



Università
Ca' Foscari
Venezia

MASTER DEGREE
IN FINANCE

FINAL THESIS

EU Customs Procedure During The Russo-Ukrainian War

The prohibitions on the export of dual use goods and the sanctions
on Russia

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MATRICULATION NUMBER

872500

ACADEMIC YEAR

2022/2023

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INTRODUCTION

In this discussion the main topics analyzed are going to be the current customs procedures in Italy and at European level; in particular we will see how the institutions are tackling the issue of dual use goods during the Russo-Ukrainian conflict.

Recently anti money laundering discipline has occupied an increasingly important role in the banking industry but also in all financial and economic activities.

One of these is the legislation concerning the issue and intermediary services connected to dual use goods.

Dual use goods are items, software and technology that can be used for both civilian and military applications: in particular, we are interested in the export and intermediary services on these products.¹

Some examples of dual use goods are engines, drones, night and thermal vision and many other objects, involving nuclear technology.

We should take into account that these weapons do not have a unique qualification: some of them might be originally conceived as weapons, such as rifles and ammunition, but also cars or drones that were solely produced for civilian purposes but can be employed in a conflict.

A very famous episode involving dual use goods is the “Toyota War”: this conflict took place in 1987 in the northern Chad on the border with Libya.

This war owes its name to the pick-ups and off-road vehicles produced by the Japanese car manufacturer Toyota, in particular the famous Land Cruiser model.

These cars were used to mobilize Chadian forces in order to harass and eventually stop the Lybian armored columns through lightning hit and run attacks.

The dilemma concerning the circulation of weapons has been going on since WW2 due to the dramatic evolution military technology and the tragic consequences of it.

"I know not with what weapons World War III will be fought, but World War IV will be fought with sticks and stones" is the debated quote from Albert Einstein, which probably is a synthesis of his thoughts on nuclear escalation.

However, at the same time the new inventions are opening gigantic chances for outgunned forces to confront even numerically superior enemies.

History has indeed shown that weapons can indeed protect freedom but they must be controlled since they cannot fall into the wrong hands.

¹ <https://dscompliance.lu/wp-content/uploads/2021/06/AML-guidelines-2021.pdf>

In general, restrictions and obligations in the export of dual use goods are part of the framework that has the objective of preventing organizations considered terrorists to improve their military capabilities.

Furthermore, since war is one of the oldest demons that haunts humanity from the beginning of time.

It was natural and perfectly understandable to hope that major conflicts between developed countries could end with WWII.

Unfortunately, this was not the case and the Russian invasion of Ukraine and we are clearly seeing the impact of modern tech in the current war in which the estimated losses are enormous.

The conflict has dramatically brought back the shadow of mass destruction and death on European soil in a clash that will probably shape the future of the world as we know it.

Such war has roots almost a century deep but the modern hostility between Ukraine and Russia has been brewing not officially since 2014 as Russia supported, while not admitting it directly, the separatist republics of Donetsk and Luhansk.

Ukraine was incorporated by the Soviet Union in 1922, then declaring itself independent after the disintegration of the USSR in 1991 but remained for more than two decades under the orbit of the Federation.

Following the decision of the Ukrainian government to suspend the negotiations for an association agreement between Ukraine and the European Union on 22 November 2013 a series of hard events broke out that led to the death of hundreds of civilians.

The events ended with the success of the Movement called Euromaidan², which refers to the independence square in the center of Kiev on 22 February 2014, when President Viktor Yanukovich fled and was overturned.

Since 2014, therefore, despite the Minsk protocol which was to be prepared to a definitive peace, on both sides the violations of the ceased the fire continued.

The second protocol of 2015 did not change the situation that remained of the highest tension that resulted in the invasion of February 24, 2022.

Similarly to the war between Chad and Libya previously mentioned Russian forces marching on Kiev were constantly attacked on the flanks by Ukrainian troops and in many cases completely cut down.

After one year of conflict it appears clear that in the first weeks of the invasion the Russian high command underestimated the capacity of the defenders and the weapons donated by allied countries.

This introduces a new scale to the war and it is particularly relevant for our purposes in analyzing dual use goods and customs procedures.

² The word is a mixture between the term "euro", referring to the European Union and the word "Maidan"

The conflict indeed involves the entire world since various superpowers are supporting the opposing sides: one recent example was a series of shipments from China of modernized guns towards Russia.

The shipments through Turkey took place between June and December 2022, according to the data provided by Import Genius, which is a customs data aggregator.³ China North Industries Group Corporation Limited, one of the country's largest state-owned defense contractors, sent the rifles in June 2022 to a Russian company called Tekhkrim that also does business with the Russian state and military.

The CQ-A rifles, modeled off the American M16 but tagged as "civilian hunting rifles" in the data, have been reported to be in use by paramilitary police in China and by armed forces from the Philippines to South Sudan and Paraguay.⁴

Russian entities also received 12 shipments of drone parts by Chinese companies and over 12 tons of Chinese body armor, routed via Turkey, in late 2022, according to the data.

At this point, the reader may be questioning how we should approach such broad and complex matter because legislative frameworks differs among states and as we said the war sees different participants not directly involved in the conflict but active in assisting.

Italy has been part of the EU since 1958: the Union is an entity born with the project of enhancing trade among member states that is now one of the major economic superpowers of the world.

Therefore, we are going to take the perspective of EU law because it is an extension of Italy's foreign policy and is aligned with the United States.

Furthermore, as we will see, EU combines the characteristics of a federation and confederation, with its own Parliament and Council.

The Union has welcomed new countries and reached the number of 28 Member States, 27 after the recent departure of England through the Brexit, and its foreign policy is uniformed through the "Common Foreign and Security Policy"

On the other hand, NATO is a military alliance that includes 29 European countries, the US and Canada and it was formed in 1949.

The counterparty, the eastern block, is not as uniform since we have the two major superpowers that are Russia and China and the countries that are under their influence.

In particular, Russia is backed by Belarus that is among the territories, which has been sanctioned, as we will see later.

³ Da <https://www.politico.com/news/2023/03/16/chinese-rifles-body-armor-russia-ukraine-00087398>

⁴ Ibid

An important detail of our discussion is that the sources will be of a different kind between the chapters: in the more theoretical and legislative part our references will be the official statements of the EU and the law.

Subsequently the more empirical parts will rely heavily on intelligence agencies⁵ and journalist sources.

Therefore, we will discuss the principles laid out in the legislative framework that normally are conceived to prevent those technologies to fall in the wrong hands.

The main source for the custom procedure framework is Regulation 2021/821 that we will have to analyze in the theoretical part of our discussion.

In order to understand it we will have to delve a bit into the Treaty on the Functioning of the EU and explain the powers of the Union in its main bodies.

Furthermore, it will be necessary to discuss the difference between directives and regulation, in particular how they enter into force, which will lead us to our main source mentioned before.

Subsequently, we are going to mention the concept of obliged entity, which as we will see, is the exporter or the intermediary of an operation: we will define the concept of relevant operations that are export, brokering, technical assistance and transit.

Due to the risks connected to offering these services towards certain countries or clients, we are going to see that an authorization from the national competent authority is needed.

Furthermore, before moving to the ongoing conflict, it will be necessary to discuss the main sanctions imposed in 2014 that have been in force until the escalation of the war.

Therefore, we will have to introduce the legislative framework of the EU that allows for cooperation and harmonization in the actions against Russia.

Among the legislative framework, the importance of cooperation among states in order to prevent flaws in the system will play a major role.

Finally, we will analyze the custom procedures for the export of dual use goods per se but also the sanctions that were imposed on Russia in 2014 for supporting the Donbass militias and the annexation of Crimea.

In the last part of the discussion, we will see how sanctioned groups and individuals can avoid the restrictions imposed through the new financial technologies.

Crypto assets right now allow people to move money without passing through an obliged entity that acts as third party.

The natural consequence of this is that if opening an account does not require identification of the client people can access and use funds that are not traceable.

⁵ In particular agencies specialized in blockchain monitoring

Such possibilities open enormous opportunities for terrorist groups to avoid sanctions and fund their operations without risking identification that is why AML regime covers also the prevention of terrorism financing.

We should take into account that the classification of terrorist or sanctioned group depends on the qualification that the institutions give them.

For instance, Hamas⁶ is considered a terrorist organization by our institutions however, not all the public opinion agrees on this.

In fact some people may regard it as a group that fights for a free Palestine and at the same time some paramilitary units backing the Ukrainian army are not sanctioned by EU or US but are considered terrorists from Russia.

Furthermore, we will try to draw some remarks on the faults of the current customs procedures with the evidence that this war is giving us.

For example the exclusion of ten main Russian banks from SWIFT system, which is a Belgian messaging platform connects thousands of financial institutions around the world for money transfers.

This causes specific troubles in trying to export or import goods that are not sanctioned from and to Russia.

On Swift the messages with the instructions necessary to transfer the funds travel: not the actual money, therefore, but the address to ship it to.

Moreover, the focus will be on the issues caused by the sanctioning regime to persons and entities based in an EU Member State.

⁶ Hamas is a Palestinian Sunni-Islamic fundamentalist, militant, and nationalist organization which de facto controls the Gaza strip

CHAPTER I: AML AND CTF IN EU LEGISLATION

The submerged economy is one of the main issues all countries have to deal with to a certain extent: they are a cycle of funds that are not accounted in the gross domestic product and, above all, cannot be taxed since they are not declared.

In this set of illegal actions, we find a process aimed at recycling and cleaning up what is called dirty money: we define this as “money laundering”.

It is thus a second crime, grafted onto the proceeds of the first, such as tax evasion, drug trafficking or exploitation of prostitution.

Money laundering attempts to conceal a range of crimes, from small tax evasion and drug trafficking to government corruption and the financing of groups designated as terrorist organizations.

1. INTRODUCTION TO AML AND CTF

Anti-money laundering (AML) is a set of laws, regulations and procedures designed to detect attempts to disguise illicit funds as legitimate proceeds.

In our case, dealing with dual-use items is a subject that concerns mainly Counter-Terrorism Financing but it would be correct to introduce some concepts connected to AML since the EU legislation targets both.

This appears to be logical since in order to fund any kind of war or insurrection money is the most important factor.

Furthermore, usually these funds cannot be transferred directly so can come in forms of equipment or alternative currencies, which will be discussed in the last chapter.

In order for funds to be placed and used without raising suspicion, they must be cleared and put into legitimate economic circulation.

This procedure usually consists of three steps: in other words, the funds received are put into legal circulation.

The first stage is usually done through an occasional or benevolent intermediary, but also with the purchase of goods.

At this stage, a more or less complex series of financial actions, depending on the persons and sectors involved, must be carried out in order to cover the tracks so that the source of the funds cannot be easily traced.

Once the legal process is completed, the revenues cleared by the system are "consolidated" and, in many cases, transferred to experts in the sector for management.

This process can occur both for voluntary actors who actively cooperate and for parties who have been deceived by criminals into acting in good faith.

Examples include the transfer of funds to countries with low tax rates or where banks are silent, which is similar to the process of tax avoidance but as we said, in money laundering case we have funds obtained from illegal acts.

There is also the crime of self-laundering, where a person commits a crime and then invests and reinvests the proceeds of the criminal activity himself.

A recent event in Europe can summarize efficiently these steps and give us a nice example to better understand the money laundering process in practice.

London in the last years has become one of the capitals of drug deals: as we said this kind of money needs to be cleaned in order to avoid the controls of the financial sector.

An investigation in 2017 uncovered a racket that was utilized to launder the money all across Europe.⁷

This system used mules to carry the money into Paris where an ambulance driver used his beyond suspicion cover to collect this money.

Then some even less suspicious middle-aged women drove the collected money to Antwerp, in Belgium, where money was exchanged with a gold dealer whose main role was to import gold bars through the black market.

Gold was then taken to Dubai through Amsterdam where it is sold and through multiple deposits "covered" and integrated into the financial market, rendering impossible to trace it back.

This story highlights a couple of key detail of AML regime: following the money is the main way to reach the criminals, who are the beneficial owners of the laundered cash.

However, it is extremely easy to move money into countries that are more permissive and make it disappear from the radar of regulators and police forces.

This leads to the importance of cooperation among states and the application of KYC requirements from the civilian sector.

As it was said before directly connected to AML there is the risk of terrorism financing, which involves all transfers of funds to organizations or individuals considered terrorists.

⁷ <https://www.bbc.com/news/uk-50194681>

Naturally, the concept of funding comprehends the donation of material, even not dangerous such as cars, that can be useful to the organization in their activities

In order to understand the proportions of the matter the United Nations Office on Drugs and Crime (UNODC) ⁸estimates that between 2 and 5% of global GDP is laundered each year, which lies between EUR 715 billion and 1.87 trillion each year.

Finally yet importantly, a crucial factor are the Suspicious Transactions Reports by the intermediaries, the so-called obliged entities.

STRs are necessary since allow the Financial Intelligence Units of each Member State to analyze potential abuses among the entire country's territory.

In general this discussion will emphasize the importance of cooperation among civilian sector, supervisors and judicial authorities.

⁸ <https://www.unodc.org/unodc/en/money-laundering/globalization.html> and <https://www.europol.europa.eu/crime-areas-and-statistics/crime-areas/economic-crime/money-laundering>

1.2 SUSPICIOUS TRANSACTION REPORTS

We introduced the basic concepts of Anti-Money Laundering and Counter Terrorism Financing, stressing the fact that supervisors alone cannot control everything.

That is why the collaboration of the private sector, the banks and other intermediaries, is crucial to prevent abuses.

Such situation is naturally vital in the dual-use goods sector even though customs authorities perform the bulk of controls.

1.2.1 What is an STR?

Civilian intermediaries are expected to apply due diligence obligations in order to identify the beneficial owners and eventual suspicious transactions.

The most common entities are banks, credit unions, brokerages, money service businesses and now also the providers of crypto assets.

Such obliged entities need to adopt supervisory practices and have a system of control that can trigger once a suspicious transaction occurs.

These peculiar or potentially linked to criminal activities need to be reported to the competent authorities, which are financial intelligence units and law enforcement agencies.

These reports, called Suspicious Transaction Reports (STRs) play a critical role in detecting and preventing financial crimes and for this reason are a crucial component of anti-money laundering and counter-terrorism financing efforts.

Identifying these movements require an analysis of customers' regular patterns and recognize transactions that seem unrelated to the client's profile.

A few examples could be an occasional but significant transaction or frequent currency exchanges but also operations involving high-risk countries.

STRs usually describe the details about the transaction such as the individuals or entities involved and the reasons behind the report.

Further information might be the parties' identities, the amount and nature of the transaction, and reasons for suspicion.

Such reports are usually treated as confidential and are not shared with the subjects of the reports: disclosing the filing of an STR to the involved parties could hinder ongoing investigations.

Reporting timelines are not flexible and even if do not require immediate identification regulators require the entities to file the report shortly after the financial institution becomes aware of the suspicious activity.

As described later, delays or failure to report can result in legal responsibility and regulatory consequences.

The main implication of this regulatory framework is a dilemma for the obliged entities: how can they combine precision and timing?

More precisely, the risk of legal and reputational consequences may lead many entities to file reports on every suspicion but this can result in an overflow of reports to the competent authorities.

An overview of the steps can be provided by the UIF, the Italian competent authority that is going to be our main source in dealing with this subject.

Legislative Decree 231/2007, Article 41, requires a broad range of persons, namely financial intermediaries and other persons engaging in financial activity of the Decree.⁹

Professionals auditors and a series of persons engaged in other activities to send the FIU a suspicious transaction report “whenever they know, suspect or have reason to suspect that money-laundering or terrorist financing is being or has been carried out or attempted.”¹⁰

The suspicion can be built on characteristics, size, or nature of the transaction, in particular relating these elements to the economic capacity or business activity of the persons carrying out the transaction.¹¹

Such report needs to take into account all the elements, both objective and subjective, that the institution has acquire on the customer.

An example of a subjective elements would be identifying a strange behavior of the client, such as fear or excessive sweat as a sign of tension.

To facilitate the detection of suspicious transactions,¹² the Decree provides for several operational tools.

⁹See [https://uif.bancaditalia.it/adempimenti-operatori/segnalazioni-sos/index.html?com.dotmarketing.htmlpage.language=1#:~:text=In%20this%20regard%20Legislative%20Decre%20231/2007%20provides%20that,the%20individuals%20who%20make%20reports%20\(Article%2045%20and\).](https://uif.bancaditalia.it/adempimenti-operatori/segnalazioni-sos/index.html?com.dotmarketing.htmlpage.language=1#:~:text=In%20this%20regard%20Legislative%20Decre%20231/2007%20provides%20that,the%20individuals%20who%20make%20reports%20(Article%2045%20and).)

¹⁰ Ibid

¹¹ Ibid

¹² See [https://uif.bancaditalia.it/adempimenti-operatori/segnalazioni-sos/index.html?com.dotmarketing.htmlpage.language=1#:~:text=In%20this%20regard%20Legislative%20Decre%20231/2007%20provides%20that,the%20individuals%20who%20make%20reports%20\(Article%2045%20and\).](https://uif.bancaditalia.it/adempimenti-operatori/segnalazioni-sos/index.html?com.dotmarketing.htmlpage.language=1#:~:text=In%20this%20regard%20Legislative%20Decre%20231/2007%20provides%20that,the%20individuals%20who%20make%20reports%20(Article%2045%20and).)

For instance there are anomaly indicators issued by other authorities on a proposal from the FIU¹³ and models and patterns representing anomalous conduct, devised and issued by the FIU itself¹⁴.

It is then the role of the Intelligence Units to conduct an analysis of the reports and it may need to request new information from the entity or through consultation of the and exchange information with other FIUs

The report has to be filed as soon as the transaction is identified, if possible should be filed even before the completion of the operation.

The portal for the transmission of the FIU, provided that reporting institution has been registered and authorized to use the system¹⁵,

Reports are transmitted to the FIU electronically via the INFOSTAT-UIF portal, after the by the procedures described in a special set of instructions.

It is important to note that STRs do not constitute a violation of secrecy requirements or professional secrecy as long as they are made in good faith and for the purposes envisaged by the law, they do not incur liability of any kind.¹⁶

Once a STR has been filed the entity is protected by a guarantee of confidentiality and the anonymity of the individual making the report.

In this regard, Legislative Decree 231/2007 provides that reporting institutions and professional associations receiving reports from their members must adopt adequate measures to ensure the maximum protection of the identity of the individuals who make reports.¹⁷

It is relevant that investigative bodies must not mention the identity of the natural persons and other persons with reporting obligations.¹⁸

This is because the identity of natural persons can only be revealed when the judicial authority, by reasoned decree, deems it indispensable for the purposes of ascertaining the crimes that are the subject of proceedings¹⁹

The procedure contemplates a technical analysis of the report, examinations designed to use all the information acquired in order to understand the context that generated

¹³ See Article 41[2] and [3]);

¹⁴ See Article 6[7][b]

¹⁵ See <https://uif.bancaditalia.it/adempimenti-operatori/segnalazioni-sos/index.html?com.dotmarketing.htmlpage.language=1>

¹⁶ See Article 41[6]

¹⁷ See <https://uif.bancaditalia.it/adempimenti-operatori/segnalazioni-sos/index.html?com.dotmarketing.htmlpage.language=1>

¹⁸ Ibid

¹⁹ Ibid and reference to Article 45[7]

the report, pinpoint personal and operational ties, trace the suspicious financial flows and determine their likely purposes.²⁰

Once the analysis is completed the FIU transmits the STR to prosecutors and also notifies the judicial authorities of any penally relevant findings.²¹

1.2.2 How To File An STR

The way suspicious transaction reports are to be compiled and their information content are specified in the FIU measure of 4 May 2011²², “Instructions on the data and information to include in suspicious transaction reports”.²³

The reports can be transmitted only electronically and using the Bank of Italy’s dedicated INFostat-UIF portal.

