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# WORKING PAPER

**The Consequences of Anti-Russian Sanctions  
for Russian and International Trade Law  
Developments**

Daria Klimova El Moukahal



European University Institute

**Academy of European Law**

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## **The Consequences of Anti-Russian Sanctions for Russian and International Trade Law Developments**

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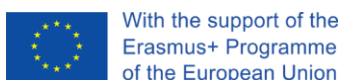
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## **Abstract**

This research paper analyses the consequences of anti-Russian sanctions on developments in Russian and international trade law. Thus, Russia is actively practicing special economic measures to help its economy resist these actions. It is also developing closer cooperation with important trading States that have not introduced sanctions against it. Cooperation and trade diversification are an effective way for Russia to resist the sanctions crisis, but it is also the only way for States applying the sanctions to prevent sanctions circumvention. The article is divided into two parts: development of Russian special economic measures (I) and international cooperation mechanisms (II).

## **Keywords**

International economic sanctions, countermeasures, special economic measures, trade diversification and cooperation, sanctions circumvention.

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International economic sanctions – very different in their goals, legal nature and scope – are studied by scholars and practitioners from different perspectives. Firstly, the legal basis for imposing restrictive trade and financial measures and the legality of unilateral restrictive economic measures can be of interest for lawyers<sup>1</sup>. Secondly, the effectiveness of coercive economic measures, regarding the officially declared goals, also constitute an interesting topic for study<sup>2</sup>. While international economic sanctions are not considered a new instrument of foreign policy, it is worth analyzing how they impact international trade and law when industrialized countries like Russia, with an important weight and strategic importance in the global economy, are targeted.

Since 2014, some States have decided to apply sanctions on Russia due to the country's actions in Crimea and Sevastopol. As of 2022, these States have further developed sanctions against Russia given the military conflict in Ukraine. A joint statement by the World Bank, International Monetary Fund (IMF), United Nations World Food Program (WFP), and World Trade Organization (WTO) underlined the increase in the cost of natural gas along with cuts in global supply and their dramatic consequences for food production in most countries<sup>3</sup>. The

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<sup>1</sup> For ex., P. Berthelot, E. Hatem (eds.), *les sanctions internationales: entre légalité et réalité*, l'Harmattan, 2015, p.135 ; I. Bogdanova, *Unilateral Sanctions in International Law and the Enforcement of Human Rights. The Impact of the Principle of Common Concern of Humankind*, Brill, Nijhoff, 2022, p.362.

<sup>2</sup> For ex., R. Connolly, *Russia's Response to Sanctions. How Western Economic Statecraft is Reshaping Political Economy in Russia*, Cambridge University Press, 2018, p. 227.

<sup>3</sup> Joint Statement of the heads of the World Bank, the International Monetary Fund (IMF), the United Nations World Food Program (WFP) and the WTO, 13 April, 2022.

WTO | 2022 News items - World Bank, IMF, WFP and WTO call for urgent coordinated action on food security

implications of the Russia/Ukraine conflict and worldwide trade and supply chain disruptions due to sanctions explain the importance of analyzing the anti-Russian sanctions and local Russian reactions to sanctions.

This research will focus on the legal changes provoked by sanctions applied by Western States on Russia. Sanctions will be understood as economic and trade restrictive measures that are meant to coerce in response to an international law violation or a threat to international peace and security<sup>4</sup>. One difficulty with sanctions is determining whether legal changes made by the receiving State are due to the sanctions or are part of an entire process preceding and surrounding the sanctions. Another difficulty is that sanctions comprise political, economic, and legal dimensions. Therefore, this study will concentrate on changes in Russian and international trade law from 2014 to spring 2023, which corresponds to introduction and development of sanction regimes originally started because of the events in Crimea.

Increased interdependencies between States, the quasi “absence” of trade boundaries, and the general tendency for widespread trade liberalization have created vulnerabilities exploited by economically strong State-actors in order to achieve their political goals. This paper will summarize current international restrictive economic measures applied against Russia and study the impact of such anti-Russian sanctions on Russian legal developments. Considering the importance of the energy and food sectors in the Russian economy, this paper analyzes how Russia employs diverse methods to adapt its economy to significant import and export restrictions. Additionally, this paper considers how recently passed Russian laws attempt to minimize the negative effects of unilateral trade restrictions.

Hence, it seems necessary to provide data on Russia’s place in global trade along with the scope of international economic sanctions imposed upon Russia since 2014.

## Trade Statistics

In 2020, Russia ranked 22<sup>nd</sup> globally for total imports and 14<sup>th</sup> globally for overall exports. Russian imports were also estimated at \$231 billion and Russian exports at \$335 billion. The main export lines involved mineral fuels and oils, coal, gold, steel and iron, pearls and stones, platinum and aluminum, and cereals (wheat and meslin). The major imports included electrical apparatuses for line telephony or line telegraphy, industrial machinery and parts, electronics, machinery and transport equipment, motor cars, parts and accessories for motor vehicles, chemicals, medicaments, manufactured articles, aircrafts, and spacecrafts<sup>5</sup>.

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<sup>4</sup> We are not going here to debate on the term “sanctions” in itself. Different States use different terminology with reference to sanctions, which appears to be a general term to designate special economic measures, or restrictive measures, or unilateral restrictions. See for ex. I Bogdanova, *op.cit.*, p.66-68, P.E. Dupont, Les sanctions unilatérales et le droit international : le cas de l’Iran, *in* P. Berthelot, E. Hatem (eds.), Les sanctions internationales : entre légalité et réalité, l’harmattan, 2015, pp. 45-52 ; Ch. Beaucillon, An introduction to unilateral and extraterritorial sanctions : definitions, state of practice and contemporary challenges *in* Ch. Beaucillon (ed.), Research handbook on Unilateral and Extraterritorial Sanctions, p.1; J.-M. Thouvenin, Articulating UN sanctions with unilateral restrictive measures *in* Ch. Beaucillon (ed.), *op.cit.*, pp.149-164.

<sup>5</sup> Latest Russia Trade Data - Russia Foreign Trade Statistics ([russiaimportdata.com](http://russiaimportdata.com)). World Trade Statistical Review 2020.



