restrictions, primarily on an economic basis. However, after the outbreak of the war between Russia and Ukraine in February 2022 and the illegal annexation of Zaporizhia, Kherson, Luhansk, and Donetsk regions which altered the power balance in the region and even threatened the global security architecture, European and US officials urgently convened and finally decided on concrete measures regarding the importance of the region.

The ongoing armed conflict, the shifting relationships among major global and regional actors, and the resurgence of frozen conflicts in the Black Sea region and the Republic of Moldova demand increased attention from the European Union and the international community towards the region. The new Strategy for the Foreign Policy of the European Union and the NATO Summit in Vilnius confirm the clear intention of the main actors on the international stage to link the Black Sea region to the entire process of European and Euro-Atlantic cooperation, with a particular focus on regional stability and all its components, as well as the European continent.

This study does not prioritize analyzing the aspects derived from the developments of the states in the region following Russia's act of aggression from a security perspective. Instead, it focuses on the crisis relationship between the geopolitical risk and the imminent risk of violating the economic sanctions imposed by the European Union and the international community. The increased risk of fraud due to the unprecedented disruption of trade relations in the area, combined with serious criminal activities such as trade in prohibited goods, money laundering, and terrorist financing, necessitates urgent measures for stability in the region through the cooperation of European structures, institutions, and third-party states called upon to combat threats that affect territorial sovereignty and economic security in the region.

MATERIALS AND METHODS

Being a multidisciplinary study, it involves approaching a thematic and bibliography from multiple reference domains, such as international relations, political and security studies, public international law, European law, world economy, and trade defense measures for illicit transactions. The issue of border control and customs risk management has been analyzed by the latest public strategies of the European Union. The consulted articles and specialized studies, dated recently, required the method of comparative scientific research as a systematic procedure for contrasting multiple global phenomena that led to the definition of problems. Finally, a series of reports and conclusions of important international conferences, summits, and points of view of specialists and experts communicated in writing or through a series of conferences organized by think tanks with relevance were analyzed for the international political scene.

THE EFFECTS OF ECONOMIC SANCTIONS ON TRADE RELATIONS

Russia's unprovoked aggression against Ukraine undoubtedly represents a blatant violation of the United Nations Charter. The European Union strongly condemned this kind of behavior and called for the condemnation of Russia and immediate measures to limit the disaster in regional formats and international organizations, in any public position taken or resolutions of national parliaments. Alongside the specific diplomatic means in such a context, the European Union, with significant efforts from its member states together with several



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international allies and partners and through collective pressure, adopted a series of economic sanctions against Russia, maintaining its commitment to sustaining and augmenting these measures as long as the situation requires, within the limits of international commitments aiming at a rules-based international order.

The response was designed to weaken Russia's economy, which is quite attractive, at least in terms of resources [3], seeking to deprive it of trade relations with EU member states, restricting access to various technologies, raw materials, and critical infrastructures, thereby reducing its capacity to continue the war that threatens the territorial integrity and independence of Ukraine, but also peace in the region.

Strictly from an economic standpoint, the restrictions targeted companies in the military sector, shipbuilding, aviation, machinery construction, etc., as well as blacklisting adopted through a series of directives from state financial institutions and banks, and professional and employer associations. These measures included banning certain transactions on the European Union's capital and financial markets, limiting, or prohibiting imports of energy products from Russia, and restricting the export of products and advanced technologies to Russia. Service provisions with Russian companies were banned in the transportation sector, and some EU ports were closed to vessels under the Russian flag.

Regarding defense, but also in case products with potential dual-use, civil and/or military, such as vehicles, equipment of any kind, navigation instruments, and weapons and ammunition, were also subject to import or export bans on a case-by-case basis.

The successive extensions of these packages of restrictions practically prohibited almost all imports, exports, and transit related to Russia, as well as the provision of services, including maintenance, consultancy, and advisory services.