As mentioned before access to the portal is granted only to authorized entities: the reporting institutions must first be identified and allowed to access the portal.

Allowance requires registration within the portal, the compilation and transmission of the “membership form” to the FIU that could demand further documents or information.

Such authorization to access the portal normally is given within 48 hours of reception of the application.

Once registered, each reporting person is assigned a “reporter code” to identify it unequivocally within the FIU’s archives: this code is to be used in all information exchanges.²⁴

According to UIF’s website a report has 4 main sections:

- Data on the report itself which contains the information that identifies and qualifies the report and the reporting institution.²⁵
- Details on the transactions, persons and accounts involved with a reference to the interrelations
- Free-form explanation of the transactions reported and the grounds for suspicion

²⁰ See [https://uif.bancaditalia.it/adempimenti-operatori/segnalazioni-sos/index.html?com.dotmarketing.htmlpage.language=1#:~:text=In%20this%20regard%20Legislative%20Decrete%20231/2007%20provides%20that,the%20individuals%20who%20make%20reports%20\(Article%2045%20and\).](https://uif.bancaditalia.it/adempimenti-operatori/segnalazioni-sos/index.html?com.dotmarketing.htmlpage.language=1#:~:text=In%20this%20regard%20Legislative%20Decrete%20231/2007%20provides%20that,the%20individuals%20who%20make%20reports%20(Article%2045%20and).)

²¹ Ibid

²² Ibid

²³ Ibid

²⁴ Ibid

²⁵ Ibid

-Any other relevant documents attached.

These reports pass through two different types of automatic controls: the portal has tools available directly to the filing entity.

Furthermore, the FIU's information system has a form of automated control when acquiring the report in order to guarantee data integrity.

In line with the provisions of art. 41, co. 2, of Legislative Decree 231/2007 UIF transmits to the reporters, on a periodic basis, communications relating to the results of the reports of suspicious operations.²⁶

The UIF will give feedback on the STR in particular will communicate to the entities two different types of communications: the results of the reports and the feedback cards.

UIF will transmit the STRs that, after analysis conducted by the authority and potentially investigative bodies, are considered irrelevant: these are divided in two groups.

-List A contains STRs that did not involve enough risk elements to lead reasonable suspects of money laundering, terrorism financing or other abuses

-List B, containing the reports where some details suggest a reasonable suspicion but were classified as low risk.

On the annual basis, the UIF transmits, to the major reports of the "banks and post offices" and "Money Transfer" sectors, the "Feedback card" containing synthetic indicators on the signs compared with those of the respective category of belonging.
²⁷

Cards, due to necessity of obtaining statistically reliable conclusions, are created only for intermediaries such as banks that sent at least 200 STRs in the previous year or 100 STRs in case of a "Money Transfer" institution.

In conclusion, STRs are crucial in preventing financial crimes connected to AML and CTF because competent authorities do not possess the capabilities to control the whole national territory.

However this does not imply that the system is perfect and as will be discussed in the next chapters many goods are slipping through the controls of the Member States and other Western countries.

²⁶ See [https://uif.bancaditalia.it/adempimenti-operatori/segnalazioni-sos/index.html?com.dotmarketing.htmlpage.language=1#:~:text=In%20this%20regard%20Legislative%20Decre%20231/2007%20provides%20that,the%20individuals%20who%20make%20reports%20\(Article%2045%20and\).](https://uif.bancaditalia.it/adempimenti-operatori/segnalazioni-sos/index.html?com.dotmarketing.htmlpage.language=1#:~:text=In%20this%20regard%20Legislative%20Decre%20231/2007%20provides%20that,the%20individuals%20who%20make%20reports%20(Article%2045%20and).)

²⁷ Ibid

1.3 ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING (AML/CTF) REGULATIONS

Governments around the world have implemented AML/CTF laws and regulations that require financial institutions, including banks, to implement robust systems for detecting and reporting suspicious financial activities.

The most important players in an AML and CTF framework are the professionals called obliged entities such as banks, brokers, insurance companies that are expected to supervise their clients.

These regulations include know-your-customer (KYC) requirements, transaction monitoring, and reporting suspicious transactions to financial intelligence units.

Getting knowledge on the customer is a key element: for instance a bank must identify the source of income of a depositor and verify his identity.

The FIUs serve as central national agencies responsible for receiving, analyzing, and disseminating suspicious transaction reports (STRs) and other financial information to relevant law enforcement and intelligence agencies.

It is crucial that the information they receive is not redundant so it is a responsibility of the obliged entities to send precise and reasonably suspicious reports.

Therefore, we can definitely say that FIUs play a crucial role in detecting and investigating both money laundering and potential terrorism financing activities.

Furthermore, collaboration and information sharing among countries are vital in preventing or at least tracking these financial crimes.

Countries must work together through mutual legal assistance treaties, regional initiatives to share intelligence, coordinate investigations and disrupt cross-border financial flows related to terrorism.

International organizations such as the Financial Action Task Force undertook the task of generating standards in the supervisory sector, but we have to remember that these are not binding.

In order to deter these crimes governments can impose targeted financial sanctions on individuals, entities, and organizations suspected of involvement in terrorism.

These sanctions may involve freezing their assets and restricting their access to the global financial system, making it harder for them to raise and move funds.

Likewise Non-Profit Organization (NPO) are vulnerable to exploitation, especially in the matter of terrorism financing.

Governments have implemented regulations to enhance transparency and accountability in the NPO sector, including registration requirements, due diligence procedures, and monitoring mechanisms to prevent abuse.

As we mentioned, the collaboration between the public and private sectors is crucial in detecting so it is a responsibility, potentially leading to sanctions, of obliged entities to supervise on their clients.

Financial institutions, technology companies, and other private entities tend to work closely with law enforcement agencies to develop tools, share information, and implement measures to detect and disrupt suspicious financial activities.

This can be achieved through risk assessments to identify potential vulnerabilities and indicators of terrorism financing.

In this case advanced analytics and intelligence analysis techniques can be employed to identify patterns, detect anomalies, and improve the effectiveness of monitoring and investigation processes.

In general also raising awareness among financial institutions, businesses, and the public about terrorism financing risks is important because as we said the most important part is collaboration.

Efficiency among the obliged entities can be improved through training programs, workshops, and outreach initiatives that help these stakeholders understand the indicators of suspicious activities, strengthen their ability to report, and respond effectively.

These obviously are just a few examples of the strategies and measures employed to prevent money laundering and terrorism financing, since regulations differ among the world.

It's an ongoing and evolving effort that requires close cooperation between governments, financial institutions, law enforcement agencies, and international organizations to stay ahead of the evolving tactics and methods employed by terrorist organizations.

1.3.1 European Union AML/CTF Discipline

The EU promotes a risk-based approach to AML that assesses the risks faced by financial institutions and designated entities and applies measures proportionate to those risks.

This is considered the most well rounded approach since it helps to focus resources on high-risk areas, adhering to the principle of “following the money”.

In other words, an old man depositing his pension is less suspicious than a trust whose beneficial owner is not clear so an obliged entity would have to prioritize the controls on the trust.

This is why financial institutions are required to implement CDD measures, including customer identification and authentication: such phase includes understanding the purpose and nature of the customer relationship and continuous monitoring.

An important aspect of AML in the EU is the focus on transparency of beneficial ownership: Member States are required to establish a register of beneficial owners of legal entities so that the ultimate persons who control or own legal entities can be identified.

Furthermore, the EU aims to harmonize AML rules across Member States and ensure consistent application.

The European Banking Authority (EBA) is mandated to “lead the development of AML/CFT policy and supporting its effective implementation [...] coordinating across the EU and monitoring the implementation of EU AML/CFT policies and standards to identify vulnerabilities in competent authorities’ approaches”²⁸

Finally, the EU maintains a regime with sanctions targeting individuals, legal entities and countries involved in money laundering and terrorist financing; enforcement of AML regulations is primarily the responsibility of national competent authorities.

- **Fourth Anti-Money Laundering Directive:** Approved in 2015, created an ample framework for AML and CTF in the EU. It announced responsibilities for member states to implement deterrent measures, improve customer due diligence, require operators to keep beneficial ownership registers, and reinforce cooperation among financial intelligence units.
- **Fifth Anti-Money Laundering Directive:** Adopted in 2018, further improved the EU's AML and CTF regime. It increased the types of obliged entities, presented improved due diligence requirements for high-risk states, enhanced the transparency requirements of beneficial ownership information.

²⁸ <https://www.eba.europa.eu/regulation-and-policy/anti-money-laundering-and-counteracting-financing-terrorism>

1.3.2 6th ALM Directive²⁹

The main reference for EU law on AML is the fifth AML Directive (EU) 2015/849, soon to be replaced by the 6th.

The new AML Directive also criminalized and classified various methods of acquiring illicit property and money.

Therefore, it deals with the generation of illicit funds, the acquisition of property through them and money laundering.

Article 7 of the new AML Directive 6 focuses on corporate responsibility and authentication, which RegTech companies are working on.

Essentially the Directive envisages and provides that if a 'lack of oversight or control' of a 'lead' actor enables criminal activity, the legal entity is deemed liable: a secure online authentication process is therefore crucial.

Along the same lines, Article 10 focuses on the application of sanctions and jurisdiction in order to reduce legal issues and confusion.

For example, in 2017, US federal regulators fined the US units and subsidiaries of Asian financial institutions and banks approximately USD 110 million for deficiencies in their processes.³⁰

Articles 5 and 8 of the EU's Sixth Money Laundering Directive focus on sanctions: these include denial of the right to receive aid or support from the state, temporary or permanent prohibition of access to public funds, prohibition to engage in commercial activities.

Furthermore, criminal sanctions that may lead to imprisonment of the responsible professional, which is an important risk the obliged entities need to take into account.

While these measures were already foreseen in AML5, which focused on sanctions against both operators and potential offenders, the EU 6th AML Directive has progressively managed and strengthened them.

To this end, the EU 6th AML Directive introduce the following key changes to the 5 AMLD:

- All organizations and firms that consider their activities regulated and affected by this standard must develop technical procedures to recognize risk factors in order to comply with the EU's 6 AMLD requirements and avoid offences. It is mandatory to have the necessary technical competence for processes (e.g. KYC) to be compliant with the Directive.
- These acts of assistance, incitement and predisposition to commit crimes also constitute acts of aggression and are punishable as criminal offenses. Uniform

²⁹ Taken from <https://www.electronicid.eu/en/blog/post/aml6-sixth-anti-money-laundering-directive/en>

³⁰ Ibid

offenses. EU Directive 6 AML establishes a total of 22 crimes, ranging from digital crimes to tax crimes. It is imperative to establish secure KYC procedures to detect them.

- Crimes can concern both legal entities (business organizations, companies) and natural persons (individuals). This responsibility is attributed to the directors and employees of the company.
- The minimum penalty for money laundering-related offenses has been increased from one to four years' imprisonment. Similarly, economic sanctions have been increased to €5 million (and equivalent amounts in other currencies). The Sixth EU AML Directive also encourages authorities to set an exemplary sanction.
- The Sixth AML Directive defines procedures for cooperation between states in the detection of financial crimes and cross-border attacks. Similarly, an international monitoring regime has been established for companies that fail to comply with the Directive.

Now we are going to make a couple of diversions on two concepts that will be needed in the next chapters.

1.3.3 US AML Discipline

The Anti-Money Laundering (AML) discipline in the US is a comprehensive framework of laws, regulations and safeguards designed to detect and prevent money laundering, terrorist financing and other illicit financial activities.

The main components of the AML discipline in the US are:

- Bank Secrecy Act (BSA): The BSA is the primary federal law on AML discipline in the U.S. The BSA requires financial institutions to have a strong program based on internal control practices, customer due diligence (CDD), transaction monitoring, and suspicious activity reporting
- Financial Crimes Enforcement Network (FinCEN): The Financial Crimes Enforcement Network (FinCEN) is part of the US Department of the Treasury and it's responsible for protecting the financial system.³¹ It administers and enforces AML regulations, collects and analyzes financial data, and disseminates information to law enforcement and other stakeholders. His mandate is similar to EBA in Europe
- AML regulation for financial institutions: Various regulatory agencies, including the the Federal Reserve Board (FRB), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA) regulate various types of obliged entities, including banks, credit unions, broker-dealers, and money service businesses. AML regulation.³²
- OFAC is the US Government agency charged with overseeing national security by controlling and influencing persons or entities that may harm the United States and its interests, particularly in matters affecting sanctions against terrorism and financing-related objectives.

³¹ <https://www.bricslawjournal.com/jour/article/download/156>

³² <https://home.treasury.gov/system/files/136/2022-National-Money-Laundering-Risk-Assessment.pdf>

1.4 CRYPTO ASSETS

In this part of the discussion, we are going to mention the already emerged crypto asset category, which is composed by currencies on blockchain, tokens and NFTs.

A blockchain is software responsible for processing and information archive. Each block of information is linked by encryption and the goal is to make the blockchain unchangeable.

The blockchain is essentially a device that works using encryption and a specific series of algorithms to generate and verify increasing quantities of data.

It develops as a "transactions blockchain", which acts on a distributed Ledger Technology.³³

The reader may question why we have to elaborate on this matter: the reality is that these financial instruments were created to allow direct access to financial operations without requiring an intermediary.

However, we discussed that the intermediaries are a key element of the AML regime: the intermediary has the responsibility of applying KYC procedures and eventually file a suspicious transaction report.

We can understand that an instrument that has no obligation of control because is exchanged between customers in a peer-to-peer system is a threat.

Crypto assets are a huge opportunity for sophisticated criminals to launder money and legislations managed to begin a regulation process.

Moreover, we have to introduce this concept because cryptoasset are effectively been used in the conflict in Ukraine by both sides.

In Europe, the legislation will soon be more harmonized: in fact, the entry into force of the Markets Regulation in Crypto Assets will make a difference because entities that want to offer certain types of services will require an authorization.

Furthermore, they will be subjected to the AML requirements that we previously mentioned.

Being a regulation, it has an immediate effect on the whole territory of the Union from the moment in which it is approved by the European Parliament.

³³ The concept can be translated as a "register" or "master book": the DLT can be implemented through a blockchain but not all DLTs need a blockchain to exist

This is different from the directives that before having the effects on citizens must be implemented in national legislation

A new definition of Crypto Asset is implemented within the Mica: "Crypto-Asset Means a Digital Representation of a Value or a Right Which May Be Transferred and Stored Electronically, Using Distributed Ledger Technology or Similar Technology"³⁴

Therefore, a digital representation of a value or contractual right is preserved at the electronic level.

The implication of this definition is that many categories of products such as Token Utilities and representations of value without financial investment character are now regulated.

The last frontier of digital technology applicable to the financial world are the non - fungible tokens, commonly called NFT.

These are perhaps the category of blockchain products most divisive: for some it is a fashion while for others it can also be the future of the art market as well as financial.

Basically, the token guarantees the property of a product, equipped with certificate of authenticity, to its buyer and is defined not that can not be fungible because it is not replicable.

The real problem from a purely financial point of view is to regulate these tools, not for their objective value which is established by the market but to avoid the risk that NFT be used for illicit purposes.

In fact, nothing would prevent, given that they can be purchased anonymously, to create an image and sell it to a profile that was actually created only to introduce the legally earned money to the legal circuit.

In other words, if we were drug dealers and we needed to clean up that money between the various options we could use a NFT.

In essence, the great problem of cryptocurrencies is exactly their pseudo or even complete anonymity that allows you to act under the subject to the subjects who commit.

³⁴ REGULATION (EU) 2023/1114 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 31 May 2023 and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937: available at <https://www.sygna.io/blog/what-is-mica-markets-in-crypto-assets-eu-regulation-guide/> and <https://hrcak.srce.hr/file/174064>

1.4.1 DLT and Blockchain

Any analysis of crypto assets and their development cannot ignore the reasons behind their creation.

Indeed, each technology responds to a need, what we might call consumer demand. In the aftermath of the 2007 crisis, much frustration built up toward the banking sector, which had been one of the main intermediaries of the public's financial activities.

The call for technology that does not require an intermediary to manage funds resulted in the birth of Bitcoin in 2009.

Since then, the evolution that has resulted from its considerable popularity has led to the creation of new technologies that will now be described.

First is the blockchain, the foundation of cryptographic assets; details will be provided in the next section, but for now, it can be thought of as software responsible for processing and storing information.

Each block of information is linked by cryptography, with the goal of making the blockchain immutable.

A blockchain is essentially a device that operates using cryptography and a specific set of algorithms to generate and verify increasing amounts of data.

It is developed as a "transactional blockchain" that operates on distributed ledger technology.

It is a system in which all network elements hold equal copies of a database, which can be interpreted independently.³⁵

Changes to the DLT are made through a mechanism called the consensus reconciliation algorithm.

This is because it is necessary to maintain cohesion and correspondence between the various versions of the database, which are constantly updated in a decentralized and therefore independent manner.

Implemented via blockchain, this technology allows for the simplification of transactions that normally involve a third party.

Blockchain provides decentralized authentication of transactions and exists in many forms; they include the following

- Open authentication: Without blockchain, a user can enter the network as is without being authenticated by any entity. To enter the network and add

³⁵ See https://blog.osservatori.net/it_it/distributed-ledger-technology-significato

transactions, all one needs is a computer with the relevant software; this is true for most cryptocurrencies.

- A blockchain that requires authorization means that before a transaction can enter the network, it must be voted on by the “warden” of the network, the person who sets the rules for the DLT. This allows the identity of the network members to be verified.

Authorized blockchains are divided into two groups.

- Open or public permission-based blockchains. Anyone can join and only authorized contributors to the network can execute transactions or update their ledger status.
- Closed or "enterprise" blockchains, where access is controlled and only supervisors of the network can create transactions or update the status of the ledger.

A blockchain can be defined as a distributed database since all additions to this ledger are made by one of the participants (the network node that creates the new "block").

A digital signature with a remote key authenticates the "block" of transactions. Each user has two sets of keys.

- The client receives the private and public keys needed to create the transaction signature: in most cases this improves efficiency.

It is important to note, however, that this can create problems for the parties involved since they do not physically know the seller or buyer.

Traditionally, this problem has been handled by a third party, such as a bank, acting as a guarantor.³⁶

Secondly, some readers may be surprised to see the term "cryptoasset" used rather than cryptocurrency.

There are two types of cryptoassets, those that rely on the blockchain and those that rely on protocols, but only the definition by Buchwalter is referenced here.

"Protocol cryptoassets do not have their own blockchain, but operate on the platform of other cryptoassets, and their own currency can be called a token."³⁷

An important feature of cryptoassets is their decentralized management. To do this, cryptography and distributed ledger technology are used.

