

COUNTERING CIRCUMVENTION OF RESTRICTIVE MEASURES: THE EU RESPONSE

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Abstract:

Restrictive measures are always complemented by an “anti-circumvention clause” which prohibits participation in activities the object or effect of which is to circumvent EU provisions. This clause plays a key role in ensuring the effectiveness of sanctions and, ultimately, the objectives of EU external action. This article intends to shed light on the obligations arising from the anti-circumvention clause, with a specific focus on financial restrictive measures against designated individuals (which essentially entail asset freeze measures against them). First, the scope of the anti-circumvention clause under EU law is defined. Second, the actors involved in uncovering and countering circumvention practices within the territory of the Union are presented, illustrating the central role of the Member States in coordinating national and supranational efforts to ensure compliance with EU restrictive measures, through constant dialogue and cooperation with financial operators and the European Commission. Third, one specific circumvention strategy is explored, namely circumvention through family members. More precisely, the article investigates whether there is a presumption of circumvention when family members are involved. To this end, it considers the case law of the ECJ on the legality of family members’ designations under EU sanctions. Throughout the analysis, the article emphasizes how the exceptional circumstances in relation to the war in Ukraine have progressively changed the design of EU restrictive measures as well as the commitment of the Union to tackle circumvention. In this context, the unprecedented emphasis on circumvention is complemented by the Union’s unprecedented desire to resort to criminal enforcement. Accordingly, the effectiveness of EU restrictive measures has become a call for effective criminal enforcement. The article, however, argues that this may not be the most appropriate choice.

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