The response, be it late to Russia's aggression in Ukraine, the period 2014-2022 being the adoption of sanctioning measures without a major impact on the Russian economy, highlights, first, unity in action, solidarity with the hard-pressed Ukrainian people, the list of restrictive measures is an unprecedented one. Many entities and individuals were included in these lists, with the immediate effect being devastating for Russia, or at least disruptive for the Russian economy.

Statistical data communicated by the World Bank and the International Monetary Fund estimate that *"70% of the assets of the Russian financial system are subject to international sanctions. 300 billion euros represent reserves of the Central Bank of Russia are blocked in the EU, other G7 countries and Australia"*.

These important sums, to which are added approx. 20 billion euros were sums made available to over 1,500 structures and individuals to whom the sanctions were applied, diminishing Russia's ability to finance the war.

Based on data provided by the International Monetary Fund, in 2022 *"Russia's imports fell by 15.01% compared to the previous year, while exports fell by 8.7%."* The International Energy Agency estimated that *"Russia's oil revenues fell by more than a quarter in January 2023 compared to January 2022."* The Organization for Economic Cooperation and Development published the following information: *"In 2023 Russia's GDP will decrease by 2.5%, although the World Bank predicted a decrease of only 0.2%, and the International Monetary Fund even anticipates an increase by 0.7%"*.

At the same time, these trade defense measures have a disruptive effect on markets globally. For the main categories of goods, prices have fluctuated, which leads to an imbalance



in trade in goods and services for the main profile markets. There is an obvious reaction of Russia, which throughout this period has sought to identify new markets and strategic partners with which to lay the foundations for long-term trade, conditional on the abandonment of ongoing trade agreements. These are China, North Korea, Iran, Turkey, India and other Asia-Pacific states. The World Bank estimates that in 2023 and the following period, imports will increase by 4.1%, compared to the period of 2022, a slight upward trend will also be registered in the case of exports. This indicates that Russia has identified new markets and trade, at the expense of economic sanctions, is beginning to recover.

According to the public decisions of European political leaders, these restrictive measures will continue. Additionally, a series of cooperation measures with third countries will be targeted to jointly ban commercial relations with Russia, urging them to implement similar measures to tighten import and export restrictions with the Russian Federation, suspend the most favored nation clause for products originating from its customs territory, and suspend the ongoing accession process to the World Trade Organization.

All these aspects significantly complicate commercial activities in the region, as trade between EU member states and countries in the Black Sea basin had reached a high level by 2021. As a result of the European Union's policy to promote maritime routes in the eastern proximity, configuring new transport corridors, and the potential offered by the region's resources, trade has seen significant progress [4].

The market for energy products, gases, iron and steel products, and rare metals has surged [5], and like a snowball effect, all prices for major agro-food products [6] and service provisions have reached unprecedented levels, leading to unimaginable deficits in the budgetary-economic systems of all EU member states. Europe is facing its most serious economic crisis in the past 15 years, and recent estimates from the "Big Four" throw the global financial and banking system into disarray for the next 16 months. Entire sectors of activity are being affected one after another, and horizontal measures are identifying more and more bankruptcies, workforce layoffs, and the risk of profile markets getting blocked. Perhaps it is still premature to understand the full implications of blocking/reducing imports of Russian gas at the regional level, but in the long term, this war-induced crisis is estimated to be the most pronounced in the past 50 years [7].

On the other hand, Russia's withdrawal from the Agreement on Cereals in the Black Sea, signed on July 22, 2022, under the auspices of the UN and with Turkey's significant involvement as a mediator (the "Black Sea Grain Initiative"), in light of a very bountiful grain harvest in Ukraine, not only increases the risk of insecurity through trade blockades announced by Russia in the Black Sea, in the context of the 1936 Montreux Convention, granting Turkey control over the Bosphorus and Dardanelles straits, but also states like Romania, Bulgaria, and Poland are at risk of facing severe imbalances in the grain market, both in terms of infrastructure by providing assistance and support to Ukraine through the provision of road, rail, and naval infrastructure, and economically by accepting Ukrainian cereals on the domestic market, most likely from September 2023, offering facilitations at the level of the Commission for their imports.