In its latest WTO Trade review report, Russia stated that in 2021 the EU was its main trade partner and held a special place<sup>6</sup>. In 2016-2020, trade in goods with the EU accounted for about 34% of Russian trade turnover, followed by the Asia-Pacific Economic Cooperation (especially China) with 33.8%, CIS countries with 12.9%, and finally Eurasian Economic Union partners with 9.1%.

Regarding services, Germany accounted for 6.7% share in Russia's services trade, the United States for 6.1%, Cyprus for 5.9%, and Switzerland for 6.1%. The geographical structure of outward FDI were dominated by EU countries whose share grew and reached 72.6% in 2019<sup>7</sup>.

In summation, according to economic analysts, before 2022 the EU was "a far more important trading partner for Russia than the other way round. Based on total trade (exports and imports), the EU is roughly five times more important to Russia than vice versa. The EU buys more than half of Russian exports, equivalent to almost 10 percent of Russia's economic output"<sup>8</sup>. Nowadays, it is difficult to find relevant and reliable trade data due to sudden and continual changes in trade flows and hidden statistics from Russia's side. Nevertheless, it is evident that important trade restrictions affected Russia's economy and the economies of its former partners.

## **Sanctions data**

Three quarters of the international community condemned Russia's military actions in Ukraine within the United Nations General Assembly (141 against 5). Since the UNGA resolution on Russian aggression was adopted<sup>9</sup>, some States have acted collectively and reproduced each other's sanctions against Russia without a United Nations Security Council (UNSC) resolution (which is highly unlikely due to the Russian veto).

As the normative leader of international sanctions regimes<sup>10</sup>, the EU has adopted and progressively widened (i.e., 14 times by June 2024) a set of international economic restrictive measures against Russia<sup>11</sup>. Alongside the USA, Canada and some other States, the EU cancelled the most favored nation treatment of Russian goods and services<sup>12</sup>. Furthermore, the U.K., Australia, Japan, Switzerland, Singapore, South Korea, and New Zealand joined the Western trend of sanctioning Russia and introducing an unprecedented number of unilateral economic restrictions in numerous fields. Besides import and export bans or limitations, the

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<sup>6</sup> Russia's Trade policy review 2021, para. 2.12.

<sup>7</sup> *Ibid.*, para. 2.21.

<sup>8</sup> I. Bond, C. Odendahl, J. Rankin, *Frozen: The Politics and economics of sanctions against Russia*, Centre for European Reform, March 2015 in Maarten Smeets, *Can Economic Sanctions be Effective?*, WTO Economic Research and Statistics Division, Staff Working Paper ERSD-2018-03, 15 March 2018, p.7.

<sup>9</sup> A/RES/ES-11/1.

<sup>10</sup> Paul James Cardwell & Erica Moret (2023), *The EU, sanctions and regional leadership*, European Security, 32:1, 1-21.

<sup>11</sup> EU restrictive measures against Russia over Ukraine (since 2014) - Consilium (europa.eu).

<sup>12</sup> More on American and EU sanctions regime against Russia, see I. N. Timofeev, *Unilateral and extraterritorial sanctions policy: the Russian dimension* in Ch. Beaucillon (ed.), *op.cit.*, pp. 90-109; M. Hayashi, *The Crimea question and autonomous sanctions* in M. Asada (ed.), *Economic sanctions in international law and practice*, 223-243.

following restrictions were introduced: Russian banking system isolation<sup>13</sup>, energy<sup>14</sup>, technology, defense<sup>15</sup> and transport<sup>16</sup> sectors restrictions, legal, IT and financial services<sup>17</sup>, personal sanctions against the main political and media personalities – their assets frozen and the transactions blocked, as well as trade and financial isolation of disputed territories, and on top of that difficulties and freeze of diplomatic relations. Several Russian banks are excluded from SWIFT and this causes an important impact on Russian logistic operations and transactions with all Russia's trade partners, who needs to find another payment methods. Until now, Russia has the most significant number of sanctions applied against it. All mentioned measures produce an impact not only on the Russian economy and legal system, but also on the international economy and broader legal system<sup>18</sup>. The concerned States act depending on their attitude towards sanctions and legal instruments available to support local economy and trade.

Based on their attitude towards anti-Russian sanctions, three groups of States can be distinguished. The first group of States comprises those that have introduced sanctions against Russia. The second group is composed of important trading States that have not applied sanctions against Russia and have deepened cooperation with the country. For example, these States include China, India, Brazil. The third group of States have not introduced autonomous sanctions against Russia but decided to comply, in an open and declared manner, with the sanctions of other States against Russia (particularly when it comes to the financial field). These States include Turkey, the UAE, Kirgizstan, Kazakhstan, Uzbekistan, Turkmenistan. Notably, Belarus is an important strategic Russian trade partner that is also hit by international economic restrictive measures for its support of Russian actions in Ukraine. Overall, these three groups of States are important to distinguish for two main reasons. Firstly, Russia uses special terminology in relation to States that have imposed sanctions and qualify these sanctions as “unfriendly” measures and concerned States as “unfriendly” States. Russian laws on special economic measures (i.e., countermeasures) specify the conditions of trade with “unfriendly” States and fix an objective of trade diversification and national production support. The first part of this paper analyzes Russian legislation on countermeasures. While there are normative leaders of unilateral economic restrictions who seek to make the targeted State comply with its international law obligations, some others follow the leaders to obtain closer trade ties with them and not become subject of secondary sanctions. The second part of this paper studies new types of international cooperation created in relation to sanctions against Russia.

## I. Improvement of Russian legislation on countermeasures

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<sup>13</sup> Ex., SWIFT ban for certain Russian and Belarusian banks

<sup>14</sup> Ex., price cap related to the maritime transport of crude oil and petroleum products.

<sup>15</sup> Ex., prohibition on exports to Russia of dual-use goods and technology items, drone engines.

<sup>16</sup> Ex., closure of EU airspace to all Russian-owned and Russian-registered aircraft.

<sup>17</sup> Ex., prohibition to provide crypto asset wallet, account or custody services, architectural and engineering services.