³⁶ See Snyers A., Houben R., (2018), 'Cryptocurrencies and blockchain', pp.17

³⁷ See Buchwalter B. (2019), 'Decrypting Crypto-assets: Introduction To An Emerging Asset Class, SKEMA Business School, p.28

The DLT is a database that allows for the secure operation of a decentralized digital database. It must be emphasized that a decentralized network eliminates the need for a central authority.

In other words, we can use the definition presented by Buchwalter that "cryptographic assets are based on a network of distributed blockchains in which each node has equal authority in decision-making and interaction with the database."³⁸

Just as important as the cryptographic and pseudo-anonymous features is the fact that the blockchain can only verify the correctness of information; this is done through a consensus mechanism.

Mining is not about creating new blocks, but about contributing to the preservation of the blockchain.

There are two consensus mechanisms that contribute to the preservation of the blockchain:

- POW mechanism: a proof-of-work is a decentralized consensus mechanism that requires network participants to solve an arbitrary mathematical puzzle so that no one else can use the system. In other words, the POW requires network nodes to prove that they have spent computational power to reach consensus and prevent intruders from accessing the network. In the case of Bitcoin, to achieve consensus, a majority, or at least 50%, of the miners must agree on the validity of the blockchain.³⁹

- POS Mechanism: Another type of mechanism is a proof-of-stake (POS), which allows people who want to contribute to the maintenance of the blockchain to make part of their savings available in the native cryptocurrency. Typically, their role is to confirm transactions and create new blocks; POSs may be more secure in terms of the risk of attacks on the network by miners.⁴⁰ Just as important as the cryptographic and pseudo-anonymous features is the fact that the blockchain can verify only correct information. This is done through a consensus mechanism.

³⁸ Ibid, p. 2

³⁹ See Buchwalter B. (2019),, 'Decrypting Crypto-assets: Introduction To An Emerging Asset Class, SKEMA Business School, p.24

⁴⁰ Ibid p.24

1.4.2 - Tokens

Also called exchange tokens, these are primarily used for transactions: these assets are a revolutionary resource for finance because they are very different from the typical systems associated with banks.

First, access to these assets is easier than investing in a bank, for example, with less management, no time restrictions (no business hours, open 24/7), and almost unrestricted access.

Administration is decentralized, but there is usually a blockchain, a database that stores all transactions, and it has already been reported that hacking is almost impossible.

In general, the blockchain is immutable and cannot be invalidated by input data: for example, the blockchain system used for Bitcoin permanently records all transactions and makes them available to everyone; however, it is impossible to identify the owner of a bitcoin purchased anonymously.

In addition to bitcoin, there are a growing number of alternative currencies known as "altcoins. Broadly speaking, these altcoins fall into two categories:⁴¹

- Created using Bitcoin's open source protocol, altcoins create their own currencies with a wide variety of features. One example is Litecoin.
- Altcoins that are not based on Bitcoin's open source protocol but have their own protocol and distributed ledger. Well-known examples are Ethereum and Ripple.

One feature that is not often emphasized is that crypto blockchains are not only associated with coins.

For example, Ethereum is considered a "smart contract platform", while it is true that Ethereum has its own currency, Ethereum, it can also be programmed to repeatedly release funds to someone for a specific reason at a specific time, such contracts are possible.

Buchwalter proposes his own interpretation of this definition: "Crypto asset payments are peer-to-peer electronic payment systems. Cryptocurrency platforms enable more generalized exchanges between individuals and are not limited to peer-to-peer remittances".⁴²

⁴¹ See Snyers A., Houben R., (2018), 'Cryptocurrencies and blockchain', p. 29

⁴² See Buchwalter B., (2019), 'Decrypting Crypto-assets: Introduction To An Emerging Asset Class, SKEMA Business School, pp.1

Cryptocurrency platforms can be seen as a general counterpart to cryptocurrency payments because they not only enable remittances, but also provide other services such as cloud storage and cloud computing for smart contracts".

Let us now look at the concept of Protocol Cryptocurrencies: these are a type of asset that does not have its own blockchain.

1.5 INTERNATIONAL LEGISLATION

At this point, we should rightly address the question of how crypto assets will be regulated.

The "Western" countries, which are part of the European Union and mainly include NATO members, are planning some form of harmonization in the fight against money laundering and terrorist financing.

Of course, laws are always forced to keep up with new technologies and often fall behind, but it is of course objectively impossible to try to predict technological developments.

As in Europe, the U.S. continues to fight the use of crypto assets for illegal purposes, and the law authorizes action against intermediaries.

Although U.S. law is complex to analyze because it varies from state to state, even within the Union, it is worth mentioning at least the role of OFAC (Office of Foreign Assets Control).

OFAC is a U.S. government agency tasked with overseeing national security by monitoring and targeting individuals or organizations that may harm the U.S. and its national interests, particularly those associated with terrorism and its financing.

Meanwhile, in Europe, the Markets In Crypto Assets Regulation (MiCA) is scheduled to come into effect.

Since MiCA is a regulation, it will take effect immediately throughout the EU from the moment it is approved by the European Parliament.

"A crypto asset is a digital representation of a value or right that is transferred and stored electronically using distributed ledger technology or similar technology."⁴³

In other words, it is the digital representation of a value or contractual right that is stored electronically.⁴⁴

The implication of this definition is that many product categories, such as utility tokens and expressions of value that do not have a financial investment character, are now regulated.

Indeed, at the European level, prior to MiCA, crypto asset providers were not necessarily considered operators subject to licensing.

There was only a category of so-called financial products offered to the market, regulated under Regulation 600/2014 MIFIR II.

⁴³ See 2020/0265 – MiCA Article 3

⁴⁴ See www.consob.it

The absence of licensing requirements did not mean that services could be offered through crypto assets without being a mandatory entity, as compliance with the rules under Directive 2018/843, the fifth anti-money laundering directive, was still required.

However, crypto exchanges are well aware that this is an area where honest investors are at risk of being affected by foreclosure or unwittingly contributing to money laundering or terrorist financing.

As a result, it may be possible to strengthen oversight of intermediaries in this area, not only through anti-money laundering discipline, but also by taking a step beyond the regulatory level.

The cooperation of intermediaries is crucial for authorities intent on freezing and seizing assets, as we will see in the examples.

An example of sanctions against a Russian company is the exchange Garantex, which lost its license as a VASP (virtual asset service provider) in Estonia following a report by the Estonian Financial Intelligence Unit in February 2022.⁴⁵

The exchange was based in the Federation Tower in Moscow and was sanctioned for not effectively applying due diligence requirements.

Obviously, only accounts in the name of users in the country where the seizure takes place will be affected.

Take a recent example from Italy, where users of BitGrail, an exchange founded in Italy in 2017, suffered the theft of the digital token Nano (XBR), created in the United States.

According to the platform, it was a flaw in the software that manages Nano, and according to the token's creator, the problem was in the platform's security.

"A bitcoin wallet was created and owned by the court. In the process of creating the wallet, steps were taken to ensure that participants could not use, view, or reconstruct the keys after the fact."⁴⁶

The wallet was deposited in a secure location in the name of the court (the same location where gold bullion and valuable pieces are stored).

The article quotes computer forensics expert Paolo D'Arcecco as commenting on the seizure of digital assets "We compare the digital seizure of cryptomonet to a form of physical seizure of cash and valuables for which the judicial authorities have established methods of preservation and control".⁴⁷

The case concluded with the indictment of the programmers who established the exchange on the following charges.

⁴⁵ See <https://home.treasury.gov/news/press-releases/jy0701>

⁴⁶ See https://www.agi.it/economia/furto_bitcoin_bitgrail-4010463/news/2018-06-09/

⁴⁷ Ibid

It appears that the user who embezzled the funds discovered that by requesting a withdrawal at a specific time, he would likely be able to make the same withdrawal twice.

At that point, Filano kept the platform open and continued to attract new users (which increased from 70 to 217,000 in a few months).

By doing this, he made an unjustified profit equivalent to the profits he made from the deposits and transactions".⁴⁸

A second example is the seizure by German authorities of US\$25 million in bitcoins from the online black market DNM Hydra.

Hydra operates almost exclusively in Russian, and its sellers are based primarily in Russia, Ukraine, Belarus, Kazakhstan, and neighboring countries.

Hydra sellers also offer services such as hack-for-hire, ransomware-as-a-service, and various money laundering features.

While drug trafficking is limited to Russia and its neighbors, computer and money laundering tools are available to anyone in the world who pays for them.

What made Hydra Market unique among other darknet markets was its delivery system.

The delivery system relies on a network of trusted couriers who "deliver" goods by hiding them in various locations and sharing information with customers, known as geocaching.

⁴⁸ See

https://firenze.repubblica.it/cronaca/2021/04/29/news/bitcoin_nano_xrp_criptoaluta_hacker_firano_bitgrail-298682008/

1.6 DUAL USE GOODS

Dual use goods are items, software and technology that can be used for both civilian and military applications.⁴⁹

Why should countries that are not waging war limit the exportation on a product that has been created in its borders that may create jobs and increase GDP?

For instance Italy has had a reputation for building weapons that dates back to the Middle Ages and it would certainly benefit from the removal of the bans on exporting.

Furthermore weapons have also been a key to freedom for countless nations, so it a very delicate issue: freedom is considered a right and the United Nations vowed to protect it but at the same time this implies a potential discrimination on who can take arms.

The ongoing discussion on whether Ukraine should be supported is a clear demonstration that the issue exists.

According to the Council on Foreign Relations's Global Conflict Tracker, there are currently 27 ongoing conflicts worldwide.⁵⁰

This is because some countries are torn by wars but at the same time every conflict is a huge expense and consequently a big opportunity for business.

Summarily the goods subject to international transactions can be classified in the following macro categories:

- Embargoed goods: relate to goods prohibited for export to certain countries;
- Authorized goods: relating to goods that are subject to ministerial authorization for export purposes; and
- Dual-use goods: relate to goods that require special analysis to determine whether they have dual material uses or are 'related' goods in all respects;
- Non-export prohibited goods: relate to goods that are classified as free to export;

The attachment "I" of the "Regulation" (Reg. EU 428/2009) reports a list of the categories of dual use assets which are subject to specific authorization to be exported to a third state. This type of products are:⁵¹

- Category 0 - Nuclear materials, plants and equipment
- Category 1 - Special materials and related equipment
- Category 2 - Treatment and processing of materials
- Category 3 - Electronic materials

⁴⁹ <https://dscompliance.lu/wp-content/uploads/2021/06/AML-guidelines-2021.pdf>

⁵⁰ See <https://www.cfr.org/global-conflict-tracker>

⁵¹ Annex I of Regulation EU 428/2009

- Category 4 - Calculators
- Category 5 - Telecommunications and "Information safety"
- Category 6 - Sensors and laser
- Category 7 - Avionic and navigation material
- Category 8 - Naval material

It's important to note that the specific regulations and control lists for dual-use goods may vary from country to country.

Since as we said war is a business, it is crucial to cooperate in order to avoid the proliferation of weapons around the globe: we are going to mention the main agreements.

- **Wassenaar Agreement**

The Wassenaar Agreement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, commonly known as Wassenaar, is a multilateral export control regime: established in 1996 in the city of Wassenaar (NL).⁵²

This arrangement aims to promote transparency and responsibility in the export of conventional and dual-use goods and technologies, therefore its main objective is to prevent the proliferation of sensitive materials that could contribute to the development of weapons of mass destruction or to regional and international security instability.

There are currently 42 countries participating in the Wassenaar Arrangement, including major arms exporters and developed countries: these members coordinate their export control policies and practices through regular meetings and consultations

Although the Wassenaar Agreement is neither a treaty nor legally binding, its guiding principles and best practices serve as a framework for national export control regimes.

The main features of the Wassenaar Arrangement are these:

- The group maintains control lists that categorize specific items, technologies and materials subject to export controls. Obviously these lists are regularly updated to take account of new technologies and security concerns.
- Exchange of information: participating countries share information on their export control policies, licensing procedures and enforcement activities. This promotes transparency and enables Member States to harmonize their efforts to prevent illicit transfers.
- Export controls: Member States commit to implement effective export controls on the transfer of listed items. To achieve this Member States shall establish

⁵² <https://www.bis.doc.gov/index.php/policy-guidance/multilateral-export-control-regimes>

licensing systems to ensure that exports are assessed on a case-by-case basis and that factors such as end-use, end-user and destination country are taken into account.

- The Wassenaar Arrangement contributes to global non-proliferation efforts by promoting cooperation and coordination among Member States and helps prevent the misuse of conventional weapons and dual-use goods and technologies.

- **Nuclear Suppliers Group**

Established after the experiment 'Smiling Buddha', which was a nuclear test performed in India in May 1974.

This nuclear test demonstrated that some technologies specific to non-military nuclear weapons could be rapidly converted into weapons development.

Consequently States already party to the Nuclear Non-Proliferation Treaty (NPT) felt the need to further restrict the export of equipment, nuclear material and nuclear technology.

This treaty consists of 11 articles in total and prohibits 'non-nuclear' parties from acquiring these weapons and 'nuclear' parties from transferring nuclear weapons.

In addition, the transfer of nuclear technology for peaceful purposes such as electricity generation is required to take place under the control of the AIEA.⁵³

The Treaty was signed by the US, UK and USSR on July 1, 1968 and entered into force on March 5, 1970; France and China (which possess nuclear weapons) joined in 1992 and North Korea signed in 1985 but explicitly withdrew from the Treaty in 2003 after refusing inspections because it was suspected of producing atomic bombs.⁵⁴

In 2006, 30 suspected cases were investigated, but only two were non-democratic countries (Algeria and Egypt).

- **Australian Group**

After the end of the Cold War, the TNP began to show its limits: the relative decline in the number of nuclear bombs was associated with an increase in the number of countries capable of producing atomic bombs, which is potentially more dangerous.

⁵³ International Atomic Energy Agency

⁵⁴ From https://it.wikipedia.org/wiki/Nuclear_Suppliers_Group

Initially composed of 15 members, the TNP held its first meeting in Brussels in September 1989 and now has 41 members.

These include all OECD (Organization for Economic Cooperation and Development) member states except Mexico, all 28 members of the European Commission, Ukraine and Argentina.

The Group's name comes from Australia's initiative to establish the Group and its secretariat is led by Australia.

- **Chemical Weapons Convention**

The initial members of the group made various assessments of chemicals that should be subject to export controls. Countries that joined the group later did not initially comply with these controls.

Today, group members have agreed to maintain controls on the export of a homogeneous list of 54 chemical compounds, including compounds that are not relevant for export under the Chemical Weapons Convention but could be used to make chemical weapons.

The aim of the 35 member states of the Missile Technology Control Regime (MTCR) is to control the export of ballistic missiles, cruise missiles and remotely piloted military vehicles, i.e. unmanned aerial vehicles, used for nuclear weapons. proliferation must be prevented.

Such products have a destructive power, ranging from advanced military versions, such as Turkey's bilateral drones, to civilian drones in general.

- **Missile Technology Control Regime**

The Missile Technology Control Regime (MTCR) is a multilateral export control regime. It is an informal political agreement between 35 Member States aimed at limiting the proliferation of missiles and missile technology.⁵⁵

The regime was established in 1987 by the G-7 industrialized countries. The MTCR aims to limit the risk of proliferation of weapons of mass destruction (WMD) by controlling

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https://en.wikipedia.org/wiki/Missile_Technology_Control_Regime#:~:text=In%20this%20context,%20the%20MTCR%20places%20particular%20focus,on%20equipment,%20software,%20and%20technology%20for%20such%20systems.

the export of goods and technologies (except manned aircraft) that could contribute to delivery systems for such weapons.

In this context, the MTCR focuses on rockets and unmanned aerial vehicles capable of carrying a payload of at least 500 kilograms (1,100 pounds) at a range of at least 300 kilometers (190 miles), as well as equipment, software and technology for such systems.

The MTCR is not a treaty and does not impose legally binding obligations on partners (Member States).⁵⁶ Rather, it is a political arrangement aimed at limiting the proliferation of missiles and missile technology between states.

The 1993 Paris Chemical Weapons Convention entered into force on April 29, 1997, firmly affirming the total prohibition of these weapons.

⁵⁶

https://en.wikipedia.org/wiki/Missile_Technology_Control_Regime#:~:text=In%20this%20context,%20the%20MTCR%20places%20particular%20focus,on%20equipment,%20software,%20and%20technology%20for%20such%20systems.

1.7 EU INSTITUTIONS

After the Second World War ended Europe was free from the Nazi menace but almost six years of all-out war had taken a devastating toll on the continent.

Furthermore, the conflict between US and the URSS was delineating and securing the position of the European soil was considered crucial.

In 1949 the North Atlantic Treaty Organization (NATO) was created: it consisted in an intergovernmental security alliance consisting of the United States, Canada and ten Western European countries,

In order to end the frequent and bloody conflicts that culminated in World War II, European politicians begin the process of creating today's European Union (EU).⁵⁷

Ten Western European countries then create the Council of Europe to promote democracy and protect human rights and the rule of law.

In 1950, French Foreign Minister Robert Schuman announces plans to deepen cooperation. He proposes to unite the coal and steel industries of Western Europe. Subsequently, the European Union celebrates May 9 as "Europe Day".

Under Schuman's plan, six countries sign an agreement to jointly manage the coal and steel industries. In this way, one country will not be able to point its weapons of war against the other, as has been done in the past.

The six countries were Germany, France, Italy, the Netherlands, Belgium, and Luxembourg: 1952 marked the creation of the European Coal and Steel Community.

The European Coal and Steel Community, established in 1951, was the first step toward lasting peace; the Treaty of Rome established the European Economic Community (EEC) in 1957, beginning a new era of close cooperation in Europe.

However, this period also saw the outbreak of the Cold War, which would divide the European continent for more than 40 years.

Building on the success of the Coal and Steel Treaty, the six founding countries extended cooperation to other economic sectors.⁵⁸

They formalized this by signing two treaties, the European Economic Community (EEC) and the European Atomic Energy Community (Euratom). These institutions began their work on January 1, 1958.

⁵⁷ https://european-union.europa.eu/principles-countries-history/history-eu/1945-59_en#:~:text=Building%20on%20the%20success%20of%20the%20Coal%20and,bodies%20come%20into%20being%20on%201%20January%201958.

⁵⁸ Ibid

On March 19, 1958, the European Parliament, the forerunner of today's European Parliament, met for the first time in Strasbourg, France, where Robert Schuman was elected president.

The European Parliament replaced the General Parliament of the European Coal and Steel Community, which changed its name to the European Parliament on March 30, 1962.

The next step was the creation of the European Free Trade Association (EFTA) in May 1960 to promote free trade and economic integration between countries outside the EEC: Austria, Denmark, Norway, Portugal, Sweden, Switzerland and Great Britain. By 2020, Iceland, Liechtenstein, Norway and Switzerland became members of the EFTA.

Another measure that contributed to this was the Common Agricultural Policy, in which EEC countries jointly managed food production.

This meant that from the 1990s onward, priority had to be given to reducing agricultural surpluses, improving food quality, and ensuring sustainability.