FRAUD RISK

I. It is essential to note that in addition to specific aspects related to approved blacklists of entities, individuals, banks, products, or product groups (identified and classified according to customs nomenclature), all these sanctions refer to the prohibition of direct or indirect transactions with Russia, Belarus, Iran, etc. The matter is even more complex because



identifying indirect operations requires access to a series of data, information, and documents, some of them of a public nature, such as tax declarations or economic balance sheets or from the database of the Trade Registry Office, others can only be obtained from the commercial partner. For example, an indirect export refers to an export, where a product can be shipped to a destination that is not on the list of prohibitions, such as Turkey, China, or several tax havens, and then the goods may be re-exported to Russia. The most likely routes, however, may involve countries in the proximity of the Russian Federation, such as Kazakhstan, Turkmenistan, or the countries bordering the Black Sea or the Caspian Sea.

If there is no manifest intent to defraud, this aspect of the indirect transaction, this aspect can be clarified to some extent by requesting relevant information about the ultimate beneficiary/user of the goods in question from the contractual partner during the negotiation phase. Cooperation between EU member states and other third countries, for example, regarding the exchange of customs information, would allow real-time monitoring of the supply chain, the final destination, and even the use of goods.

Analyzing commercial documents is a complex process. Most of the time, these documents accompany the goods, and scrutinizing each piece of information included in this package of documents can lead to the identification of possible fraud. For example, studying the delivery condition (according to Incoterms-International Commercial Terms) in sales contracts, the delivery condition in international transport contracts and commercial invoices may reveal discrepancies regarding e.g. the coverage of transport expenses, and external handling costs. Requesting an additional document, such as one that indicates the loading/unloading location and their cost, and who covered these expenses, may reveal another entity, a port, or a territory on the sanctions list or the actual destination of the goods.

Data from commercial contracts, invoices, transport documents, certificates of origin, manufacturer certificates, quality and quantity specifications, and ultimately tariff classification must be correlated. According to the tariff nomenclature (TARIC - Integrated Tariff of the European Union), goods are classified based on dimensions, quality, coverage of certain goods, etc. Depending on the correct tariff classification of goods, the list of sanctions can be consulted, or their classification as dual-use goods can be identified, or even a group of products on the sanctions lists.

II. Customs valuation is one of the most complex activities of the customs authority, upon the release of goods into free circulation (import), as goods can be undervalued or overvalued on a case-by-case basis. The application of Article VII of the General Agreement on Tariffs and Trade (GATT) is crucial, and establishing the correct customs value can reduce the risk of fraud and protect the financial interests of the European Union.

However, the most critical verification is the affiliation between the seller and the buyer, which can influence the price of the invoice. Identifying a new shareholder, possibly on the sanctions list, requires careful study of the constituent documents of the entity declaring the goods at customs through the specific instrument provided by the GATT/WTO Agreement, called "Customs Value Declaration". The classic definition of affiliation refers to Company X holding a minimum 25% share in Company Y.

They are structures/entities that have been included on the blacklist of sanctions that have among their shareholders legal persons who, in turn, may have shareholders of legal or natural persons who may be shareholders in other entities, public or private, that may re-export/import or transit goods whose final destination may be Russia or industrial capacities that are operative on the territory of other states, not included in the list of sanctions.



III. So far, 12 packages of measures have been adopted regarding restrictions directed against Russia and Belarus. Since the prohibitions were introduced gradually, what was not prohibited in November 2022, for example, became prohibited from April 2023. Many European companies that had commercial agreements with entrepreneurs from Russia found themselves, often overnight or with a few days' notice, unable to fulfill their contractual obligations. The situations are diverse; some companies received advances from Russia, others partially delivered, unable to ship the entire batch of goods, rendering the use of only part of the delivered equipment impractical. In other cases, the contractual partner or their membership in one of the employer associations appearing on the list of prohibited entities forced the European entrepreneur to suspend any commercial relationship with them indefinitely.