<sup>18</sup> Maarten Smeets, *op.cit.*

Russian legislation on countermeasures in the foreign trade field is based on several federal laws, Presidential executive orders and decrees, and governmental regulations. The main and most general federal law is n° 164-FZ “on the fundamentals of the State regulation of foreign trade activity.”<sup>19</sup> This law allows the government to take countermeasures “to restrict foreign trade in goods, services and intellectual property (retaliatory measures) if a foreign State:

- 1) does not fulfill the obligations under international treaties in relation to the Russian Federation;
- 2) takes measures that violate *economic interests* (emphasis added) of the Russian Federation, the subjects of the Russian Federation, municipal entities or Russian persons or *the political interests* (emphasis added) of the Russian Federation, including measures that unreasonably block Russian persons from accessing the market of a foreign state or otherwise unreasonably discriminate against Russian persons...”<sup>20</sup>.

Therefore, the law designates a violation of economic or political interests, blocking and discrimination against Russian persons as gateways to introduce special economic measures like countermeasures. According to federal Law n° 390-FZ on security (amended in 2015 and 2020), special economic measures could also be taken to ensure *security* objectives. The scope and modalities of the countermeasures are specified by federal law n° 281-FZ of 30 December 2006 “On special economic and coercive measures”<sup>21</sup>. Since 2019, one major improvement includes the introduction of a difference between two kinds of countermeasures depending on whether they are taken on the basis of a UNSC resolution. Those taken based on a UNSC resolution are considered **coercive measures** (art. 1.3) whereas those that are not based on such resolution are called **special economic measures** (art. 1.2). Given this difference, special economic measures could be introduced by the President’s decision in order to reply to a situation requiring an immediate reaction to an internationally wrongful act or to an unfriendly act of a State or its political officers that threatens the interests and security of the Russian Federation and/or violates the rights and freedoms of Russian citizens. There is no precise definition of an unfriendly act, but it relates to a violation or threat of violation of the economic, political or security interests of the Russian Federation. An act not violating international law could also be seen as an unfriendly act by Russian laws and result in countermeasures. A varied set of special economic measures are defined by the law on countermeasures as an obligation to act or not to act<sup>22</sup>. Article 3 enumerates eight types of measures ranging from the suspension of programs of economic and technical assistance and programs of military-technical cooperation to the termination of international trade treaties and other international treaties regarding foreign economic relations<sup>23</sup>.

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<sup>19</sup> Federal law n° 164-FZ “on the fundamentals of the State regulation of foreign trade activity”, 8 December, 2003.

<sup>20</sup> Article 40.

<sup>21</sup> Federal law n° 281-FZ of 30 December 2006 “On special economic and coercive measures”. The law was amended and modified in 2019, 2022, and in August 2023.

<sup>22</sup> Article 3.

<sup>23</sup> The following **other measures** are fixed in the article 3: prohibition of financial transactions or imposition of restrictions on their implementation; prohibition of foreign economic operations or establishment of restrictions on their implementation; modification in export and (or) import customs duties; prohibition or restriction of the entry into the ports of the Russian Federation of ships and the use of the airspace of the Russian Federation or its individual areas; restrictions of tourist activities; prohibition or opting-out of international scientific and technical programs and projects.

All specific economic measures that are being adopted by Russia in response to current autonomous sanctions could be classified by their objectives and function. The first set of measures implementing the mentioned federal laws is intended to block or mirror the restrictive trade and financial measures. The second classification contains measures that are designed to produce additional support to national industry on the microeconomic level during the crisis. The third type of measures provides judicial protection to Russian persons. The fourth classification of measures, which are not *stricto sensu* countermeasures but a consequence of sanctions, provides for trade diversification on the macroeconomic level and constitutes an important part of Russia's reaction to unilateral international economic sanctions. The final type of measure links to the previous one and relates to the development of arguments in different international and regional integration organizations and international forums for providing a better understanding of international economic rules.

### **1. Measures of implementation: blocking/mirror measures**

Based on federal laws, Russia undertook a series of special economic measures/countermeasures to reply to the autonomous/unilateral sanctions introduced since 2014 and developed in 2022. More precisely, several decisions were taken to reply to concrete *unfriendly* acts of foreign States.

As already mentioned, Russian legislation uses the term *unfriendly acts* and *unfriendly States*, which refers to violations of its economic or political interests and threats its national security (such as sanctions). On the 5 March 2022, the Russian Government issued a list of unfriendly States targeted by the countermeasures. It included roughly 48 countries and territories<sup>24</sup>: the EU Members States, Australia, the U.K., Iceland, Canada, Republic of Korea etc. This list is regularly reviewed, and other countries were added since the first draft in 2018 in which only the USA and Check Republic were listed. Moreover, the Russian government established a list of foreign persons whose property and capital will be frozen in Russia<sup>25</sup>. This countermeasure mirrors European and American practices of designating not only goods, services, sectors, and countries of origin under sanctions, but also persons linked by sanctions. Consequently, in 2022 a new instrument – copying the European and American one – of blocking/freezing property of sanctioned persons was created in Russia.

Since April 2022, Duma (i.e., the lower chamber of the Russian Parliament) is considering the potential nationalization of assets belonging to persons associated with unfriendly States. There is no current law legalizing this procedure because the business sector considers such initiative a bad sign for foreign investment that presents high risks that worsen the investment and business climate in Russia. Another argument against this initiative is that the legalization of nationalization of those assets would diminish chances of de-freezing Russian assets that were blocked in the EU and U.S. Generally, confiscation or nationalization of foreign assets opens the Pandora's box and impacts the trust of foreign investors. Nevertheless, on 25 April

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<sup>24</sup> EU members States, Australia, Albania, Andorra, Great Britain, Iceland, Canada, Liechtenstein, Micronesia, Monaco, New Zealand, Norway, Republic of Korea, San Marino, North Macedonia, Singapore, USA, Taiwan, Ukraine, Montenegro, Switzerland, and Japan.

<sup>25</sup> The Government regulation n° 1300 of the 1<sup>st</sup> of November 2018.

2023, the first step towards nationalization was done by Presidential decree n°302 which allowed the Government to place property belonging to people or companies from unfriendly States into the interim administration of the Federal Agency for State Property Management. This law permitted the seizure and potential control over movable goods and properties located in Russia that belong to foreign parties with ties to unfriendly countries. Additionally, this law allowed the government to seize property rights held by parties from unfriendly foreign countries. The term “foreign persons” used in the Decree comprises citizens or residents of these countries, those with a registered addresses in these countries, or those that have their principal place of business or derive most of their profits from working in these countries. The first two companies hit by the Decree have ties with Finland and Germany: Uniper SE and Fortum Holding. This measure is designed to send a political message and respond to Russian property and capitals blocking in unfriendly States.