On July 20, 1963, the EEC signed its first major international agreement. Six member countries agreed in the Yaoundé Treaty to promote cooperation and trade with 18 former colonies in Africa.

Today, the EEC maintains special relations with 79 African, Caribbean and Pacific (ACP) countries and seeks to strengthen partnerships with Africa to address problems common to both continents.

Last time we noted that harmonization was a crucial step in establishing common positions in multilateral organizations, and in April 1965 the first step along this road was the signing of the "Fusion Treaty".

The Treaty, which brought together the executive bodies of the three Communities (the European Coal and Steel Community, the European Economic Community and Euratom), was signed in Brussels and entered into force on July 1, 1967.

Since then, the Community had a single administrative body (Commission) and a single executive body (Council).

An additional landmark was reached with the beginning of the Customs Union: 1968 marked the dawn of the modern free market, when the six member countries of the EEC abolished tariffs on each other's imports, allowing free cross-border trade for the first time.⁵⁹

The attempt proved successful, and trade between the six EEC member countries and with the rest of the world expanded rapidly.

⁵⁹ From <https://european-union.europa.eu/principles-countries-history/history-eu>

To demonstrate their solidarity, EEC leaders agreed in 1974 to create a major new fund under the European Regional Policy.

Its purpose was to transfer funds from rich regions to poor regions, improve infrastructure, attract investment, and create jobs. The following year, the European Regional Development Fund was created.

Ten years later, an important milestone was reached: for the first time, members of the European Parliament were elected directly by European citizens.

Until then, MEPs⁶⁰ had been delegated by national parliaments. MEPs⁶¹ were part of pan-European political groups, not national delegations.

Although tariffs were abolished in 1968, trade between member states was not free cross-border. The main obstacle was differences in national rules.

The Single European Act launched an extensive six-year program to solve these problems and create a single market: the law, which entered into force on July 1, 1987, gave a voice to the European Parliament and strengthened the Community's powers in the field of environmental protection.

In addition, the Erasmus program, a policy of funding university students wishing to study in other European countries, was launched to strengthen the training of the next generation.

Since then, the program has provided more than 10 million people with the opportunity to study, train, volunteer, or gain work experience abroad.⁶²

In 1993, the single market was launched with the "four freedoms" - the free movement of people, goods, services, and money.

The 1990s were also the decade of two treaties: the 1993 Treaty on European Union (the Maastricht Treaty) and the 1999 Treaty of Amsterdam.

Austria, Finland and Sweden joined the EU in 1995, and a small village in Luxembourg gave the name to the Schengen Agreement.

The Schengen Agreement entered into force in seven countries - Belgium, France, Germany, Luxembourg, the Netherlands, Portugal and Spain.

Travelers can move between these countries without passport controls at the border; by 2021, 26 countries will become passport-free Schengen members, including Iceland, Liechtenstein, Norway and Switzerland.

Maastricht was a milestone, setting clear rules not only for the future single currency, but also for closer cooperation in foreign affairs, security policy, justice and home

⁶⁰ Member of the European Parliament

⁶¹ Ibid

⁶² From <https://european-union.europa.eu/principles-countries-history/history-eu>

affairs. This treaty formally established the "European Union," which entered into force on November 1, 1993.

In addition, the single market and its four freedoms (free movement of people, goods, services, and money) were created in 1993; hundreds of laws concerning taxation, business regulations, professional qualifications, and other barriers to opening the border were agreed upon since 1986.

In 1994, the European Economic Area was also created, and the single market was extended to EFTA member states.

Today, 30 member states of the EEA (27 EU countries plus Iceland, Liechtenstein and Norway) allow the movement of people, goods, services and capital: Switzerland is not a member of the EEA, but has access to the single market.

The Treaty of Amsterdam was signed in 1997: the treaty builds on the achievements of the Maastricht Treaty and outlines plans to reform EU institutions, give Europe a greater voice in the world and devote more resources to employment and citizens' rights. It will enter into force on May 1, 1999.

The final step is the introduction of a common currency, the euro, introduced in 11 countries for commercial and financial transactions only: it will be followed by banknotes and coins.

The first countries to introduce the euro were Austria, Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal and Spain.

Banknotes and coins were first issued in January 2002, and the euro became legal tender in 12 EU countries.⁶³

Naturally, the printing, minting and distribution of coins represented a massive logistical operation, since the coins were standardized on the one hand, and had national emblems on the other.

Banknotes, on the other hand, were the same in all countries, with a maximum denomination of 500 euros, which, as will be discussed later, posed a problem for AML/CFT supervision.

In 2007, member states signed the Lisbon Treaty, which amended previous treaties: the treaty was intended to make the EU more democratic, efficient and transparent, allowing it to address global issues such as climate change, security and sustainable development.

The global economic crisis also hit Europe hard, with several countries facing budgetary problems after the economic crisis that began in 2008. The 16 EU countries that use the euro have approved plans to deal with budget deficits.

⁶³ Greece joined the eurozone in 2001, and several more countries joined after 2002.

This catastrophe sent a strong message about the need for stronger banking supervision and led to the creation of a banking union to ensure safer and more secure banks.

Several emergencies have occurred in recent years that required federal intervention, but they were not always decisive.

Moreover, now that war has broken out in Ukraine, member states have agreed to support Ukraine, but political forces in different countries argue about the morality of this support.

Now we should see in further detail the institutions that are the foundations of the European Union since for our purposes many of these are going to be mentioned in the next chapters.

1.7.1 Commission

The European Commission is one of the main institutions of the EU and is the driving force behind the legislative process as well as the executive body of the EU.

The Commission is composed of Commissioners elected individually from each EU Member State, each of whom is responsible for taking decisions independently of the governments that appointed them.

It represents and defends the interests of the European Union as a whole and proposes, with exclusive legislative initiative, the adoption of EU legislation with the final approval of the European Parliament and the Council of the European Union.⁶⁴

The Commission is therefore the guardian and guarantor of Community law. The Commission's tasks are fulfilled through infringement proceedings against Member States.

The Commission shall give advice or opinions in the fields expressly provided for in this Treaty or where the Commission considers it necessary.

This is an advisory power of general scope, consistent with the scope of the Convention.

The Commission shall have its own decision-making powers and shall participate in the formulation of acts of the Council and the European Parliament under the conditions laid down in this Convention.

The Commission has the right to lead the legislative process, i.e. to propose legislation for adoption by the European Parliament and the Council.

This body of the EU exercises the powers conferred on it by the Council and applies the rules laid down by the Council.

As the executive organ of the European Union, the Commission is also responsible for the substantive implementation of the Common Policy, the management of the European Union program and the management of the Community budget.

This competence is also provided for in Article 291 TFEU: In adopting the measures necessary for the implementation of EU legislation, the Commission shall be assisted by a Commission composed of representatives of the Member States, experts, non-governmental organizations, business and representatives of the business community.

⁶⁴ See <https://eur-lex.europa.eu/eli/reg/2021/821/oj> and <https://www.cyelp.com/index.php/cyelp/article/download>

1.7.2 Parliament and Council

As previously mentioned the Parliament is elected by universal suffrage every five years since 1979: the role of this institution is to perform the legislative functions of the EU and has legislative initiative in certain cases provided for in the Treaties.

Furthermore participates in the procedure for approving the EU budget, elects the President of the Commission, approves or rejects Commission-wide appointments and can force the Commission as a whole to resign by adopting a no-confidence resolution.

At this point we may ask ourselves how can the Parliament represent adequately all the citizens of the Member States.

The solution that was found allocated to each Member State of the European Union (EU) a number of representatives determined by population according to the criterion of 'descending proportionality'.

This means that the more populous a country is the more of its citizens will be represented by a single MEP. After the Treaty of Lisbon, all countries concerned have adopted the same electoral system for MEPs, but each country has adopted its own procedures on eligibility, how to vote and how to notify nominations.

However, the elections for the European Parliament must be held across the EU between Thursday morning and the Sunday immediately following.

As a result, Maltese voters have around ten times more influence than German voters: in 2014, Germany (80.9 million inhabitants) elected 96 MEPs for every 843,000 inhabitants, while Malta (0.4 million inhabitants) had six seats for every 70,000 inhabitants.

It was mentioned before that the European Commission, which is the executive branch of the EU, typically plays a central role in proposing legislation.

This institution has the authority to draft legislative proposals and submit them to the other institutions, such as the European Parliament and the Council of the European Union, for consideration and approval.

However, there are other avenues for proposing legislation in the EU: for instance the European Parliament has the power to request the Commission to propose legislation on a specific matter.

If a majority of the European Parliament supports such a request, the Commission is obliged to consider it.

Furthermore, national parliaments of EU member states can also have an influence on EU legislation.

In areas in which the European Union does not have exclusive competence, the principle of subsidiarity⁶⁵, laid down in the Treaty on European Union, defines the circumstances in which it is preferable for action to be taken by the Union, rather than the Member States.

National parliaments have the right to submit reasoned opinions if they believe that a legislative proposal does not comply with this principle, in case the EU has overstepped its role.

The Council of the European Union was named after the 2007 Lisbon Treaty and shares legislative competence in the European Union with the European Parliament.

This institution is formed by a selection of ministers from the governments of the 27 EU Member States: the Treaties do not establish a hierarchy between the two bodies of the EU-

As previously mentioned, the Council is composed of a ministerial-level representative from each Member State as laid down by Article 16 of the Treaty on European Union: these ministers are elected according to the subject matter of interest.

A peculiar case is represented by Germany, which for some matters does not have a single minister since it is a federation.

Usually there is a minister for each "Land", so the regions: the State will appoint the most competent or representative one to the Council.

Depending on the agenda, a ministerial-level representative responsible for the topic under discussion, so for instance foreign affairs, transport or agriculture, represents each Member State.

Furthermore, there is the European Commissioner who is responsible for the topic under discussion: the Presidency of the Council of Ministers is rotated every six months.

There are ten different bodies in which the Council meets, but only two are explicitly mentioned in the Treaty on the Functioning of the European Union⁶⁶

- Foreign Affairs Council (chaired by the High Representative of the Union for Foreign Affairs and Security Policy)⁶⁷
- Economic and Financial Council (ECOFIN Council)
- Agriculture and Fisheries Council
- Justice and Home Affairs Council
- Council for Employment, Social Policy, Health and Consumer Affairs

⁶⁵ See Article 5(3) of the Treaty on European Union (TEU) and Protocol (No 2)

⁶⁶ https://it.wikipedia.org/wiki/Consiglio_dell'Unione_europea

⁶⁷ Ibid

- Competitiveness Council
- Transportation, Communications and Energy Council
- Environment Council
- Education, Youth, Culture and Sports Council

The Treaty of Nice introduced a 'weighted voting' system whereby each Member State is given a certain number of votes proportional to the population: this system is intended to balance the representation of less populous countries.

In the original system, a qualified majority was deemed to have been achieved if:

- an absolute majority of the members of the Council (2/3 if the proposal to be adopted does not come from the Commission)
- 255 out of 345 votes (260 out of 352 after Croatia's accession to the EU)

Following the adoption of the Lisbon Treaty (2007), a "double majority" system was to be adopted as of October 31, 2014.

In the case of legislation submitted by the Commission or the High Representative, it must be supported by 55% of the member states representing 65% of Europe's population (15 of 28 member states as of 2018);

In all other cases, 72% (20 of 28, as of 2018) of Member States representing 65% of Europe's population must be in favor.

1.7.3 Law Making Process

At this point, we should concentrate our discussion on the process that originates a law in the European Union.

The first step is, as previously mentioned, the proposal stage: the European Commission, as the EU's executive branch, recognizes the need for legislation, conducts inquiries, and drafts proposals based on EU policy priorities and objectives

In order to verify if such proposal is adequate to the environment of the Union, the Commission might discuss it with different stakeholders, such as member states, industry representatives, and civil society groups.

Furthermore, the Commission will also develop impact assessments to evaluate the possible economic, social, and environmental effects of the proposal.

The second phase involves the European Parliament and the Council of the European Union review the suggestion of the Commission: the Parliament can propose amendments and has the power to request further legislative initiatives from the Commission.

In the Council, the EU appointed ministers from the member states proceed to the same type of discussion.

In most cases, the Parliament and the Council cooperatively participate in the legislative process using the co-decision process

This procedure, like in a bicameral system, gives equivalent weight to the Parliament and the Council and requires their consent to adopt legislation.

The next stage in the Adoption phase in which the Parliament and the Council take part in consultations to reach an arrangement on the final text of the legislation.

They consider each other's amendments; suggest compromises trying to reach a common solution.

Once they find an agreement, the Parliament and the Council formally accept the legislation: this involves voting the final text.

After the adoption, it is the turn of member states to transpose the EU legislation into their legal systems within an indicated time lapse.

It is possible that the States will have to change their legislation or procedures in order to comply with EU laws.

The Commission, since it holds the executive power, is also expected to verify the implementation of EU law by member states: this means that it may initiate infringement proceedings against a member state that fails to fulfill its obligations or violates EU law.

1.7.4 Treaties

As for treaties, the EU operates under a set of foundational treaties that define its legal framework and governing principles. The main treaties include:

1. Treaty on European Union (TEU): Also known as the Maastricht Treaty, it established the EU in 1992 and outlines its objectives, decision-making processes, and institutions.
2. Treaty on the Functioning of the European Union (TFEU): This treaty, previously known as the Treaty establishing the European Community (TEC), sets out the EU's internal market rules, competition policy, agriculture, and more.
3. Lisbon Treaty: The Treaty of Lisbon, which entered into force in 2009, amended the previous treaties and strengthened the EU's role in areas such as foreign policy, energy, and justice.

These institutions and treaties form the foundation of the EU's governance and provide the legal framework for its policies and decision-making processes.

The TEU established the framework and institutional structure of the EU. It sets out the objectives, principles, and decision-making processes of the Union.

The creation of this treaty cemented three fundamental pillars of the EU:

-The European Communities: This pillar deals with monetary and social matters, which are the basis of the Union that originated from a series of economic agreements.

-Common Foreign and Security Policy (CFSP): The objective of this policies is to support and organize foreign policy among EU member states: naturally deals with diplomacy, defense, and security cooperation.

-Justice and Home Affairs (JHA): This pillar stresses the necessity of cooperation in matters such as justice, police, and immigration. It aims to create a common approach to combat crime, ensure justice, and manage migration within the EU.

The TFEU is one of the main agreements that structures the European Union (EU) and works in combination with the Treaty on European Union (TEU).

The TFEU was originally known as the Treaty establishing the European Economic Community (EEC) and was renamed with the Treaty of Lisbon in 2007.

The principal role of the TFEU is to serve as legal basis for the goals of the EU, particularly in the area of economic and social policies.

It defines the framework for the functioning of the EU in these matters:

-Internal Market: the objective is to remove barriers to trade, harmonize protocols, and stimulate fair competition among the whole territory of the Union.

-Competition Policy: deals with antitrust, state aid and mergers within the EU: these policies aim to safeguard fair competition, avert monopolies and endorse an open solid field for businesses.

-Economic and Monetary Policy: the TFEU establishes the economic and monetary union (EMU) and the euro as the single currency of the euro area

-Social Policy: the treaty includes provisions for social policies such as strategies connected to employment, social protection, health and safety at work, and non-discrimination.

-Common Agricultural Policy (CAP) and Fisheries: mainly focused on maintaining a sustainable supply of food, protecting rural farmers or small industries.

With fishery, the policies might be on the means of fishing, the competition and initiatives to protect marine resources.

Furthermore, the TFEU deals various other policy areas, including transport, energy, environment, consumer protection, research and innovation, regional development, and more.

In general, the interventions that the EU is empowered to make are of different type: some of them are binding, so the Member States that do not comply will be reprimanded and possibly sanctioned.

A Regulation is a binding type of “hard” law so from the moment of its approval is valid and Member States are expected to apply it immediately in its totality.

For example, when the EU’s regulation on ending roaming charges while travelling within the EU expired in 2022.

The Parliament and the Council adopted a new regulation both to improve the clarity of the previous regulation and make sure a common approach on roaming charges is applied for another ten years.⁶⁸

A "directive" is a legislative act that creates an objective and sets out requirements for all EU countries, which must be applied.

However, it is up to the individual countries to devise their own laws on how to reach these goals: in other words they have to implement the requirements of the EU in their domestic legislation.⁶⁹

A "decision" is binding on those to whom it is addressed which can be an EU country or an individual company and is directly applicable: for example, the Council issued a decision on allowing Croatia to adopt the euro on 1 January 2023.

⁶⁸ See https://european-union.europa.eu/institutions-law-budget/law/types-legislation_en

⁶⁹ Ibid

Furthermore there are two types of interventions which are not binding and could be defined as instruments that allow the EU to take position on matters without impositions.

A "recommendation" is not binding and in case it is rejected or ignored does not have any legal consequence.

Therefore, a recommendation allows the institutions to make their views known and to suggest a line of action without imposing any legal obligation on those to whom it is addressed.⁷⁰

An "opinion" is an instrument that allows the bodies of EU to express a make a statement in a non-binding fashion, so without imposing any legal obligation on those to whom it is addressed.

While laws are being approved, the committees draft opinions from their specific regional or economic and social viewpoint.

The implications for our purposes are that when we deal with Directives, in particular in the subject of AML and CTF, the crucial detail will be analyzing how the requirements have been transposed into the national legislation.

⁷⁰ See https://european-union.europa.eu/institutions-law-budget/law/types-legislation_en

1.8 REGULATION (EU) 2021/821

Being a Regulation, the requirements are binding for all Member States and this is logical: cooperating in exportation is one of the main drivers of the formation of the EU.

This part of the chapter is an introduction of the definitions and concepts that we are going to see in the second and third part of our discussion.

In the second article we find some useful definitions of the terms of this subject: the first, probably most important, is the interpretation of dual-use item.

“Dual-use means items, including software and technology, which can be used for both civil and military purposes, and includes items which can be used for the design, development, production or use of nuclear, chemical or biological weapons or their means of delivery, including all items which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices”.⁷¹

Then there is the concept of export: in this case it’s necessary to look back at the Union Customs Code of 2013, where we can find a definition of the “Union goods”

"Union goods means goods which fall into any of the following categories:⁷²

(a) goods wholly obtained in the customs territory of the Union and not incorporating goods imported from countries or territories outside the customs territory of the Union;

(b) goods brought into the customs territory of the Union from countries or territories outside that territory and released for free circulation;

(c) goods obtained or produced in the customs territory of the Union, either solely from goods referred to in point (b) or from goods referred to in points (a) and (b)”⁷³

This concept is crucial because it is referenced when the Regulation 2021/821 defines “exportation”: Union goods to be taken out of the customs territory of the Union shall be placed under the export procedure.⁷⁴

The Union Customs Code requires operators to register to their domestic authorities or the competent authority of the countries they operate in.