From a legal standpoint, the described situations cannot be classified as force majeure, as the unpredictability lacks support more than a year or two after the outbreak of the armed conflict in Ukraine, putting companies from the member states in a delicate situation. The non-adoption by the Commission of packages with minimal compensation for affected companies creates conditions for the violation of sanctions imposed by the Council, with some entrepreneurs, mostly, seeking illegal mechanisms to recover financial damages incurred, either by identifying alternative routes or new partners for the indirect shipment of remaining goods in stock and not exported, as well as collecting owed sums from Russian partners, most likely through tax havens.

RESULTS

The Commission should have a more prominent role in managing an easy-to-use platform so that fraudulent attempts to pass goods across the external border, refusals of authorizations, and the issuance of permits for the shipment of goods considered sensitive or with dual use can be known through this permanently updated mechanism and made available to all interested control authorities from all member states for the early detection of any attempted fraud.

I also propose the creation of a platform that would allow all the control authorities in the member states to be able to access databases from the trade registers, and user reports, through operative units functional 24/7 at the level of each customs authority in the member states, to identify transactions of some union commercial companies with other structures from the European Union and from third countries from which routes, final destinations, the typology of transported goods, the means of transport involved, procedural incidents and of any nature that may give clues to any fraudulent act, ongoing criminal investigations

DISCUSSIONS

Russia's or its allies' evasion of restrictive measures and deceptive practices have compelled the European Union to adopt a series of measures to ban access to vessels, for example, transporting petroleum products through EU ports. Decision CFSP No. 1217 of 2023 [8] recommends allowing access to ports only after thorough risk assessments for goods susceptible to circumventing sanctions. From a technical standpoint, there are recommendations for using AI formats and states cooperating through the mechanism of information exchange in customs or criminal matters, which can lead to any intention or notification of vessels carrying out any port operations, including the transshipment of petroleum products from one means of transport to another.



Is it necessary to adopt a mandatory norm for the uniform application of these provisions in customs matters throughout the Union territory? Can these measures be extended to the exchange of goods for other categories of transport? How urgent are these measures? In our opinion, given the security developments in the Eastern region of the European Union, all these aspects should be quickly resolved, so that Russia's trade in goods and services decreases so much that it weakens the ability to finance the war of aggression launched in Ukraine and which seriously affects security in the region

CONCLUSIONS

The uniform application of sanctioning measures in all member states presupposes the acceptance of imperatives resulting from the texts of special rules adopted by the provisions of the Treaty on the Functioning of the European Union. The abundance of normative acts containing provisions regarding the application of sanctions requires an urgent re-systematization of the texts, which have become redundant in the meantime, and which makes it difficult for the authorities and entrepreneurs to identify the applicable normative act and how it is fully understood, so the pursuit of prohibitions. We consider that Regulation (EU) No. 833/2014 [9] and Regulation (EU) No. 269/2014 [10] are the most important normative acts that should be urgently taken into consideration.

We believe that the urgent introduction of uniform application of these similar normative provisions in all member states is required so that the sanctioning rules discourage interested persons from choosing the territory with more permissive legislation that could issue, more easily, export authorizations on the relationship with Russia or choosing a procedurally more favorable court.

At the same time, we propose the establishment at the European level, perhaps within Europol or Eurojust, of a coordination and control unit with the sole objective of verifying the correct application of the normative acts by which the sanctions instituted at the level of the Council or by other acts with vocation were adopted International. The member states should cooperate loyally with all these structures for the destruction of any networks that would affect the political decisions to sanction an aggressive compartment of Russia, about the international legal order, but also the operative identification of any fraudulent acts that could seriously affect the financial interests of the European Union.

The application of a set of similar export control measures in all member states and the urgent conclusion by the Commission of cooperation agreements with third countries recommending the adoption of measures with equivalent effects in national legislation is also a priority in our opinion, providing minimum guarantees of protection against threats from external borders, including from a post-conflict perspective [11].

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