Russian legislators have historically considered the U.S. as the main unfriendly State. In this respect, federal law n° 127-FZ “On Retaliation Measures (Countermeasures) to unfriendly actions of the United States of America and other foreign states”<sup>26</sup> is notable because it aims to protect the interests and security of the Russian Federation, its sovereignty and territorial integrity, the rights and freedoms of Russian citizens from unfriendly actions including the introduction of political and economic sanctions against the Russian Federation, and Russian legal entities<sup>27</sup>. These unfriendly actions, for example political and economic sanctions, according to law n° 127-FZ, constitute a threat to Russia’s territorial integrity and are aimed at the economic and political destabilization of Russia. To protect Russian persons, the federal law provides a list of measures that can be applied to the U.S. and other foreign States that have committed such unfriendly actions. For example, these measures include suspending or terminating international cooperation programs and banning or limiting exports and imports of products and raw materials. The ban of exports could be general<sup>28</sup> or concern only unfriendly States<sup>29</sup>. The export restrictions applied to unfriendly States concern fertilizers, wood, cereals, other agricultural products, and ammonium nitrate. Additionally, Russia prohibited international cargo transport originating from unfriendly States from entering Russia on the unfriendly States list<sup>30</sup>.

Security considerations prompted Presidential Decree n° 592<sup>31</sup> (2018) on special economic measures in connection with unfriendly actions of Ukraine against citizens and legal entities of the Russian Federation. The transit for goods from or through Ukraine became possible only if transport systems were equipped with GLONASS (Russian equivalent to GPS)<sup>32</sup>. To ensure the security of the Russian Federation and the uninterrupted functioning of industry, Presidential Decree n° 100 of 8 March 2022 on special economic measures in the field of

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<sup>26</sup> Federal law n° 127-FZ “On Retaliation Measures (Countermeasures) to unfriendly actions of the United States of America and other foreign states”, 2018, amended in 2022 and in December 2023.

<sup>27</sup> Article 1.

<sup>28</sup> Government Regulation n° 311, March 9, 2022.

<sup>29</sup> Government Regulation n° 313, March 9, 2022.

<sup>30</sup> Government Regulation n° 1728, September 30, 2022.

<sup>31</sup> October 22, 2018.

<sup>32</sup> See also Government Regulation 1716-83 of 29 December 2018, on the measures of implementation of the President’s Decree n° 592.

foreign trade (modified in October and December 2022)<sup>33</sup> introduced a ban on imports and exports of raw materials to and from unfriendly States. However, this do not apply to Russians, foreign nationals, and stateless persons in case of import and export for personal use. The Decree was completed by Presidential Decree n° 252 of 3 May 2022 “On special economic measures in connection to unfriendly acts of some States and international organizations”. This decree prohibited Russian persons to enter into transactions with designated persons from unfriendly States. Russian persons include federal and regional state authorities, municipalities, organizations, and individuals (and the entities they control) under the jurisdiction of the Russian government. In this decree, the export of raw materials and other products originating from Russia in favour of sanctioned persons or via sanctioned persons to third parties was prohibited. This shows how the economic weight of a State is important in applying sanctions and countermeasures. Indeed, States rely on global economic interdependence when they outline new restrictions intended to cause harm to their opponents.

Decree n° 560 “On the application of certain special economic measures in order to ensure the security of the Russian Federation”<sup>34</sup> links security defense considerations and the necessity to push national industry and reduce dependency on foreign trade with unfriendly States. It also prohibits or limits imports of some agricultural products (such as meat, fish, milk, nuts, salt etc.) from States that have introduced sanctions against Russia (except for the transit of such kind of goods). The decree has been amended and extended every year since 2014.

Further, it is worth mentioning several norms on blocking legislation. Several presidential decrees have established financial retaliatory measures against States and international organizations that introduced sanctions against Russia. For example, one of these decrees include the one on special economic measures in connection with unfriendly actions of the U.S. and foreign States and international organizations that have joined them.<sup>35</sup> Another presidential decree (n° 81 of 1 March 2022) includes the one regarding additional temporary measures of an economic nature to ensure the financial stability of the Russian Federation<sup>36</sup>. In summation, Russia introduced financial measures to preserve the national balance of payments and to favor the use of rubles in foreign transactions via restrictions of currency, sale, and transfers along with the obligation to receive government authorization for some financial operations.

A final example of blocking legislation, in the energy sector, must be noted in this analysis. To cut Russia’s financial resourcing from oil exports used for military purposes, the EU and other G7 countries have progressively introduced restrictions and bans on the purchase, import or transfer of oil and petroleum products originating from Russia since 2022. With the exception of the most vulnerable European countries (such as Bulgaria and Croatia), these restrictions cover approximately 90% of Russian oil imports to Europe. Additionally, oil price caps limited the price of crude oil and several petroleum products exported from Russia, and the EU has prohibited EU vessels from transporting Russian crude oil and petroleum products to third countries. The above-mentioned measures were designed to reduce revenues earned by

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<sup>33</sup> March 8, 2022.

<sup>34</sup> August 6, 2014.

<sup>35</sup> President’s Decree n° 79, February 28, 2022.

<sup>36</sup> President’s Decree n° 81, March 1, 2022.

Russia from oil and stabilize global energy prices<sup>37</sup>. To reply to those measures, Russia passed a blocking legislation on 27 December 2022. This President's decree subordinates the transactions with cap prices to the President's special agreement. Without this agreement, all oil exports with the cap price are prohibited. These are measures taken to reply to unfriendly acts. Thus, the mechanisms elaborated in Russia since 2014 allow for quick reactions to unfriendly actions of foreign States and the introduction of blocking legislation to diminish the harm due to international sanctions.

At the same time, the government is encouraged to increase national production. Another set of measures concern the need to deal with economic problems that arise when usual trade flows are disrupted<sup>38</sup>. Thus, Russia is creating tools to better adapt to national financial and trade systems to new economic situation such as import substitution, subsidies to national industry, trade diversification and others.

## **2. Support and adaptation of national economic, trade and financial system**

It is worth briefly discussing the Russian laws adopted to fight low levels of imports, higher prices, and lack of national technologies on Russian markets because they represent important changes in the Russian strategy of countersanctions.