⁷¹ Article 2, of Regulation (EU) 2021/821, see <https://eur-lex.europa.eu/eli/reg/2021/821/oj>

⁷² From <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02013R0952-20200101>

⁷³ Article 5, paragraph 23 of Regulation (EU) No 952/2013

⁷⁴ Article 2, of Regulation (EU) 2021/821, see <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02013R0952-20200101>

Furthermore, “In specific cases, economic operators which are not established in the customs territory of the Union shall register with the customs authorities responsible for the place where they first lodge a declaration or apply for a decision”⁷⁵

The exporter is defined as

“(a) any natural or legal person or any partnership that, at the time when the export declaration or the re-export declaration or an exit summary declaration is accepted, holds the contract with the consignee in the third country and has the power to determine the sending of the items out of the customs territory of the Union; where no export contract has been concluded or if the holder of the contract does not act on its own behalf, exporter means the person who has the power to determine the sending of the items out of the customs territory of the Union; or

(b) any natural or legal person or any partnership that decides to transmit software or technology by electronic media, including by fax, telephone, electronic mail or by any other electronic means to a destination outside the customs territory of the Union or to make available in an electronic form such software and technology to natural or legal persons or to partnerships outside the customs territory of the Union.”⁷⁶

However, the exporter is not the only player that can be involved in the exportation of goods produced or transiting through the Union.

The regulation presents multiple kinds of export authorizations, such as individual export authorizations, global export authorizations, large project authorizations, Union general export authorizations, and national general export authorizations.

In the next chapters we are going to see these authorizations and how they specify in detail the conditions and requirements for exports.

Transit refers to the transportation of dual-use items, produced outside the Union, entering and passing through the territory of the Union with a destination that is outside the customs territory of the Union.

Various scenarios are considered as transit, including external transit procedures, trans-shipment within free zones, or direct re-exportation from temporary storage facilities.

The Regulation also mentions the concept of brokering services: they are the “negotiation or arrangement of transactions involving the purchase, sale, or supply of dual-use items between third countries.”⁷⁷

⁷⁵ Article 9, paragraph 2 of Regulation (EU) No 952/2013, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02013R0952-20200101>

⁷⁶ Ibid

⁷⁷ Article 2, paragraph 7 of Regulation (EU) 2021/821, see <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019R0125>

We should note, “Ancillary services such as transportation or financial services are excluded from this definition”.⁷⁸

Furthermore, we have the definition of technical assistance, which is defined as: “any support related to repairs, development, manufacture, assembly, testing, maintenance, or other technical services. It can be provided through various means, including electronic media, telephone, or verbal assistance.”⁷⁹

In order to be a provider of such technical assistance a person has to fall into one of the elements of this list:

- Providing a service from a Union country to a customer into a third country, so outside the EU zone
- Providing such service while into a third country
- Providing assistance for a client established in a third country who is temporarily operating within a Member State

The regulation highlights the requirement for exporters to form and continue an internal compliance program (ICP).

The ICP should involve strategies and procedures to guarantee compliance with the regulation's requirements and goals.

An operator in this field is required to apply for an authorization from the competent authorities in case:

- The operator is dealing with items listed in Annex I
- The competent authority has informed the operator that the item might be used for military purposes directly or used in the constructions of it.⁸⁰

Article 4 includes a “catch-all” clause, which allows the local competent authorities to require authorisation, in other words to potentially impede the export, of items not in the list but that can be employed for military or terroristic use

The regulation comprises a precise class for dual-use items intended for secret surveillance of individuals through data monitoring and analysis of information.

⁷⁸ Ibid

⁷⁹ Article 2, paragraph 9 of Regulation (EU) 2021/821, see <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019R0125>

⁸⁰ Article 4 of Regulation (EU) 2021/821

CHAPTER II: THE ROLE OF SANCTIONS IN THE RUSSO-UKRAINIAN CONFLICT

In this chapter, the discussion will be focused on the current situation in Ukraine and how the intervention of the Western block is affecting the conflict.

The main themes are going to be the situation on the field, the paramilitary groups involved and dual use goods are still reaching Russia despite the embargo.

Furthermore, the analysis will be focused on the sanctioning regime imposed on Russia after the invasion.

2.1 THE SITUATION ON THE FIELD

The invasion proved to be much more complicated than expected for Russia which, unlike the previous intervention in 2014 where she had not met significant resistances in Crimea, found itself in front of a motivated and organized army capable of inflicting enormous losses from the first moments of the invasion.

The situation has further worsened since the western countries, which were already gradually equipping Ukrainian forces with the best military technology available, have started to pour drones, anti-tank weapons and artillery in Ukraine.

On the other hand, Russian military doctrine is based on quantity more than quality since the times of the Second World War.

The basic idea is that mass fire power of the artillery can suppress the enemy paving the way for ground troops, which in theory should overwhelm the enemy with the strength of the numbers, circumventing and overcoming the opposing positions.

This doctrine based on the search for multiple breakdown points of the enemy front had already been studied and partly addressed during the Second World War.⁸¹

According to an analysis of 2018 from the US agency AWG⁸² it is possible to see very accurate predictions of what has actually materialized on the field.

The modern Russian units have evolved into smaller and smaller formations provided for a type of conflict other than a large-scale war.

⁸¹ See <https://www.awg.army.mil/AWG-Contributions/AWG-Recruiting/Article-View/Article/1809312/this-is-how-the-army-thinks-russia-would-wage-war/>

⁸² Asymmetric Warfare Group

The operational Russian military unit is the Battalion Tactical Group, which can be adapted for specific missions through the addition of anti-aircraft units, electronic war and artillery.

This kind of flexible unit was used with great success from France during the Serval Operation in Mali against the jihadist forces that had attempted to occupy the north of the country.

There the ability to quickly deploy a few thousand men trained to maneuver in a synchronized way against an unconventional enemy has proven decisive.

However, in the face of a conflict that includes hundreds of thousands of soldiers on a huge frontline the task of coordinating units that include different departments becomes very difficult.

Here is the first problem for the Russian forces, already identified in the early stages of the conflict: the logistical support was not enough to maintain an operation on such a large front.

We must consider an element in modern war, the so-called tooth-to-tail ratio, that is, the relationship between the operating units and the auxiliary staff necessary to support the war effort.

This auxiliary staff includes mechanics, drivers, cooks and all services not directly linked to combat.

To give a rapid idea of the numbers, a legion of the Roman Empire counted about five thousand legionaries in full organic.

There are no specific standards, also due to the evolution of an army that has remained in activity for almost four centuries, but the sources cite at least one servant every eight legionaries, which constituted the basic nucleus of the Roman forces called "contubernium", to which they came added engineers and doctors.

It could safely be a number close to or greater than a thousand of non-combatives who regularly followed each legion.

At the time, obviously the technology was much more backward and this leads us to understand that modern armies completely depend on the support staff and that this exceeded the forces that can be used in combat.

We can illustrate this case with an example: John J. McGrath in his "The Other End of the Spear: The Tooth-to-Tail Ratio (T3R) in Modern Military" refers to the distribution of the US contingent in Iraq and in the nearby support bases in Kuwait.

The staff was divided in this way:⁸³

- 28% unit ready for combat
- 41% logistic support staff
- 14% medical personnel
- 17% administrative staff

After a year, the clear difficulties shown by the Russian army to maintain their connection lines in efficiency show the importance of this factor too often underestimated in the military.⁸⁴

Russia's passion for the "god of war" dates back to several centuries and Russian tactics still emphasize artillery as a decisive tool to destroy enemy formations, while the maneuvering units manage the raking of survivors.⁸⁵

Moscow has long planned to use ever larger cannons as a means of compensating the qualitatively lower training of its forces.

While the western soldiers use artillery more and more to hit the enemy positions precisely, the Russian army still enhances large-scale bombings with overwhelming volumes of fire power, even with multiples systems such as the BM-30 Sirch, an evolution of the concept of the infamous Katjuša from WWII.

In Ukraine, the large scale adoption of drones was also a "turning point" in the effectiveness of artillery.

The forces supported by Russia in the 2014 conflict phases used drones to coordinate the battery shooting and were able to hold back regular forces: from this experience Ukrainian army learnt to rebuild its doctrine and structure.

However, a weakness of Russian artillery in a large -scale conflict is its centralized command and control structure, which makes it difficult for the troops on the front line to request support.

While the self-propelled artillery vehicles can accompany the troops on offensive maneuvers, in general, combat units need to bombard the enemy from a safe distance: this strategy is effective against a conventional frontline but less flexible during an advance in column.

⁸³ See John J. McGrath *The Other End of the Spear: The Tooth-to-Tail Ratio (T3R) in Modern Military*, p.54

⁸⁴ See <https://www.thenationalnews.com/world/2022/03/19/analysts-say-russia-faces-numbers-game-challenge-in-ukraine/>

⁸⁵ See <https://www.awg.army.mil/AWG-Contributions/AWG-Recruiting/Article-View/Article/1809312/this-is-how-the-army-thinks-russia-would-wage-war/>

This strategy was reviewed during the early stages of the conflict, in which once the first Ukrainian defense lines had been overcome, the Russian columns in the north of the country began to aim straight towards Kiev ignoring local resistance pockets.

Certainly, it was a calculated risk that, in the face of the strenuous defense of both the military and the civilians of the Kiev region, exposed the sides of the invasion forces.

In this regard, we remember the many images of armored columns being flanked and cut down with rocket launchers and drones while they were on the road

As last point we should mention the use of paramilitary and local irregular forces to support the hardest fights.

Moscow has made an increasing use of allied irregular forces and private mercenary companies to guide operations in Ukraine and Syria, supported by Russian consultants, military equipment and training.

This approach was partly inspired by western commitment with allied delegates in conflicts ranging from Vietnam to Libya and Afghanistan.

Employees on the field, irregular ones create different useful effects for successful Russian military operations: they are a form of "Confusion, deniability and additional workforce."⁸⁶

Furthermore, local mercenary and irregular don't require conventional Russian military units to intervene in the sectors that are most necessary and also help to paint political legitimacy for Russian military operations.

In fact, Moscow is placing a renewed emphasis on the "information war" to model the human terrain of an area of conflict in its favor.

Finally, Russia has been using the mercenary or irregular units to deny the involvement of its strength, confusing the reactions of its opponents.

This was particularly evident in the first conflict in Ukraine in 2014, when the government's reaction was initially paralyzed by the uncertainty that she had to face a Russian invasion or a purely local revolt.

In the same way in Syria, there was often uncertainty that a given direct attack against civil objectives was perpetrated by the Syrian or Russian forces.

The Russian strategy is therefore based on quantity more than on quality both in the means and in the troops used in the fighting.

⁸⁶ See <https://www.awg.army.mil/AWG-Contributions/AWG-Recruiting/Article-View/Article/1809312/this-is-how-the-army-thinks-russia-would-wage-war/>

The paramilitaries then find a place in the Russian military doctrine as a first -line unit with the task of breaking through the enemy front and opening the way for regular troops.

It is therefore understandable that the commands expect high losses among the irregular forces and do not want to waste their best armored or in general equipment for individual soldiers entrusting them to troops that will probably not return behind.

This has a fundamental implication for our discussion: some of the independent units directly involved need to improve their individual or department equipment.

At this point we should pull some sums on the situation: the sources suggest a picture in which Russian war doctrine is based on a limited military budget.

The fire power is present and considered fundamental to pave the road but it is not always precise and consequently it is expected that the assaults will not always succeed.

For this reason, the first waves are almost always made up of units of poor experience or paramilitary: we are seeing a clear example now in Bakhmut.

There the Wagner group has achieved results but at the cost of numerous losses, which have fallen, but they have a private contract with the company and their death is not something the Russian government must respond for.

2.1.1 The paramilitary forces that support Russia

To view the organization and creation of these paramilitary units, we must realize that the war is changing compared to the last century.⁸⁷

In fact, we were now used to states that fought by using professional armies, framed and coordinated at the centralized level also in the period of peace with uniformity of training, equipment and salary.

In the last twenty years, starting from the missions in Afghanistan and Iraq, we have witnessed an exponential increase in the use of private staff alongside the regular forces.

Even one in four member of the American contingent in Iraq in 2016 had a contract as a private security operator, although these contractors often had previous military experience in an army of the western blockade.

Russia has brought this system to an even higher level: in Ukraine we are seeing, in particular during the siege of the now ghost city Bakhmut, the use of a private army.

This is the private military company (PMC) Wagner, of which it is not much known but appeared for the first time in 2014 to support the separatist militias in Donbass.

His leader at least on paper is the Logistics expert Yevgeny Prigozhin, who is also the image man when he appears to the front and sometimes speaks with critical tones on the performance of regular forces.

The military arm of the group, since it is more than a network of paramilitary units, has been founded and probably still managed by the former Lieutenant Colonel Dmitry Valerievich Utkin, who had served in the special forces of Russian military intelligence, called Gru.

The PMC Wagner has become the Longa Manus of the Federation, participating directly in the war in Syria, Libya and supporting the government forces of the Central African Republic.

To support the invasion, the Wagner group has had authorization to thicken their ranks with former soldiers who offer volunteers but above all Russian prisoners.

In exchange for their service they are granted an important discount on their sentence after a one year long period at the front.

It was impossible to know how many men understood before, however an estimate of the spokesman for the National Security Council of the White House John Kirby has

⁸⁷ See Privatization of Security in Iraq with Us Intervention: The Role and Effects of Contracted Personnel and Private Military and Security Companies, Mehmet Turan Çağlar, p.2

now gave an estimate of "10000 members of private staff and 40000 conscripts from prisons" ⁸⁸

Pavel Luzin, a Russian political analyst, told Bellingcat that the Russian authorities use mercenaries not only as "cannon fodder", but also as a tool to prevent political threats from Russia ". ⁸⁹

"There are no private initiatives in this field and all the groups of mercenaries are affiliated to branches of the police " ⁹⁰said Luzin, who regularly writes about military issues for the Independent Riddle site.

As already mentioned, thanks to the mercenaries, the Russian authorities are able to limit the losses between troops and regular units.

In addition to the Wagner we can identify two formations that group the paramilitary forces that fight alongside the Russian soldiers.

The popular militia of Donetsk and the popular militia of Luhansk were founded in the first days of the 2014 conflict and had a former Ukrainian army departments consisting mainly of men of Russian ethnicity and local volunteers.

There is a classification of the two armies that brings the counting to 40000 men around and shows a mixed army with conventional forces and departments made up of militiamen. ⁹¹

Some of the militant groups identified in social media posts, seen by Bellingcat, who are building Russian military forces are under the umbrella of the Coalition of the Donbass volunteers (SDD), led by Aleksandr Borodai, former prime minister of the self proclaimed "People's Republic of Donetsk "(DNR).

After leaving power in 2014, Borodai became head of the SDD, a large organization of Russian fighters in Donbass, who has branches throughout Russia.

Borodai is currently part of the Parliament of the Russian Federation as vice president of the political party of the president Vladimir Putin.

Both the testimonies on the video and the interceptions during this year of conflict show how a large part of the Russian troops receive lower equipment compared to the enemy.

⁸⁸ See <https://www.nbcnews.com/news/world/russia-ukraine-war-wagner-group-criminal-organization-white-house-rcna66830>

⁸⁹ See <https://www.bellingcat.com/news/2022/06/17/meet-the-irregular-troops-backing-up-russias-army-in-the-donbas/>

⁹⁰ Ibid

⁹¹ See https://it.wikipedia.org/wiki/Forze_secessioniste_del_Donbass

Recall that these are regular units, we can therefore imagine that the paramilitary forces that support the Russian army are equipped even worse.

From the photographs and interceptions it appears that the main elements that are missing or are of little quality for the Russian forces are the bulletproof plates and clothes suitable for winter.

Standards therefore very different from those of the western armies and now also of Ukrainian forces, which usually bring bulletproof plates into the so-called Plate Carrier.

It is a tactical vest that includes a plate usually consisting of a steel layer and a ceramic one as well as the pockets where you can transport chargers, water and the radio.

In short, we understand the need for here irregular groups to improve their individual kit but also of the department.

In fact we will see that the funds obtained also serve to buy the materials and build or repair drones.

In fact, the latter had already played an important role in the conflict in Syria and Iraq against ISIS and Nagorno Karabakh between Armenians and Azeri.

Now in Ukraine drones of various kinds are being used massively both in terms of battalion or regiment to hit the enemy both as a means of reconnaissance with smaller units.

One of the groups identified and sanctioned is the Rusich Task Force, which the OFAC describes as "a neo-Nazi paramilitary group that took part in the fighting alongside the Russian forces in Ukraine".

The Task Force Rusich is one of the irregular units that calls himself "battalion", such as the Sparta and Somalia battalions of the Republic of Donetsk.

To distinguish the terms and numbers involved, the term battalion is often used but it is not specified by how many men it is composed.

This clearly is a definition that differs between the various armed forces, however, we can draw indicative data.

For the mechanized infantry, which constitutes the backbone of modern earth troops, eight or nine companies, each counting around a hundred soldiers, form a battalion.

An organic full battalion is therefore made up of about a thousand soldiers, more battalions constitute a regiment and more regiments a brigade.

This is at least the theoretical division, then the term probably is use deliberately by irregular forces to give themselves a more aggressive tone.

A crucial part of these irregular forces is dedicated to raise funds for its military branches.

This is the reason behind the intensive propaganda that usually spans between pure nationalism to a machist mentality of gaining glory and honor in war.

This is the reason why we have defined this matter as closest to the CTF that pure anti-money laundering as part of the Russian war effort rests on the shoulders of paramilitary groups that are considered terrorist groups.

2.1.2 Funding to paramilitary groups

The research of the "Chainanalysis" intelligence agency, specialized precisely in tracking movements on blockchain, shows us the presence of money movements from Russian users.

The agency suspects, that these they are accounts used by oligarchs to move money and circumvent the penalties imposed by Western countries ⁹²

This is because Chainanalysis tracks "whales" are private wallets belonging to Russian citizens who hold more than \$ 1 million in crypto currencies.

“Between the moment when the news joints began and on March 21, we monitored just over 62 million dollars in crypto currencies sent by the Russian "whale" to other addresses, many of which were connected to platforms and OTC Exchange, some of the which are part of the high risk category. “⁹³

As often happens in this kind of activity, the transfers of money from the Russian "whale" touched a maximum of almost eight months, 26.5 million dollars, in the week of February 28, shortly after the invasion. ⁹⁴

Now we will see what the TRM LAB, another intelligence agency, has reconstructed on the financing of the Rusich Task Force.

This investigation was carried out as part of a wider revision of the risks placed by extremist groups and organizations that facilitate the movement of digital goods, such as exchanges.

The Rusich Battalion is directly connected to Wagner, although the latter almost certainly receives funds and equipment from the Russian secret services.

It was founded in Russia in the summer of 2014 by the Russians Alexey Yurevich Mirchakov and Jan Igorevich Petrovsky and had the baptism of fire in the Middle East, Africa and Ukraine.

Since March 2022, the Task Force Rusich has received around 138,000 US dollars at 11 addresses, including five addresses sanctioned by the OFAC on September 15 and six others six addresses associated with the TRM group.

⁹² See <https://blog.chainanalysis.com/reports/cryptocurrency-ukraine-russia-sanctions/>

⁹³ Ibid

⁹⁴ Ibid

As of September 16, 2022 the most recent transactions to these addresses amounted to 400 US dollars and had taken place on 13 September 2022, two days before the sanctions.⁹⁵

On the morning of September 16 2022, about 9,000 US dollars remained in cryptocurrencies remained in the sales of the addresses.