In the latest report submitted under the WTO trade policy review mechanism, Russia emphasized that the *“politicization of foreign economic and trade relations is a serious challenge. Inclusive growth of the world economy has been constrained by the replacement of the WTO norms with the other “rules”, together with the unfair competition methods, protectionist measures, trade wars, and unilateral sanctions (emphasize added). All this has led to the fragmentation of the global economic environment, and has negatively affected the socio-economic development. Some of these measures have led to the disruption of established production and supply chains and results in the need to develop import substitution plans based on domestic supply”*<sup>39</sup>. In other words, in order to substitute imports, disrupted due to unilateral sanctions, Russia developed a strategy of centralizing efforts on national production and domestic supply. According to economic analysis, the strategy was quite effective regarding increasing national production in several sectors<sup>40</sup>.

Another anti-crisis measure involves the diminishing of State controls. State control and supervision measures were suspended until the end of 2023, with some exceptions for high-risk industries, to reduce the regulatory and administrative burden on business until 2030<sup>41</sup>. Quality requirements and environmental standards in industry have also diminished to answer customer demand. Therefore, to support the national industry and economy in times of sanctions, exceptional measures have been taken in Russia.

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<sup>37</sup> Official site EU : EU sanctions against Russia explained - Consilium (europa.eu)

<sup>38</sup> R.M. Nureev (ed.), *Economic sanctions against Russia and Russian countersanctions: costs and benefits of confrontation*, 2023, 252 p.

<sup>39</sup> Russia's 2021 Trade Policy review, WTO, para. 3.8.

<sup>40</sup> R. Conolly, *op.cit.*; R.M. Nureev (ed.), *op.cit.*

<sup>41</sup> Government resolution n° 336, 10 March 2022, para. 11 (3). On financial control measures, see Government resolution n° 977 of 28 May, 2022 on measures of currency control in conditions of sanctions pressure.

More than that, in 2022, the parallel import became legal in Russia.<sup>42</sup> Since 2019, discussions have taken place about the forced licensing of software with a “project” status. The Russian Civil Code was amended in 2021<sup>43</sup> and now authorizes the government to infringe intellectual property rights by licensing the use of inventions, industrial prototypes, or utility models without the consent of patent-holders. The government only has an obligation to inform the patent holder and offer compensation. The government can apply this provision *“in case of emergency related to ensuring the defense and security of the State, protecting the life and health of citizens”*. The Civil Code was amended inter alia for the purpose of compensating for the lack of foreign medicines and medical devices. This illustrates an old discussion regarding the balance between public interests and intellectual property protection. The position of States depends on the level of their economic development. Therefore, developing States oftentimes choose intellectual property rights violations to protect the life and health of the population. Furthermore, government regulation n° 299 of 6 March 2022 allows for zero compensation to owners of patents from unfriendly countries committing unfriendly actions against Russia. In other words, Russian companies have the right to use inventions, utility models, and industrial prototypes without the patent owner’s permission and compensation if the owner is from a State listed as an unfriendly State<sup>44</sup>. The illegal use of intellectual property rights is authorized in Russia and this provision entails a risk of FDI reduction and symmetric action from unfriendly States.

Since March 2022<sup>45</sup>, original foreign goods lawfully placed on markets abroad with the consent of trademark owners are allowed to be imported into Russia without the consent of copyright holders. This measure is meant to prevent a shortage of products that are absent in the Russian market due to sanctions and supply chain disruptions. Federal law n°46 of 8 March 2022 establishes that the government has an authority to decide which provisions of the Civil Code will not apply to the protection of exclusive rights and the results of intellectual activity and identification with which goods are marked (art.18). The Ministry of Industry and Trade of Russia issued order n° 1532 dated 19 April 2022 (revised on the 2 March 2023)<sup>46</sup> which contains a long list of products (with their trade names or customs codes) that are allowed to enter Russia without paying compensation to the owner of the trademark. This list includes, for example, some alcoholic drinks (Jack Daniel’s, Malibu, etc.), chemical and organic products, pharmaceutical products, a plethora of perfumes, cosmetics (Burberry, Christian Dior, Christian Louboutin, Lancome etc, l’Oréal Paris), toilet products, photo and film products (Fujifilm, Kodak, Canon, Epson, Hewlett Packard (HP), Ricon, Xerox brother, Toshiba), leather

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<sup>42</sup> Resolution of the Government of the Russian Federation of March 29, 2022, n° 506 “on goods (groups of goods) in respect of which certain provisions of the Civil Code of the Russian Federation on the protection of exclusive rights to the results of intellectual activity expressed in such goods and the means of individualization with which such goods are marked cannot be applied”.

<sup>43</sup> Federal Law, 30 April 2021, 107-FZ “On amendments to art. 1360 of the 4<sup>th</sup> part of the Russian Civil Code”.

<sup>44</sup> More specifically, if the patent holder is a citizen of, is registered in, or has a primary place of business or profit in any of the 48 countries Russia previously designated as “unfriendly”.

<sup>45</sup> Government Resolution n° 506 of March 29, 2022.

<sup>46</sup> “On approval of the list of goods (groups of goods) in respect of which the provisions of subparagraph 6 of Article 1359 and Article 1487 of the Civil Code of the Russian Federation do not apply, provided that these goods (groups of goods) are introduced into circulation outside the territory of the Russian Federation by right holders (patent holders), as well as with their consent”.



products (Tommy Hilfiger, Bugatti, Clarks, Pepe Jeans etc), wood products (IKEA), paper products, clothes (Geox, Karl Lagerfeld, United colors of Benetton etc.), shoes (Ecco, Kappa etc), metals, electronic equipment, etc.

Russia builds its defense against foreign sanctions by completing these measures by protection of Russian trade and citizens through national courts.

### **3. Citizens' and national trade protection through national courts**

According to the general rule, Article 450.2 of the Civil Code of the Russian Federation provides the possibility to apply to the commercial /arbitral courts to terminate the contract in case of a significant violation of its terms. In 2020, the Commercial Civil Code was amended with an extra protection of Russian citizens and legal entities that were hit by foreign restrictive measures/sanctions. These persons have the right to refer their case to a Russian commercial court and prohibit the examination of the case by a foreign court. This rule does not apply though if an international treaty or contract referred the cases to an international tribunal/commercial court<sup>47</sup>.

Mentioned provisions related to intellectual property rights violations have prompted massive pleas addressed to Russian commercial courts (i.e., arbitrazh), for example the pleas of Calvin Klein Trademark trust (Tommy Hilfiger, Levis Strauss, Puma and others) and those of entertainment one UK limited (Peppa Pig, PJ Masks etc)<sup>48</sup>. Russian courts have referred to the presidential decree on special economic measures in relation to unfriendly acts of the U.S. and refused to examine these cases based on the fact that the complainant was located in a State that had introduced sanctions against Russia<sup>49</sup>. Though those decisions were later overruled by the Appellate Court, the current absence of cooperation between Russian patent agencies and U.S. and EU patent agencies may have broad implications on companies whose business has some remaining elements in Russia and Europe or the U.S.

All these provisions and court statements are alarming for foreign investors, especially those who have decided to leave Russia in 2022.

As of today, criminal responsibility for compliance with sanctions and the nationalization of companies that have left Russia remain present in Duma discussions, but these laws have not yet been adopted. Nevertheless, Article 284.2 of the Criminal Code criminalizes calls for restrictive measures against the Russian Federation, citizens of the Russian Federation or Russian legal entities. These persons could be punished by a fine, imprisonment, or forced work.

Possibly, the next step in the evolution of Russian countermeasures will include the prohibition of complying with international sanctions, in the same manner that the European legislation

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<sup>47</sup> Article 249.3 Commercial Procedure Code.

<sup>48</sup> Cases A63-6499/2021, 1 January 2023 and A28-11930/202, 2 February 2023.

<sup>49</sup> They also refer to the article 10 of the Civil Code "law abuse" to justify the refusal to examine the case.

prohibits it. The EU designed a blocking legislation<sup>50</sup> when faced with American secondary sanctions introduced by two famous laws named Cuban Liberty and Solidarity Act (Hems Burton)<sup>51</sup> and Iran and Libya Sanctions Act<sup>52</sup>. The European law prohibits the application of extraterritorial measures and tend to protect European companies from secondary sanctions. A similar development in Russia could become a valuable argument in line with European and American norms in the field of sanctions.

While countermeasures can be considered legal barriers to unilateral international sanctions, they cannot be effective without international cooperation. On the other hand, international economic sanctions would not achieve their goals without cooperation between all interested States.

## **II. Evolution of international cooperation accelerated by sanctions**

While the effectiveness of sanctions is arguable<sup>53</sup>, one cannot deny their influence on changes in global trade flows. One of the most important consequences of sanctions is the creation and development of new forms of international cooperation. This statement applies equally to targeted States along with the States applying sanctions. Sanctions not only have a multidimensional nature but are also a non-military way to compel a State to comply with international law. Sanctions and State responses to them are a means to send a political message<sup>54</sup>. The more States join the effort, the stronger the message will sound on the international arena and the higher likelihood of influencing international law practice and norms creation.

### **1. Russia's trade diversification initiatives pursuing a double objective: to satisfy national economic needs and to influence international norms creation**

This paper showed that Russia developed some economic tools and legislation supporting national industry, protecting its citizens, and defending itself from different restrictions/sanctions. From an economic perspective on the effect of sanctions, *"the country facing the sanctions is likely to develop trade relations with third parties that are not part of the*

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<sup>50</sup> Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom.

<sup>51</sup> Public Law No. 104-114, 03 December 1996.

<sup>52</sup> Public Law No. 104-172, 08 May 1996.

<sup>53</sup> Maarten Smeets, *Can Economic Sanctions be Effective?*, WTO Economic Research and Statistics Division, Staff Working Paper ERSD-2018-03, 15 March 2018.

<sup>54</sup> On this idea, see for ex. Hofer A., *Symposium on unilateral targeted sanctions: the efficacy of targeted sanctions in enforcing compliance with international law*, AJIL, vol.113, 2019, pp. 163-168.

*sanction coalition*<sup>55</sup>. Therefore, to increase the effectiveness of its legal and economic countermeasures and replace severed trade cut with former European and American partners, Russia boosted its Eurasian economic integration and developed trade cooperation with States that have not imposed sanctions. For example, the Eurasian Economic Union (EAEU) granted status of observers to Moldova (2018), Uzbekistan (2020) and Cuba (2020). Free trade agreements were concluded between the EAEU and Vietnam (5 October 2016), the Republic of Serbia (10 July 2021), the Republic of Singapore (not yet entered into force) and Iran (2024). Some negotiations are ongoing on FTA with Egypt, Israel, India and Thailand. New cooperation is being negotiated by the EAEU with Mongolia and with Indonesia. Additionally, new cooperation and joint trade initiatives have arisen between Russia and some African countries, like Uganda, Libya, Zimbabwe, Cameroon, Congo. The enlarged cooperation is likely to counterweight negative impact of trade restrictions.

Russia uses its trade partners not only for the purpose of trade diversification and Western import substitution, but also as a political and economic forum to compete with the G7 and former G8 prior to Russia's exclusion in 2017. Alongside the EAEU, Russia is attempting to build closer ties with partners in two additional economic cooperation groups: BRICS (Brazil, Russia, India, China and South Africa) and the Shanghai Cooperation Organization (Belarus, China, India, Iran, Kazakhstan, Kyrgyzstan, Pakistan, Russia, Tajikistan, Uzbekistan).

Neither of its Members has introduced sanctions on Russia. The latest joint statements of BRICS members reflect their common position on the world economic order and the necessity to elaborate changes and brainstorm harms that unilateral trade restrictions and sanctions bring. BRICS members declared their willingness to contribute to "*a more fair, just, inclusive, equitable and representative multipolar international system*"<sup>56</sup>. This statement is renewed annually during the summits of members of these organizations. The creation of the New Development Bank by BRICS members and cooperation within the Shanghai Cooperation Organization illustrate Russia's willingness to build a strong anti-sanctions system. The development of counter-sanction regulations in China is another part of this process<sup>57</sup>.

Professor Rachel Brewster argues that "*the crisis is occurring in the world where multiple multilateral international institution are being eclipsed by the rise of greater power politics. Amid the fracturing of cooperative endeavors and increasingly nationalistic policies, states may soon be engaged in greater competition in both the economic and security forms*"<sup>58</sup>. Sanctions are the most appropriate example of such form of competition because States are defending opposite positions regarding the legality and possibility of using unilateral economic restrictions in the current economic order.