In particular, when the 11 addresses began to receive funds in March, almost 60,000 US dollars of the funds received were sent by the addresses hosted to the main exchanges and providers of virtual asset services (VASP) of the world.

In the same period, the Rusich Task Force sent almost 64,000 dollars from 11 addresses to addresses resolved to three exchanges, presumably as part of a process of conversion of cash funds or in traditional currency to be used.

The general observation of the TRM LAB is that although some groups keep their websites, Telegram is the main way in which the cryptocurrency addresses are promoted for donations.⁹⁶

The groups that received higher volumes of donations generally had a certain presence before the invasion in February and seem to have benefited from greater crossed promotion on Telegram.

Now that we have made ourselves an idea of how the funds arrive at the sanctioned mercenary or paramilitary groups we should ask how these use the money received.

Where can the equipment necessary for these groups come from? From China, black markets of the Middle East or also handcrafted once the materials are bought.

In fact, with the funds obtained online, the first way to improve the armament of individuals or units is to build them by buying the materials.

On the internet there are several blacksmith tutorials that have built bulletproof vests effective as much if not more than those produced at an industrial level.

For groups made up of high numbers of fighters, it is also possible to build on their own tanks or armored means, usually reinforcing the structures of the Soviet means of origin that have now become fragile in the face of the latest generation anti-tank weapons.

An example is given by the so called "Azovette" models produced in a factory, probably located in Mariupol, from the controversial Azov battalion that fights on the side of Ukraine.⁹⁷

⁹⁵ See <https://www.trmlabs.com/post/who-is-task-force-rusich-the-neo-nazi-paramilitary-group-sanctioned-by-ofac-yesterday>

⁹⁶ See <https://www.trmlabs.com/post/crypto-fundraising-groups-supporting-russian-battlefield-efforts>

⁹⁷ See <https://www.vice.com/en/article/539ndx/a-tour-of-ukraines-mad-max-tank-factory>

The department that has perhaps a thousand men plus other civilian affiliates has been able to systematically improve the T64 tanks, now antiquated, provided by the regular army and make them almost impenetrable.

We can imagine that the use of civil staff such as engineers and mechanics also takes place on the other side of the front.

In the interview given to deputy, the spokesman for the Azov battalion had estimated a figure around 50000 euros to acquire and make changes to their wagons, funds that largely were received by the donations of civilians and often online by supporters in the rest of the world.

China is the state that could make the balance in the conflict tip in favor of Russia, if it were to decide to support the war effort of the Federation with military supplies.

It would therefore an intervention, in open confrontation with NATO, capable of solving the logistical problems that Russia has been meeting since the first days of the invasion.

Through the use of the Import Genius database, the political newspaper political newspaper has traced the arrival in Russia by passing from Turkey of dual Use goods from China, a material that can be used for the construction of bulletproof plates and drones.⁹⁸

The impact of the funds arrived from the rest of the world towards Russian paramilitary groups is significant in terms of numbers but not such as to significantly change the situation on the field.

Better equipped men are certainly more effective but the Russian difficulties seem to be of a too large and deep level to be resolved with a few million donations in crypto currencies.

It is in fact an army that was not structured to support a conventional conflict, with many armored means that have now become fragile in the face of new anti -tank technologies.

Above all, the main enemy of the Federal Army seems to be bad logistics, a problem that would however be armed or perhaps even solved by China's intervention in support of Russia as the countries of the western block with Ukraine are doing.

⁹⁸ See <https://www.politico.com/news/2023/03/16/chinese-rifles-body-armor-russia-ukraine-00087398>

2.2 SANCTIONARY REGIME

As we said the dual goods discipline aims at avoiding the proliferation of conflicts around the globe: at this moment we have to introduce our main practical theme, the Russo-Ukrainian conflict.

After the revolution in 2014 on the 27th February the local militias of Crimea occupied the main centers of power of the region and blocked the most important crossroads almost unopposed.

That paved the way to the troops that were already⁹⁹ in the region to occupy the area and proceed to the annexation through a referendum.

Ukraine could not react and unofficially accepted the development of the situation since it was not in the condition to oppose the annexation.

Things were different in the Donbass region where in April the local separatists clashed with regular Ukrainian forces that were able to repel part of the assaults in the region.

Russia here intervened by donating equipment to the rebels and soon started to support them directly by deploying forces in the region.

Such intervention from Russia, together with the annexation of Crimea, caused the NATO Block to sanction Russia in order to deter further developments.

Before getting into details we should note that the intent of “avoiding proliferation” in this case is different from many others.

The NATO block has been supporting directly Ukraine in the conflict so all sales to their entities are authorized.

More precisely US, United Kingdom, Canada and some EU Member States donated equipment to the Ukrainian army but also private entities can export.

For instance, many collectors of military hardware such as tanks, IFV and APC¹⁰⁰ or jeeps around Europe have sold to wealthy Ukrainian citizens their pieces.¹⁰¹

⁹⁹ Due to a bilateral agreement called “Partition Treaty on the Status and Conditions of the Black Sea Fleet” 25.000 Russian sailors and marines were stationed on the coasts of Crimea.

¹⁰⁰ IFV: Infantry Fighting Vehicle, APC: Armored Personnel Carrier

¹⁰¹ <https://worldcrunch.com/focus/used-tanks-ukraine>

These are broadly divided into economic sanctions and targeted sanctions.

- **Economic sanctions:**

- Containing access to capital markets for Russian state-owned banks and companies: this restricted borrowing from Western financial institutions.
- Limiting exports of dual-use items to Russia, mainly in the energy, military and high-tech sectors such as pipes, armored vehicles and drones.
- Actions to obstruct the development of Russia's oil exploration and manufacture capabilities, including limiting access to drilling technologies and services.
- Prohibiting exports to Russia of certain goods and technologies with potential military use.

- **Targeted sanctions:**

Directed to individuals, companies or sectors that were considered to be directly involved or connected to the invasion.

They include:

- Asset freezes and travel prohibitions against individuals and entities
- Restrictions on arms trade with Russia, particularly the export of military equipment and dual-use technology.
- A ban on the export of certain luxury goods to Russian officials.
- Restrictions on defense and security cooperation and exchanges.

2.2.1 Sanctions imposed in 2014

As it was already mentioned, also the United States imposed in 2014 a series of sanctions on Russia due to its direct support to the separatist militias of Donbass region and the invasion of Crimea.

Likewise, the sanctions mainly targeted individuals, organizations and sectors of the Russian economy.

On March 6, 2014 President Barack Obama signed an Executive Order¹⁰² authorizing sanctions on persons and entities that were considered responsible for the attack on Ukraine and its sovereignty

With Presidential Decree No. 13661 of March 17 sanctions were expanded by further targeting individuals and entities directly involved in the activities of the Russian state in Ukraine.

This Decree authorized asset freezes and restrictions of immigration to the United States for individuals and organizations involved in the destabilization of Ukraine.

Furthermore, the US imposed sectorial sanctions on July 16 of 2014: the US Treasury Department hit crucial sectors of the Russian economy such as finance, energy production and military industry.

These prohibitions limited targeted Russian firms' access to US capital markets and prevented exports of specific items to Russia.

The Executive Order 13662 enhanced this focusing on sanctions to Russia's energy sector by imposing limitations on exports of goods, services and machinery for Russia's shale oil projects and gas extraction.

The EU sanctions against Russia in relation to dual-use goods were laid out in Council Regulation (EU) No 833/2014 of July 31, 2014.

Article 1 prohibited the trade, supply, transfer or export to Russia of dual-use items and hardware that was engineered for military use or military end-users.

It also stated that "dual-use goods and technologies supplied by the Armed Forces shall be considered military use if the end-user is the Russian Armed Forces".¹⁰³

Article 2 required Member States to refuse approval for the export of items with a potential military use to Russia.

¹⁰² An Executive Order from the President is a type of intervention with power conferred by the legislation that does not need initiative or approval from the Congress.

¹⁰³ From Article 1, Regulation (EU) No 833/2014

However, 'exports in fulfillment of obligations arising from contracts or agreements concluded before 1 August 2014 may be authorized by the competent authorities'.¹⁰⁴

Article 3 requires prior approval for the sale, supply, transfer and export of certain technologies used in Russia, particularly in the oil industry.

These are the so-called 'Annex II' products: line pipes, tubes, drilling rigs, offshore vessels and related materials.

Article 4 prohibits the provision of technical assistance, loans and financial assistance to Russia relative to goods items and hardware on the Common Military List; it also forbids similar assistance for dual-use goods and technologies for military use.

Article 5 bans the acquisition, sale or exchange of negotiable instruments and money market instruments issued after 1 August 2014 and issued by Russian entities with substantial public ownership or control.

Article 6 highlights the necessity of information sharing and cooperation between Member States and the Commission on sanctions application.

Article 7 authorizes the Commission to amend Annex I, which lists specific entities and goods subject to sanctions.

The impact of these sanctions is not a matter that we are going to discuss intensively but it is worth mentioning that these reactions targeted individuals whose loyalty to the Russian establishment has not wavered in the past years.

Furthermore, the prohibitions on the export of dual use goods certainly prevented the embarrassing possibility of seeing Russian troops with NATO style equipment but did not have a significant impact on the overall performance of the Russian army due to two main factors.

First of all, the type of equipment that might have been shipped was more connected to the single soldier or small unit capabilities, so drones, optics, night vision or even armored vehicles.

These are types of hardware that could be absolutely useful but in large portion equipment that is not crucial to the large scale functioning of the army.

Secondly, the strategy of the Russian army until the beginning of the new conflict still believed in numbers more than quality: where Russia could find similar equipment to its own were in territories, such as China or Iran, that did not sanction the Kremlin.

¹⁰⁴ From Article 2, Regulation (EU) No 833/2014

2.2.2 Sanctions imposed after the 2022 invasion

As it was already mentioned war is a huge expense for a nation, especially in this era due to the enormous amount of people and technologies involved.

Naturally, one of the strategies to hurt a belligerent is to damage its economy in order to limit its capabilities.

In the case of the war in Ukraine the Western block did not want to intervene and risk escalating the conflict so it resorted to sanctions.

These target both the economy as a whole and individuals that are considered dangerous and promoters of the conflict such as President Vladimir Putin, Wagner's group Evgenij Prigožin and other oligarchs.

Such sanctions involve freezing of assets, for instance cars or houses or yachts and all accounts belonging to the listed persons and entities in EU banks.¹⁰⁵

Travel bans prevent listed individuals from entering or transiting through EU territory, by either land, air or sea.¹⁰⁶

Among the sanctions on entities EU imposed restrictions Russia both for importation and exportation.¹⁰⁷

The export and import restrictions exclude products primarily intended for consumption and products related to health, pharmaceuticals, food and agriculture, in order not to harm the Russian population.¹⁰⁸

Of course, this means that the sanctions affect Russia, but they also affect European companies, and as discussed below, the sanctions regime has been criticized within the EU.

According to European Commission data, the sanctions have banned \$43.9 billion in exports and \$91.2 billion in imports to and from Russia.

The World Trade Organization (WTO) also stripped Russia of its "most-favored-nation" status: this status requires WTO members to lower tariffs to avoid protectionism.

The European Union (EU) and Ukraine's donor countries have blocked Belarus' accession to the WTO.

¹⁰⁵ <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/sanctions-against-russia-explained/>

¹⁰⁶ Ibid

¹⁰⁷ Ibid

¹⁰⁸ Ibid

So let's look directly at which products are banned: ¹⁰⁹

- Cutting-edge technologies (quantum computers, advanced semiconductors, electronic components, software, etc.)
- Certain types of machinery and transportation equipment
- Certain goods and technologies required for petroleum refining
- Equipment, technologies and services for the energy industry
- Aviation and space industry goods and technologies (e.g., aircraft, aircraft engines, airplane and helicopter spare parts or any equipment, jet fuel)
- Maritime navigation goods and wireless communication technologies
- Many dual-use goods (products that can be used for both civilian and military purposes), including drones, software for drones, and encryption devices
- Luxury goods (luxury cars, watches, jewelry, etc.)
- Civilian firearms, their components, and other military materiel
- Other goods that may enhance Russia's industrial capabilities

This list also includes items that cannot be imported from Russia: ¹¹⁰

- Crude oil (after December 2022) and refined petroleum products (after February 2023).
- Coal and other solid fossil fuels
- Steel, steel products, and iron
- Gold, including jewelry
- Cement, asphalt, wood, paper, synthetic rubber, plastics
- Seafood and alcoholic beverages (e.g., caviar, vodka)
- Tobacco, cosmetics

The EU has banned accounting, management and tax consultancy services from June 2022, these services include so-called public relations services, including lobbying.

In October 2022, tougher sanctions were approved, adding legal consultancy of all kinds, IT, engineering, and architecture-related services to the list of already banned services.

¹⁰⁹ See <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/sanctions-against-russia-explained/>

¹¹⁰ Ibid

In December 2022, the new sanctions package introduced a ban on the oil sector in both crude oil and refined products, blocking their import and export.

However, exemptions were granted to countries that had special alternative resources or ways to obtain them quickly due to their geographic location.

However, this closed the door on 90% of oil exports from Russia to Europe, significantly reducing its revenues.

In addition, oil price caps were introduced to stabilize oil prices and avoid market anomalies.

The price caps were set as follows ¹¹¹

-Crude oil: \$60 per barrel

-Discounted oil products: \$45 per barrel

-Premium petroleum products: \$100 per barrel.

This price ceiling was agreed with the G7 member states in addition to other sanctions.

¹¹¹ See <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/sanctions-against-russia-explained/>

2.2.3 Air, Land and Sea

In particular, the transport of oil to third countries by vessels flying the flag of an EU member state is prohibited.

It should also be noted that the EU has banned Russian and Belarusian road transport operators from entering the territory of its member states: the need for this restriction is based on the danger of goods being smuggled in Russia.

However, EU member states may grant exceptions for: ¹¹²

- Energy transportation
- Transportation of medicines, medical supplies, agricultural products, and foodstuffs
- Humanitarian aid purposes
- Transports related to the diplomatic and consular services of the EU and its member states in Russia or to international
- Organizations in Russia which enjoy immunities in accordance with international law¹¹³
- The transfer or export to Russia of cultural goods on loan in the context of formal cultural cooperation with Russia
- The ban does not affect mail services and goods in transit between the Kaliningrad Oblast and Russia.

In the aviation sector, Russian aircraft of all types are prohibited from flying, both at airports and in EU airspace.

Obviously, this restriction extends not only to aircraft registered in Russia, but also to private aircraft chartered or leased to Russian citizens and organizations.

This sanctions regime is also applied in the United States, Canada, and the United Kingdom.

According to European Commission data, almost three-quarters of Russia's current civilian aircraft are produced in the EU, the US, and Canada.¹¹⁴

As a result, there is a risk that several aircraft will be left on the ground without the necessary facilities for repair, with serious consequences for Russia's civilian fleet.

¹¹² See <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/sanctions-against-russia-explained/>

¹¹³ Ibid

¹¹⁴ Ibid

With regard to maritime transport, the EU has decided to embargo the Russian merchant fleet, but there is an exception with regard to transport:

- Energy
- Medicines, medical supplies, agricultural products, food
- Humanitarian aid
- Nuclear fuel and other goods necessary for the functioning of civilian nuclear facilities¹¹⁵
- Coal

However, this measure does not apply to vessels seeking assistance, fleeing, or in need of rescue.

As with aircraft, restrictions apply to vessels whose registration has been changed to avoid sanctions. Authorities can verify flag changes by the number assigned to the vessel by the International Maritime Organization (IMO).

¹¹⁵ See <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/sanctions-against-russia-explained/>

2.2.4 Banking sector

However, the biggest news, and perhaps the one that has had the greatest impact on Russian society, was the sanctions on the banking system.

Indeed, ten Russian and four Belarusian banks were excluded from the SWIFT platform, which stands for "Society for Worldwide Interbank Financial Telecommunications."¹¹⁶

SWIFT is a Belgian messaging platform that connects thousands of financial institutions around the world to send money.

With SWIFT, messages are sent along with the instructions needed to transfer money.

The money transfer is done through a code. The code is a series of numbers and letters, ranging from 8 to 11 characters, that allows secure payments to be made through banks in different countries.

This is considered one of the most efficient mechanisms for verifying the identity of the bank or financial institution making the payment.

As a result, sanctioned banks (the most important ones, including Sberbank) are no longer able to obtain foreign currency or send money abroad.

As noted above, some EU countries remain dependent on Russian gas, so Gazprombank is not exempt from SWIFT permitting payments.

Technically, banks can conduct international transactions without SWIFT, but it is costly, complex, and requires mutual trust between financial institutions.¹¹⁷

Essentially, they need to confirm the details and success of the transaction with the other party by phone or fax.

Assets of Russian nationals in Europe are subject to sanctions in a variety of ways, including freezing bank accounts, seizing assets, and excluding Russian-owned banks from SWIFT lines.

These restrictions target the European holdings and accounts of oligarchs and other persons on the sanctions list in general.

The rationale for this plan is to target individuals who may have an interest in continuing the war or who have sufficient influence to advocate peace but do not take such action.

¹¹⁶ See <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/sanctions-against-russia-explained/>

¹¹⁷ Ibid.

Italian authorities and its central bank (the Bank of Italy) followed the EU framework by freezing \$2 billion in Russian and Belarusian assets, including bank accounts, yachts, and vacation homes. ¹¹⁸

In addition, the FIU obliged banks and others to "transmit information on Russian and Belarusian deposits to the UIF."¹¹⁹

In particular, after Russia began its invasion of Ukraine, the UIF began collecting data on Russian and Belarusian deposits, as well as information on the existence and economic distribution of deposit accounts.

At the end of last year, 170 financial assets deposited with 80 Russian investors were sold, more than half of which were owned or controlled by designated nominees and more than half of which were formally deposited with companies or entities not explicitly included on EU's list.

These were not deposits of ordinary citizens, but "a list of deposits in an amount exceeding 100,000 euros held, as of February 25, 2022, by Russian/Belarusian citizens or natural persons resident in Russia/Belarus, or by legal entities, business entities, or associations established in Russia/Belarus."¹²⁰

The same requirement is valid for individuals resident in Russia and Belarus who have acquired citizenship in one of the member states.

The last entities to be covered by this list are entities established outside the EU that hold at least €100,000 in accounts in a member state, provided that they are controlled directly or indirectly by Russian or Belarusian individuals for at least 50% of the time.

On the other hand, the blockade from SWIFT, while not catastrophic, did cause problems for the Russian financial authorities.

With SWIFT blocked, Russian financial authorities managed to deal with the initial banking outage and maintained a steady supply of rubles despite the depreciation of the ruble.

Nevertheless, for those who want to travel abroad, move funds locally, or hold foreign currency or securities, life became more complicated after major Russian banks were effectively excluded from the SWIFT global payments network.

Holders of foreign currency accounts were only allowed to withdraw US\$10,000 if they had deposited into their accounts before the March 9 regulation.