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<sup>55</sup> M. Smeets, *op.cit.*

<sup>56</sup> BRICS Joint Statement on Strengthening and Reforming the Multilateral System, 1 June, 2021.

<sup>57</sup> See C. Cai, China's position and practice concerning unilateral sanctions *in* Ch. Beaucillon (ed.), *op.cit.*, pp.70-89.

<sup>58</sup> R. Brewster, "The Struggle for International Economic law" *in* Chia-Jui Cheng (ed.), *A New Global Economic order. New Challenges to International Trade Law*, Brill, Nijhoff, 2022, p.121.

## **2. International cooperation to prevent sanctions circumvention**

Regional economic integration organizations can also be used to circumvent international economic sanctions. Certainly, EAEU countries are the first to be under suspicion, being close neighbors with Russia and partners to a regional economic organization with the ability to re-export sanctioned goods to Russia because these goods are in free circulation throughout the EAEU. The customs and trade data shows a sudden and significant increase of exports from the EU to follow re-export practices. Another complex circumvention scheme involves using multiple operators<sup>59</sup>. To fight against circumvention, competent customs authorities and company services compare usual trade statistics of exports/imports to detect changes in trade data during the past year. According to their observations, several States supposedly help Russia circumvent sanctions even if these States have officially declared<sup>60</sup> that they respect Western sanctions<sup>61</sup>. This EU list of suspicious States includes Turkey, the UAE, China, Hong Kong and States neighboring with Russia<sup>62</sup> as they are considered being important trade partners in the times of extended sanctions against Russia from the Western States. They did not apply autonomous sanctions on Russia, even if they did not support Russia's decisions concerning Ukrainian territories as seen during the UN AG voting<sup>63</sup>. For the last set of restrictive measures imposed by the EU, the supranational organization called for special attention to be made to these States and their companies in order to prevent sanctions circumvention<sup>64</sup>.

The preliminary conclusion regarding regional trade unions with Russia's participation is that its members, already suspected to regularly circumvent sanctions, balance between consolidation of Eurasian economic union and a declared willingness to comply with current anti-Russian international trade restrictions in order to not be hit by secondary sanctions. Kazakhstan for example is elaborating a new customs control system, more transparent and precise, to monitor the transnational movement of goods. This is supposed to assure Western States that no sanctions circumvention is taking place within Kazakhstan borders. Another question arises: is there any measures that would prevent members of the EAEU from helping Russia circumvent sanctions by re-exporting goods to its territory? What kind of monitoring could allow to control the final destination and the end-user of exported goods? The answer seems to be the following: the longer the sanctions last, the more ways of their circumvention are found by the sanctioned State.

Several countries have joined the EU's sanctions against Russia. For instance EFTA countries - Iceland, Liechtenstein, Norway and Switzerland – have aligned their actions to decrease Russia's ability to fund its military and defense sector. The States that applied sanctions against Russia united their efforts to create an enforcement mechanism and minimize the

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<sup>59</sup> For example, Rostekh company.

<sup>60</sup> Russian trade partners comply with financial sanctions (Turkey, Arab Emirates United, China, Kazakhstan, Turkmenistan, Uzbekistan) and do not work with Russian banks under sanctions.

<sup>61</sup> When we talk about Western sanctions, we usually mean these of the EU and the U.S.

<sup>62</sup> Notice to economic operators, importers and exporters 2022/C 145 I/01, OJ C 145I, 1 April 2022, p. 1–1.

<sup>63</sup> See voting in the GA ONU.

<sup>64</sup> European Parliament resolution of 9 November 2023 on the effectiveness of the EU sanctions on Russia, 2023/2905(RSP).

possibilities of circumventing their sanctions. Indeed, detecting circumvention is crucial when assessing the entry of semi-conductors to Russia that could be used for military purposes. This was the main idea of the latest packages of restrictive measures of the EU in 2023/2024, that included prohibition of the transit of dual-use goods and technology via the territory of Russia, “no Russia” clause and a better international cooperation to combat risks of circumvention<sup>65</sup>. The EU is particularly monitoring export of washing machines, photo cameras, used vehicles, high-tech goods and other dual-use products that could contain semi-conductors. In April 2022, the European Commission addressed a notice to the attention of economic operators, importers and exporters<sup>66</sup> to improve effectiveness of sanctions implementation across the EU. The Commission recalls that the restrictions imposed on Russia *“ban the direct or indirect import or export of the concerned goods, and prohibit the participation, knowingly also intentionally, in activities to circumvent these prohibitions. They also establish that Member States shall apply sanctions to infringements of these regulations”*. In this document, the European Commission stressed the need for economic operators to proceed with adequate due diligence measures, specifically when the operations concern members of the EAEU. Due diligence, a risk-based approach, and implementation of EU sanctions compliance program by adding special contractual clauses are suggested by the EU Commission to not violate European prohibitions and to avoid sanctions circumvention including in form of re-exporting<sup>67</sup>.

Concretely, it is advised to add provisions in the contracts *“destined to ensure that any imported or exported goods are not covered by the restrictions”*, in form for instance *“of contractual clauses committing the importer in third countries not to export the concerned goods to Russia or Belarus, and not to resell the concerned goods to any third party business partner that does not take a commitment not to export the concerned goods to Russia or Belarus”*. In case the latter re-exports the items to those countries it will give rise to liability. The Commission added that the *“EU customs authorities may carry out more strict controls and may also request conclusive evidence that the concerned goods are not imported from or exported to Russia and Belarus via third countries”*<sup>68</sup>.

Before concluding on the fact of circumvention, nevertheless, some conditions should be checked. Firstly, it is necessary to analyze if the significant increase of exports is not a simple reflection of an ordinary trade diversion. Then, it is important to prove that the economic operators knew about the real final destination. In practice, this fact is difficult to reveal, because sometimes economic operators are deliberately hiding the end-user information or the information on the origin of a good. In other cases, the transformation of products could also take place to hide sanctions circumvention. The European Regulation on sanctions against Russia stipulates that it is *“prohibited to participate, knowingly and intentionally, in*

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<sup>65</sup> Council Regulation (EU) 2023/1214 of 23 June 2023 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine; Council Regulation (EU) 2023/2878 of 18 December 2023 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine.

<sup>66</sup> Notice to economic operators, importers and exporters (2022/C 145 I/01), European Commission, Procedures relating to the implementation of competition, OJ, C145/1, 1 April 2022.