¹¹⁸ See

https://www.lastampa.it/economia/2023/07/04/news/bankitalia_congela_fondi_russi_per_2_miliardi_conti_correnti_yacht_e_ville_faro_sui_soldi_del_pnrr_volati_allestero-12896120/

¹¹⁹ See <https://uif.bancaditalia.it/adempimenti-operatori/rilevazione-depositi-russi-e-bielorussi/index.html>

¹²⁰ See <https://uif.bancaditalia.it/adempimenti-operatori/rilevazione-depositi-russi-e-bielorussi/index.html>

Fearing the impending full end of the regulation, people rushed to dump their rubles and withdraw their foreign currency deposits, so no one knows how much foreign currency was left outside the banking system.

The closure of Visa (V.N) and MasterCard (MA.N) in Russia meant that cards issued in Russia could no longer be used abroad, prompting a rush to the alternative Russian card, the Food Card.

However, Mir, which means "world" or "peace" in Russian, has faced difficulties abroad, with access restricted by "friendly" (i.e., not sanctioning Russia) countries such as Turkey.

Many Russians who moved abroad for fear of retaliation for their political views or fear of being drawn into conflict have also had to figure out how to get their money out of Russia.

While some banks still have access to SWIFT and can handle cross-border transfers, skyrocketing fees are driving people to alternative methods, such as crypto currencies.

For example, users of Binance, the world's largest crypto exchange, can send rubles using Tether, a "stablecoin" pegged to the US dollar.

A financial services professional who left Moscow shortly after the fighting began, but wished to remain anonymous, withdrew millions of rubles from his Russian account and asked a friend to meet the man in Moscow.¹²¹

The European Union has prohibited all transactions with the National Central Bank of Russia related to the management of the Russian Central Bank's reserves and assets.¹²²

However, a good portion of these reserves was held in central banks of the EU so they were frozen after the implementation of the sanctions.

Consequently, Russia cannot use this cushion of foreign assets to provide funds to its banks and thus limit the effects of other sanctions.¹²³

With the aim to prevent access to euro banknotes and thus stopping sanctions avoidance the EU prohibited selling or supplying euros to Russia.

¹²¹ See <https://uif.bancaditalia.it/adempimenti-operatori/rilevazione-depositi-russi-e-bielorussi/index.html>

¹²² See <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/sanctions-against-russia-explained/>

¹²³ Part of the Sixth Package of Sanctions of June 2022, see <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/sanctions-against-russia-explained/>

2.2.5 Sanctions on Media

Last but not least EU has sanctioned also broadcasting entities accused of participating to Russian's strategy of disinformation and manipulation of facts such as

- Sputnik and subsidiaries including Sputnik Arabic
- Russia Today and subsidiaries including Russia Today English, Russia Today UK, Russia Today Germany, Russia Today France, Russia Today Spanish, Russia Today Arabic
- Rossiya RTR / RTR Planeta
- Rossiya 24 / Russia 24
- Rossiya 1
- TV Centre International
- NTV/NTV Mir
- REN TV
- Pervyi Kanal
- Oriental Review
- Tsargrad
- New Eastern Outlook
- Katehon

2.2.6 The overall situation

The EU's plan does not directly hit agriculture or the food trade in general, as it does not intend to be responsible for the international crisis.

In fact, bilateral sanctions against Russia are not expected to affect international markets, and in any case, the purpose of the sanctions regime is to weaken the Russian Federation's capacity for war, not its people.

As long as the trade concerns unsanctioned goods the exports to and imports from Russia are allowed.

Again, to maintain consistent routes, restrictions on Russian aircraft accessing European skies and airports do not apply to humanitarian flights.

The same applies to sea and land shipments of goods from and to Russia in the case of food and fertilizers.

Although European airspace is not open to Russian aircraft, EU member states may permit Russian aircraft to fly in their airspace if necessary for humanitarian purposes.

¹²⁴

EU member states may also permit Russian-flag vessels to enter EU ports and to import or transport agricultural products such as fertilizers and wheat without restrictions.

Also, transport agricultural products such as fertilizers and wheat without restrictions, and allow access to the EU to Russian operators in road transportation.

To coordinate this international effort, the newly established Russian Elite, Proxies, and Oligarchs (REPO) Task Force will enable the EU to work with the G7 countries (Canada, France, Germany, Italy, Japan, the UK, and the US) and Australia to ensure that the sanctions are enforced.¹²⁵

At this point, the legality of the measures taken by the EU and its partners against the Russian Federation may be questionable.

Once a political agreement is reached among EU member states, the necessary legal measures will be prepared by the European External Action Service and/or the European Commission and submitted to the Council for adoption.¹²⁶

¹²⁴ <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/sanctions-against-russia-explained/>

¹²⁵ See <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/sanctions-against-russia-explained/>

¹²⁶ Ibid

As mentioned above, the Council's decisions are binding on all Member States and, consequently, on their nationals and associations.

In order to avoid attempts to circumvent sanctions, the EU needed to strengthen its level of cooperation with third countries that are not necessarily aligned with the Western block.

Fundamental is the role of China, whose decisive economic intervention would tip the balance one way or the other, but the Asian giant has yet to act.

In any case, the EU has no intention of accepting Russian support from third countries. As the sanctions against Iran make clear, Iran supplies Russia with thousands of drones and other equipment, violating the EU's key human rights.

If the circumvention becomes permanent and impossible to prevent through bilateral or multilateral agreements, the EU may take extreme measures.

In such a case, the EU Council could unanimously decide to restrict the sale, supply, transfer, or export to third countries of goods and technologies already prohibited for export to Russia (especially battlefield products and technologies) that have proven to be at continued and particularly high risk of being used for circumvention.¹²⁷

The key risk is that of stalemate. On the one hand, there is the risk of allowing Russia to supply itself, essentially finding alternatives to supplies from the West, since it would be impossible to force it to do so.

The other option risks an escalation that could lead to Russia becoming more isolated, both economically and militarily, and potentially acting recklessly.

In the following parts, we will attempt to analyze and summarize the actual impact of the sanctions regime on the conflict and the Russian economy.

¹²⁷ See <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/sanctions-against-russia-explained/>

2.3 EFFECTS OF THE SANCTIONS

Sanctions have taken a toll on Russia's economy however, they do not seem to bring the desired results of stopping the war.

First Russia is a country full of resources that can sustain a wartime economy but as we saw, the sanctions are not targeted to the population as a whole: the EU aims to discourage the promoters of the conflict, not Russian population.

Probably this is the main element that differentiates the intervention of NATO's block from the Russian invasion: USA, Canada and EU do not intend to wage war with all necessary means but just expect Russian forces to retreat behind the original border.

This may be explained by the fact that modern economies are all connected and a default of Russia would impact the rest of the world.

However, this makes sense since waging total war is not the modus operandi of traditional wars: it is true that Ukraine is defending its sovereignty but the two nations do not aim at completely annihilating each other.

For instance Russia might be interested in building a buffer region in Donbass but this territory is also extremely rich in underground resources.¹²⁸

Ukraine has some of the world's largest reserves of titanium and iron ore, untapped lithium fields, and huge coal deposits.

Together they are worth trillions of dollars and have the potential to make Ukraine a mining powerhouse.¹²⁹

In fact, minerals and metals such as steel, manganese, chromium, and nickel accounted for more than 30% of Kiev's exports in March 2022.

These reserves are located in the Donbass region and Luhansk, and since 2014 the Donbass region has been considered independent of Russia and is protected by the federal regular army and local paramilitary militias.

This situation explains, at least in part, the repeated need for the Kiev authorities to launch a counteroffensive and recover lost territory.

This does not seem a war that the two populations desire at all costs, there is no evidence of a racial or religious style hatred between Ukraine and Russia.

¹²⁸ See <https://www.washingtonpost.com/world/2022/08/10/ukraine-russia-energy-mineral-wealth/>

¹²⁹ See <https://www.editorialedomani.it/economia/la-lotta-per-le-risorse-naturali-dellucraina-e-una-guerra-nella-guerra-x8m0ddpp>

Consequently, NATO's concept of defeating the Federation practically means befriending Russia, convincing it to comply with the standards of a modern democracy, which is definitely not an easy task.

Russia, or we should say the Federation, has never tasted the concept of democracy because its absolute monarchy ended with the bloody communist revolution in 1917.

After the fall of the URSS there was a brief phase initiated by General Secretary of the Communist Party Mikhail Gorbachev whose main program was changing the situation through "perestrojka" and "glasnost".

The first was a program intended to reduce the presence of the state into the economy and moving towards a capitalist model.

Glasnost was targeted to increase the transparency of the state, reducing the corruption and in general, both among the politics and the media, building an environment based on debate instead of propaganda.

However, such brief enlightenment caused a decrease in the country's wealth and paved the way to the election of President Vladimir Putin who considered making Russia a superpower as an absolute priority.

In fact, Ukraine is not the first nation that has been invaded: the same fate happened to Chechnya in 1999.

Russian's reaction was justified by the invasion of Chechen separatist forces against Dagestan however the occupation of the Caucasian region went on for ten years.

Georgia also suffered an invasion from Russia, formally intervening to protect the Ossetia minority: during the conflict the Federation occupied four main cities and allowed the separatist militias to slaughter many villages in South Ossetia.

In the Ukrainian war Russia seems to have get ahead of itself and may be the tomb of Putin's renewed grandeur dreams.

However, in an almost totalitarian nation that is also one of the world superpowers defeat is not something that can be easily accepted.

Furthermore, the existence of nuclear weapons pose a way bigger threat to the entire world and the Western block needs to be extremely careful.

Probably it was impossible to operate in a different way but the sanctions may not have been as successful as it was intended.

This may have come from a misconception of the gravity of the situation and not necessarily something to blame on the legislators.

However, the guiding principle was to harm Russia's military capabilities, force a retreat beyond the borders and deter any future violations to the sovereignty of Ukraine or any other country.

Russian citizens, except the ones that are considered responsible or complicit whose number amount to a few thousand people, were supposed to be unharmed by the sanctions.

What we saw so far seems to demonstrate that this was not always the case: the limitations on banking did not have a crushing effect on people but created distress that might cause resentment toward the West instead of undermining Russia's central government authority.

Secondly, even assuming that the sanctions were indeed capable of targeting only Russia's war capabilities, there is the issue of war in its nature.

With an estimated amount of casualties, between deceased and permanently mutilated personnel, of 100.000 soldiers Russian society has been impacted and this will continue even after the war.

Families at home might have lost sons, fathers, relatives and this can take a toll on a country's politics: assuming that the grief and horror of war will automatically decrease the regime's support might prove to be a faulty logic.

Regardless of the primary cause of the conflict, Russian soldiers are being killed with weapons produced in US, Canada, UK and Europe.

Support of the war from society might falter in case of defeat or stagnation but this does not imply that people are going to forget EU's involvement in the conflict.

In conclusion, assuming that Western support of Ukraine would not impact Russian citizens seems far-fetched and could represent an issue for the future in the hope that war can come to a conclusion soon.

2.4 IMPACT OF SANCTIONS

The interpretation of the results by the EU shows how Russia's GDP has dropped by 2.1%: this vision is confirmed by Organization for Economic Cooperation and Development (OECD)¹³⁰

Such situation should evolve into a further decline during 2023 with a decrease of 2.5% according to OECD however International Money Fund (IMF) do not agrees on this estimation, expecting a growth of 0.7%.

In any case the EU believes that the sanctions forced a decline in trade due to the restrictions to imports and exports.

Again, the list of banned products is designed to maximize the negative impact of the sanctions on the Russian economy while limiting the consequences for EU businesses and citizens.¹³¹

The projections of the World Bank and IMF for next year show Russia obliged to import more than 2022 while exporting less, which is notoriously a losing economic strategy.

Durante i primi mesi del conflitto i guadagni dalle esportazioni erano cresciuti grazie alla vendita di combustibili fossili tuttavia i tetti ai prezzi imposti a Dicembre hanno limitato questo guadagno.

Furthermore, this is an estimation provided by the Consilium of the amount of frozen assets:

- €300 billion of Russian Central Bank reserves are blocked in the EU, other G7 countries and Australia (two thirds of which are blocked in the EU).
- €300 billion of Russian Central Bank reserves are blocked
- 70% of assets of the Russian banking system are under sanctions.
- Around €20 billion of assets of more than 1 500 sanctioned persons and entities have been frozen.

It should be kept in mind, however, that these considerations are at least directly from organizations that are influenced by their own statements and may not be completely objective.

In other words, it is a conflict that has been massively co-opted by the intelligence community, and Russia has invested heavily in the media in order to lend credence to its control.

¹³⁰ From <https://www.consilium.europa.eu/en/infographics/impact-sanctions-russian-economy/>

¹³¹ Ibid

Not all analysts agree, however, on the fact that the EU sanctions are in fact having the desired effect of the EU.

As noted above, the financial system introduced into the Russian Federation has several weaknesses.

First of all, Russia exports most of its oil and gas only to EU member states, and these restrictions limit its oil and gas exports and its potential to earn revenues.

The shrinkage of the European market is severe, as Asia is not at all interested in Russian gas.

Second, the blocking of imports of technical materials from Europe could hurt not only military industries but also civilian industries such as aviation and automotive.

This problem is exacerbated by the fact that all services connected to these industrial zones are prohibited.

In addition, many civilians have fled to the country, scared by the possibility of being drafted or in general impacted by the conflict at a certain degree.

This may have resulted in the loss of persons with abilities and knowledge that are very important to Russia.

Finally, the partial depletion of the ruble caused by the sanctions against the Russian central bank must be considered.

However, James K. Galbraith argued that "the main effect of export revenues is on foreign exchange reserves, not on import capacity or current activity. Thus, oil and gas revenues have little bearing on the internal functioning of the Russian economy. It does affect the state budget, but this is a matter of Russia's internal taxation system and is subject to change".¹³²

At the same time, as demonstrated with military equipment, shortages in imported technology can be solved by finding substitutes.

In the civilian market, the possibilities are enhanced because Russia is an almost totalitarian state and political objections are quickly swept away.

In addition, many foreign firms have been forced to leave much of their physical capital behind for relocation, and these assets have been transferred to Russian buyers at lower prices.

In general, this has opened up markets previously dominated by foreign firms to Russian firms.

¹³² See <https://www.ineteconomics.org/perspectives/blog/the-effect-of-sanctions-on-russia-a-skeptical-view>

“By significantly reducing the presence of non-Russian firms in Russia while restricting energy and other resource exports from Russia, the sanctions had a positive impact on the potential profitability of Russian firms, as resource prices within Russia stabilized.”¹³³

As for migration, one must take into account that hundreds of thousands of people living in the Donbass region were forced to relocate due to the conflict.

Unfortunately, it is too early to estimate these effects, but they are unlikely to have a significant impact on the war situation.

The Russian military, despite its bloody defeats last year on the siege of Kiev, remains a force to be reckoned with.

This is especially true because their military equipment has been stockpiled over the years and mass-produced during the Soviet era.

Their weapons systems are not as advanced as those currently donated to Ukraine by Western countries, and their assembly does not necessarily depend on foreign services or products.

As for the oligarchs, while it is true that many have fled abroad, others have returned their capital to Russia to protect it from sanctions.

In general, apart from the recent coup attempt by PMC Wagner, sanctions and the freezing of oligarchs' assets have not had the desired effect of weakening domestic support for the conflict.

Apparently, it would only be a defeat, apart from a major blow, that would raise serious questions for the Russian leadership, but at this point, the Ukrainian counteroffensive has not achieved much and has instead suffered many losses.

As for the current balance of sanctions, certainly the West has shown a willingness to block exports of military and dual-use products.

However, sanctions against countries heavily dependent on energy were objectively difficult for the legislators, and a compromise had to be found.

Galbraith's analysis advocates the following conclusions: “When applied to large, resource-rich, technologically advanced economies, after a period of shock and adjustment, sanctions are isomorphic to strict policies of trade protection, industrial policy, and capital controls. Such policies have been successfully applied in other countries.”¹³⁴

¹³³ See <https://www.ineteconomics.org/perspectives/blog/the-effect-of-sanctions-on-russia-a-skeptical-view>

¹³⁴ See <https://www.ineteconomics.org/perspectives/blog/the-effect-of-sanctions-on-russia-a-skeptical-view>

When the International Monetary Fund (IMF) released its economic forecast, it caused a stir when it reported that Russia had overtaken Germany and the United Kingdom.

This was read as confirmation that the sanctions imposed on Russia by the West in response to its invasion of Ukraine were not working, or at least not as expected.

However, the IMF survey takes into account macroeconomic indicators such as GDP, where the contraction of the economy is mild.

However, one must take into account that the production of bombs dropped on Ukraine is not as profitable as the production of other commodities, and that the defense industry is supported by public funds, which are also running out thanks to sanctions.

As a study by a think tank close to the EPP explains, there were two important trends in government finances at the beginning of this year.

First, revenues from oil and gas fell sharply, mainly due to the EU oil embargo, and second, Moscow pre-financed an unprecedented amount of military spending.

According to estimates based on Ministry of Finance data, more than 3 trillion rubles (32.72 billion euros) were transferred to the Ministry of Defense in the period from January to April 2023, that is, more than half of the total annual budget for 2023 (5 trillion rubles in total).

As a result, the Russian Ministry of Finance reported that the total budget deficit for January-April 2023 amounted to 3.4 trillion rubles, 17% higher than the full-year budget deficit plan approved as part of the Budget Law.

The country has also suffered from a lack of investment, especially foreign capital: after the flight of Western capital, China, India, and other Asian countries have not filled the void, showing little interest in investing heavily in technology and skills in the Federation, as Western countries have done over the past 30-40 years.

According to the Central Bank of Russia, in early 2022, cumulative foreign direct investment (FDI) from Asian countries into Russia was exceptionally low: \$3.3 billion from China, \$2.4 billion from Hong Kong, and \$600 million from India. According to the Central Bank of Russia, it was \$3.3 billion from China, \$2.4 billion from Hong Kong, and \$600 million from India.

The Russian government reported a fairly positive growth rate of 4.6% for fixed asset investment in 2022. In reality, however, this 4.6% figure is a distortion.¹³⁵

¹³⁵ See <https://www.martenscentre.eu/publication/from-bad-to-worse-the-continuing-effects-of-sanctions-on-russia/>

Investment grew 13.8% in the first quarter of 2022 (before the sanctions began to take effect), but then fell to 2-3% in the remaining three quarters of 2022 and only 0.7% in the first quarter of 2023.

Furthermore, as with GDP, a breakdown between war-related industries and the rest of the civilian economy shows that investment often increases by several percentage points in areas related to conflict and related national efforts (transportation, construction, administrative and military security, warehousing), while in key areas of the real civilian economy, a significant decline in investment is clear.

However, Putin has so far more or less consciously avoided most of the sanctions with the help of third countries.

Moscow has succeeded in securing not only trade in various sanctioned goods, but also imports of industrial and consumer goods that are not subject to sanctions but have been lost due to the withdrawal of Western companies from the Russian market; for example, parallel imports of these goods exceeded US\$20 billion in 2022.

Russia has replaced many of the lost direct Western imports by purchasing the same goods in Turkey and elsewhere.

According to Turkstat, Turkish exports to Russia increased 62% in 2022 (US\$9.3 billion) and 47% from January to April 2023 (almost US\$1 billion each month).

Meanwhile, according to Russian Deputy Prime Minister Denis Manturov, exports from Russia to the UAE in 2022 increased by a whopping 71% to US\$8.5 billion.