<sup>67</sup> See also European Commission Guidance for EU operators: Implementing enhanced due diligence to shield against Russia sanctions circumvention, September 2023.

<sup>68</sup> *Ibid.*

activities the object or effect of which is to circumvent the prohibitions<sup>69</sup>. In its judgment in *Afrasiabi*, the Court of Justice of the European Union held that “the terms ‘**knowingly**’ and ‘**intentionally**’ imply cumulative requirements of knowledge and intent, which are met where the person participating in an activity having such an object or such an effect deliberately seeks that object or effect or is at least aware that his participation may have that object or that effect and he accepts that possibility<sup>70</sup>. Thus, as established by the Court of Justice of the EU, it is prohibited to export sanctioned goods to a country not applying sanctions against Russia having trade links with Russia if there is only a *risk* that the goods be re-exported to Russia.

While the circumvention of sanctions is prohibited in the EU, the mechanism of enforcement of that provision is not enough strong. There is no institution at the European level in charge of all questions concerning restrictive measures/sanctions from design to implementation, and cooperation between all member States of the EU appears to be necessary. The Council added the violation of restrictive measures to the list of EU crimes so that the enforcement mechanism be alike across the EU<sup>71</sup>. Besides, the EU Directive of April 2024 harmonizes the definition of criminal offences and penalties for the violation of Union restrictive measures<sup>72</sup>. Closer cooperation between European enterprises and authorities is developing quickly in parallel with legislation on compliance.

Some researchers prove that unilateral<sup>73</sup> sanctions taken collectively are more effective than sanctions elaborated multilaterally<sup>74</sup>. Besides, currently it is almost the only available political tool to try to enforce international law compliance, and that requires as much cooperation as possible to be effective. Sanction circumvention highly impacts international trade cooperation developments. Thus, important changes in the world economic order occurred on the international arena. For instance, several mechanisms to monitor sanctions regimes and to prevent circumvention were created as new instruments of compliance.

The European Commission’s *Freeze and Seize Task Force*, for example, was created in March 2022 to ensure the efficient implementation of the EU sanctions against listed Russian and Belarusian oligarchs among Member States<sup>75</sup>. The G7 members, in close cooperation, created *the Enforcement Coordination Mechanism* to facilitate exchange of information on sanctions

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<sup>69</sup> Article 12 of Regulation 833/2014, concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine, Council Regulation (EU) 833/2014 *concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine*, OJ L 229, 31.7.2014, p.1; article 9 of Regulation 269/2014, Council Regulation (EU) 269/2014 *concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine*, OJ L 78, 17.3.2014, p. 6.

<sup>70</sup> Judgment of the Court of 21 December 2011 in case C-72/11, *Afrasiabi and others*, [68].

<sup>71</sup> Council Decision (EU) 2022/2332 of 28 November 2022 on identifying the violation of Union restrictive measures as an area of crime that meets the criteria specified in Article 83(1) of the Treaty on the Functioning of the European Union.

<sup>72</sup> Directive of the European Parliament and of the Council on the definition of criminal offences and penalties for the violation of Union restrictive measures and amending Directive (EU) 2018/1673.

<sup>73</sup> Devika Hovell, Symposium on unilateral targeted sanctions: unfinished business of international law: the questionable legality of autonomous sanctions, *AJIL*, vol.113, 2019.

<sup>74</sup> David A. Cohen & Zachary K. Goldman, Symposium on unilateral targeted sanctions: like it or not, unilateral sanctions are here to stay, *AJIL*, vol.113, 2019.

<sup>75</sup> <https://eucrim.eu/news/eus-freeze-and-seize-task-force-tackles-oligarchs-money/>

application. On the international level some newly created bodies and institutions monitor sanctions circumvention in financial and trade fields, especially with respect to Russia's sanctions. For example, the *Sanctions Coordinators Forum* took place in February 2023, gathering the EU Member States and their partners to improve enforcement tools. Besides, the EU and the USA lead negotiations with the World Bank Group, the European Bank for Reconstruction and Development (EBRD), the Organization for Economic Co-operation and Development (OECD) and other international organization to prevent Russia from obtaining financing. *CleptoCapture* in the USA monitors sanctions compliance and can temporarily arrest Russian property. Moreover, as an element of their anti-circumvention policies, since 2023 the EU and the USA representatives are communicating with States that are not applying sanctions against Russia and try to convince them to respect their sanctions<sup>76</sup>. Furthermore, the EU, USA, Australia, Canada, France, Germany, Italy, Japan and the UK have created a Task Force, aimed to monitor Russia's sanctions – *the Russian Elites, Proxies, and Oligarchs (REPO) Task Force*. This international partnership managed “to block or freeze more than \$30 billion worth of sanctioned Russians' assets, freeze or seize sanctioned persons' high-value goods, and heavily restrict sanctioned Russians' access to the international financial system”<sup>77</sup>.

All these task forces and joint cooperation mechanisms recognize that the exchange of information between different international and national mechanisms and a better international cooperation will bolster enforcement of international economic sanctions.

## **Conclusion**

The consequences of sanctions are likely to be long-lasting and influence the world legal order evolution. The main consequence of unilateral restrictive measures is the development of countermeasures in Russia and other concerned States along with the expansion of ways to circumvent sanctions. While Russia is improving its legislation to counterbalance the effect of sanctions (i.e., a legal challenge), it is also adopting national industry and business support measures (i.e., an economic challenge). The modern world economic order fixes its conditions, and playing alone would not be enough to achieve the respective goals. Hence, Russia makes an effort to deepen its ties with trade partners through regional integration and to develop new forms of cooperations (international cooperation challenge). The EU and the USA apply various techniques and create legal instruments to link as many countries as possible to anti-Russian sanction regime to achieve the goals of their respective foreign policies. The effectiveness of international economic restrictions and Russian countermeasures depends on international cooperation. International economic restrictive measures emphasize the process of fragmentation of international economic order. New developing economic cooperation organizations serve as a forum of influence on the international norms' creation.

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<sup>76</sup> <https://www.consilium.europa.eu/en/policies/sanctions-against-russia/sanctions-against-russia-explained/>

<sup>77</sup> Russian Elites, Proxies, and Oligarchs Task Force Joint Statement | U.S. Department of the Treasury.