As the report points out, there is clearly no additional demand for Russian goods in the UAE, and the surge in exports from Russia largely reflects trade patterns aimed at circumventing sanctions and reselling these goods where they are originally prohibited.

Also targeted for tighter export controls are dual-use items and advanced technologies. Examples include coolers with chips that Russia can take out and use for various purposes, including military purposes.

In addition to the Russian and Iranian companies already listed, companies registered in China (three in Hong Kong), Uzbekistan, the United Arab Emirates, Syria, Armenia, and Iran have been added to the sanctions list.

The transport measures include a total ban on trucks with Russian trailers and semi-trailers transporting goods within the EU.

Also banned are vessels suspected of transshipping Russian oil from ship to ship, effectively smuggling it, and so-called "ghost ships," i.e., vessels that have manipulated or deactivated their navigation tracking systems while transporting Russian oil, from entering EU ports.

These maneuvers will have only limited impact, but in addition, Russia has long avoided bans on oil sales in Europe and price caps in Western countries.

In recent months, figures show that Moscow has increased its crude oil exports to countries such as India, China, and Pakistan, while the EU imports large quantities of refined fuel from these countries.

In New Delhi, for example, deliveries of Russian crude increased from around 1 million barrels per month to 63 million barrels in April alone.

Meanwhile, exports of diesel fuel to the EU have increased tenfold and shipments of jet fuel have increased by more than 250%.

But these actions are not sanctions violations, as the G7 wanted to limit Russian interests without destabilizing the global oil market.

As a result, in May, the International Energy Agency (IEA) reported that despite price controls, Moscow's oil shipments rose by 50,000 barrels a day to 8.3 million, the highest since the invasion of Ukraine.

According to a report by the Wilfried Martens Center for European Studies, the Russian Federation's economic losses in the sector remain enormous, as buyers from the saturated Asian market are purchasing Russian crude at a significant discount.

Furthermore, shipping to new markets without pipelines, such as Europe, is expensive and time-consuming.

Shipping to India takes more than a month, and typically Russia loses about \$10 per barrel.

The Russian aggression against Ukrainian sovereignty was a failure and has bogged down Russia and the entire international community in a terrible conflict.

Indeed, against all odds, the Ukrainian army repulsed the attack on the capital, contained the coalition offensive from Crimea and Donbass, and even launched a counterattack.

This laudable achievement was due to the courage of the troops, the resilience of the population, and the support of the Western powers.

In particular, the weapons sent to Ukraine enabled them to counter Russian forces. Despite this, the Russian army made serious mistakes in logistics and probably suffered losses due to outdated concepts of war.

However, the Russian giant is a world superpower, and so far the Ukrainian army does not seem to have the strength to push the Russian army back across the border.

It is precisely because of this situation that the issues we have been discussing, especially the issue of dual-use goods, fit into the larger framework of counterterrorism.

Indeed, the Western block has responded by imposing sanctions aimed at weakening the Russian economy in order to prevent further progress in the conflict.

In addition to this, we have seen that wars need to be financed and that crypto assets allow paramilitary forces supporting the Federation to obtain funds for war equipment.

However, it must be considered that crypto assets themselves provide far more funding in proportion to the Ukrainian cause.

The key is control, and that is not easy due to the nature of crypto assets, which are designed to exclude financial intermediaries.

The most important aspect of the sanctions is to prevent Russia from gaining access to Western-style technology needed to build weapons.

In particular, preventing Russia from exporting dual-use goods to third countries that would allow it to circumvent the sanctions will be important here.

However, such action is complicated by the existence of a global economy in which Russia and the EU depend on each other for imports and exports.

Moreover, in the background, there is always the dilemma of whether the democratic objective of protecting Ukraine's sovereignty is worth the loss of life, the possibility of a recession, or the escalation of nuclear conflict.

This is not an easy situation, and the difficulty is evident in the analysis of sanctions.

Of course, the impact can only be mitigated, and while sanctions are likely to slow Russian growth, they do not seem to change the fate of the conflict.

Just as Athens cries but Sparta does not laugh, Europe is also affected by the conflict: not only must it invest in supplying arms to Ukraine, but it must also deal with its dependence on Russian gas.

Moreover, as will be discussed below, many European companies export products to Russia however even though basic necessities and non-military goods can be exported payments will be complicated.

Indeed, with the exception of Gazprombank, which settles gas supplies, Russia's major banks are excluded from the SWIFT system.

CHAPTER III: A PATTERN FOR EXPORTATION

The objective of this last part of the discussion is to identify the necessary steps to export an unsanctioned product in Russia.

Therefore, this phase requires a precise analysis of the lists included in the Annexes of the European Regulation to understand if the product is exportable.

In particular, there are some particular exceptions and cases as already mentioned previously on which the next pages will expand.

The payment phase will be of great importance, since the exclusion from Swift of the Russian main banks complicates the process.

3.1 THE RELATIONS WITH OTHER COUNTRIES

For the purposes of this sanctionary regime, 'partner countries' are nations that apply export restriction policies essentially equivalent to those set out in the Sanctions Regulation.¹³⁶

A list of partner countries is annexed to the Regulation and includes the United States, Japan, the United Kingdom, South Korea, Australia, Canada, New Zealand, Norway and Switzerland as of July 21, 2022.¹³⁷

The Commission will keep reviewing the regime adopted by third countries and will hold a constant and close contact with them in order to ensure effective sanctions.

This denomination of partner has several aspects relevant to Articles 2 and 2a of the Sanctions Regulation.

First, the same exclusions that apply to businesses owned or controlled by entities of Member States also apply to entities owned or controlled by entities of the partner State.

As long as they are not intended for military use or end users, Member States may approve the sale, supply, transfer, or export of such items and technology, as well as the provision of pertinent technical or financial assistance to such businesses.

¹³⁶ From https://mvep.gov.hr/UserDocImages/gospodarska_diplomacija/faqs-sanctions-russia-export-related-restrictions-russia_en.pdf

¹³⁷ Ibid

Second, Member States may approve the sale, supply, transfer, or export of such products and technologies, as well as the provision of pertinent technical or financial assistance, to partner State diplomats stationed in Russia.

Third, where appropriate, the EU will provide information with the partner state to assist the effectiveness of sanctions-based export restrictions and the consistent execution of partner-state-imposed export restrictions.

An important part of the sanctioning regime is also to make triangulations punishable with any non-aligned countries such as China, Serbia or Turkey.

Although those nations act independently of the responsibility for identifying the actual owner bears on the shoulders of exporters.

In fact, the exports of all of the products subject to restrictive measures are prohibited if even only intended to be used in Russia and directed to Russian subjects.

The only participation of the operators directly involved and of those who consciously help them to evade the prohibitions is considered a civil and potentially criminal liability under the provisions of Legislative Decree 221/2017.

Concluding operations with Russia despite the prohibitions can lead, in particular, penalties such as detention from two to six years or the imposition of a pecuniary sanction from 25,000 to 250,000 euros.¹³⁸

¹³⁸ From <https://www.econopoly.ilsole24ore.com/2022/04/11/sanzioni-russia/>

3.1.1 The Exceptions

In general, the regulations do not only include the types of product but also the producers: Annex IV draws up a list of these sanctioned entities since they produce goods designed for the military industry.

In addition, the EU regulation contains details on the product components because they can be disassembled and reused.

Most of the regulation consist of the Annex which include purely technical details regarding the exportable goods or not.

Consequently, unrelated products can also contain reusable components, an example are the drills used in dentistry, which consequently fall in the definition of dual use goods.

For this reason, the fact that a product is not included in penalties does not automatically make export feasible and can still be subject to controls.

In particular, there is the clause of the essential element: if the purchase of a product can be traced back to the intention to extrapolate a component then the export is prohibited.

The exemptions referred to in article 2, paragraph 3, and article 2 bis, paragraph 3, allow to exempt the export of dual use products and advanced technology from relevant restrictions from relevant.¹³⁹

However, there are exemptions linked to products that have humanitarian, emergency and medical rescue purposes: obviously, these exemptions do not apply if addressed to military or paramilitary forces.

Clearly, this is a complex and debates point since in a country with great authoritarian drift and in full conflict it is difficult to imagine that food or humanitarian genres cannot be requisitions and used by the army.

Here takes over the political and moral dilemma mentioned above and this passage can be interpreted as a clause that saves appearances.

In fact, we remember that Europe and aligned countries do not intend to fight a total war against the Russian people but only try to stop the conflict by hitting military resources.

However, each product can be used in the war effort and accordingly, in setting an export, the fact that the actual owner is exposed to the risks of an almost dictatorial regime must be taken into account.

¹³⁹ From https://mvep.gov.hr/UserDocImages/gospodarska_diplomacija/faqs-sanctions-russia-export-related-restrictions-russia_en.pdf

If the final use is part of the eight exceptions listed in article 2 bis, paragraph 3 it is not necessary to request authorization pursuant to the sanctions regulation.

These exceptions are:

- Purely civil cooperation between the union, the governments of the Member States and the Russian government;
- Intergovernmental cooperation in the spatial program;
- Operation, maintenance, disposal of fuel and safety of civil nuclear capacity; civil nuclear cooperation, in particular in the field of research and development;¹⁴⁰
- Maritime Security
- Private, non public electronic communication networks, not controlled by the state or owned by more than 50% by state organizations;
- Exclusive use by property organizations or under the exclusive or joint control of legal persons, organizations or associations created or established pursuant to the law of a Member State or a partner state.
- Diplomatic representatives of the European Union, Member States and partner States, including delegations, embassies and missions.
- IT security and information from natural and legal persons, formations, associations and organizations in Russia, with the exception of the Russian government and the controlled organizations directly or indirectly by the Russian government.¹⁴¹

Since this export does not require authorization, the exporter is required to indicate in the customs declaration that goods are subject to this exemption.

In addition, exporters are required to inform the competent authorities of the Member State in which they reside or are established within 30 days from the date of the first export in exemption regime.¹⁴²

However, the doubt on how it can be demonstrated in an unassailable way that the goods are included in the exemptions is significant.

There is no standardized procedure in this regard but generally, the individual authorities will ask for documents such as contracts and intergovernmental agreements in the specific case.

¹⁴⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02014R0833-20220413>

¹⁴¹ From https://mvep.gov.hr/UserDocImages/gospodarska_diplomacija/faqs-sanctions-russia-export-related-restrictions-russia_en.pdf

¹⁴² Ibid

Another element worth considering are the contracts that had been stipulated before the start of the invasion: when it came to dual goods or technologies, the approach was of prudent tolerance.

As long as the beneficial owner was not the military, we could keep the example of dental drills sold to dentist studios.

Member States could authorize the exportation as long as the exported filed to request before first of May 2022.

After that, the authorization could not be requested on the clause of "existing contracts" but had to be discussed and analyzed again.

In general, the modus operandi of the Member State is this: authorization will not be granted in two situations:

- In case there are reasonable reasons to believe that the end user can be a military ending or a natural or legal person listed in Annex IV.¹⁴³
- If the goods are likely to be used for military purposes.¹⁴⁴

In particular, great attention is expected for goods connected to the aviation, spatial or energy sectors.

Annex IV draws up a list of entities considered reliable that may need European products or that pass through Europe.

These are exceptional cases in which the products to be exported would be necessary to prevent emergencies that could have consequences on the population.

Of course, authorization is a standardized process, the required documents could differ according to the cases but the procedure for obtaining the green light is the same.

An element of difficult interpretation is the definition of "contract": article 2, 2 bis and 2 ter of the Regulation do not define it.

Consequently, the rules at national level are valid which generally include the clauses necessary to conduct export.

For example, it would be possible to define the type of goods, the price and the date of delivery.

In the absence of these details, it is necessary to subscribe to a subsequent contract: in this case, the contract is not considered concluded.

¹⁴³ From https://mvep.gov.hr/UserDocImages/gospodarska_diplomacija/faqs-sanctions-russia-export-related-restrictions-russia_en.pdf

¹⁴⁴ Ibid

The authorization can be suspended or canceled: Article 16 (1) allows the competent authorities to review an authorization.

These are usually cases due to a modification of the risk assessment of a product but also to the type of destination.

Of course, the possibility that the regulatory changes impacts the authorizations is also included a category of products could be added to the list: in such case the revocation of authorization would be automatic.

3.1.2 The “Not Aligned” Countries.

As seen previously, China has held an ambiguous position since it does not want to openly defy NATO but at the same time finds stratagems to support Russia.

This support is not massive and these are military supplies of small cabotage but it is still a latent threat for the hopes of victory of Ukraine.

In fact, China constitutes an economic and political power such as to make the scales hang in favor of Russia.

Above all, China has several affinities with the Russian regime, being an almost dictatorial state and which has insisted a lot in the claim of defending its traditions in the face of the attempt to penetrate western customs.

Iran, also subjected to penalties by the NATO block, has a commercial route with natural Russia represented by the Caspian Sea.

From here, they have arrived en masse of long -haul missiles, substantially drones that transport an explosive head, which constantly threaten the rear and the Ukrainian cities.

Although Iran is a sanctioned country, due to the failure to respect human rights, it borders directly with Russia for which to block the arrival of drones in the federation is practically impossible.

The role of the other neighboring countries, however, does not constitute a particular problem since Belarus is already sanctioned and has shown that it does not intend to open a second front in the north of Ukraine.

Kazakhstan and Kyrgyzstan do not have the resources to militarily support Russia and in any case they must avoid at the risk of undergoing sanctions.

The only non -aligned country on which it could be intervened is Turkey, which has a customs union with the EU.

This agreement provides that Turkey be obliged to adopt measures in accordance with the common commercial policy of the customs union.¹⁴⁵

¹⁴⁵ From https://mvep.gov.hr/UserDocImages/gospodarska_diplomacija/faqs-sanctions-russia-export-related-restrictions-russia_en.pdf

However, it is not foreseen that these obligations extend to the penalties for which military goods that pass through Turkey do not give rise to any repercussion.

Europe could try to impose its reasons with Turkey who intended to request access to NATO.

Here, however, various problems may arise: Turkey "hosts" millions of Syrian immigrants and other countries trying to arrive in Europe following the Balkan route.

Often they are detained in refugee camps and constitute a lever for Turkey towards Europe: if the Bosphorus country relieves controls, those millions of people would pour into the territory of the Member States who are already struggling to manage immigration in this period.

The penalties of the western blockage therefore fit into a very complex geopolitical theme that undermines its effectiveness.

The West in part also pays its colonial past, since Russia and China have penetrated overwhelmingly in African and South American politics.

These spheres of influence on smaller countries, which, however, constitute a huge part of the world population, can lead to consequences in the near future.

3.2 THE EXPORTATION MODEL

At this point it is given for granted that the sanctions and counter sanctions exist and an exporter has to deal with them.

The western block made the decision of potentially impacting its businesses and by consequence it's Gross Domestic Product.

More precisely, exportation or importation are not prohibited but the sanctions made them complicated even for products that are not banned.

The last part of the analysis will deal with the steps necessary to prepare an operation, with due diligence controls on multiple participants.

3.2.1 Analysis of the product

The first step is to check whether the goods are subject to the sanctioning regime: in this case, it is necessary to consult the AIDA or TARIC database.

At this point, it is necessary to have the correct customs classification and check not only on the finished goods, but in the case of systems on the components.

The site will provide an answer when the nomenclature code and the country of destination of the goods to be exported, whether it is Russia or any other state.¹⁴⁶

It could happen that the good has become prohibited as part of the sanctions: an example could be a wine or a precious food.

Of the DU or TM codes, on the other hand, connect the restriction to dual use goods which, as we have seen, also include products with reusable components.

It must be taken into consideration that the Federation has imposed against sanctions against western countries.

For this reason it is necessary to verify the presence of restrictions at the entrance of the product in the destiny market on the Access2markets website¹⁴⁷

There by entering the HS code, the country of origin and the destination you can find the technical details on the bureaucratic passages or any prohibitions.

¹⁴⁶ From <https://www.fe.camcom.it/internazionalizzazione/documenti-estero/notizie/conflitto-russia-ucraina-sanzioni>

¹⁴⁷ Ibid

Once this phase of analysis has been overcome, giving for acquiring that the product is exportable, it is necessary to identify the end user.

In fact, the penalties include a list of individuals and companies or entities that are considered off-limits for reasons already mentioned previously.

Since the restrictions also concern indirect operations, it is essential to dialogue with the customer and strongly recommended to ascertain who the final user will be.

How triangulation is forbidden to other countries during export is prohibited through the EU territory.

The goods that cross the Member States are under customs control until they leave the territory of the EU.¹⁴⁸

EU operators must implement adequate diligence procedures to ensure that exports of sanctioned goods are not deviated towards Russia.¹⁴⁹

This may include, for example, contractual provisions that establish the responsibility of the commercial partners of third countries in the event of re-exporting goods to Russia, as well as ex post checks.¹⁵⁰

Applying these controls is considered a responsibility of the Member States and the Commission is the body that must supervise the compliance with the surveillance rules.

In this case, to verify that the operation is lawful, the "end user statement" must be acquired or in the event of an intermediate passage in a neighboring country, the END user certified.

The product seller/manufacturer always has responsibility in the commercial transaction, even if it is a third party who will subsequently export to Russia.

¹⁴⁸ See Articolo 267, paragrafo 1, del regolamento (UE) n. 952/2013

¹⁴⁹ From https://mvep.gov.hr/UserDocImages/gospodarska_diplomacija/faqs-sanctions-russia-export-related-restrictions-russia_en.pdf

¹⁵⁰ Ibid

3.2.2 The Contracts

As regards the documentation, we must introduce the customs union to which an exporter should contact to formalize the operation.

In fact, after the annexation of Crimea, Russia formalized the so -called Eurasian economic union together with four countries.

It is an entity directly inspired by the free European market proposed in 1994 by Kazakhstan and taken up by Putin in 2011.

There has not yet been expanded beyond Belarus, Armenia, Kazakhstan and Kyrgyzstan despite the initial goal was to constitute a much wider confederation, potentially also subtracting countries such as Finland and Hungary now in EU orbit.

Among the EAEU countries only Armenia has a certain type of commercial exchange with Europe: this by virtue of the agreements with the West could represent an option.

However, Armenia is a country that does not border directly with Russia so a third reference would be necessary makes everything very complicated.

As for the contribution of Kazakhstan and Kyrgyzstan, these have enormous gold deposits, which, however, is exposed to the value that the financial market attributes to it and can hardly become a vehicle for help for the Russian economy.

In addition, the bank sectors of all four-member countries do not allow to efficiently establish a system that allows the Russians to circumvent the problems related to the exclusion by Swift.

In fact, all three countries must look at the risk of undergoing western sanctions, a destiny already happened to Belarus and Iran for the support offered to the Russian war effort.

To export within the Russian territory it is necessary to fill in a declaration supported by a series of documents:¹⁵¹

- Contracts
- Commercial documents such as commercial invoices and packaging lists
- Transport documents
- Import licenses
- Certificates of conformity and / or certificates of security origin

¹⁵¹ From <https://www.ccis-expertise.com/en/gost>

In particular, the certificates are new technical regulations applied to each product that is exported to the territory of the EAEU.

In general, producers can obtain unified certificates and declarations of conformity for all five member countries.

There is an exception on customs duties when it does not affect the Russian economy, such as the temporary import of:¹⁵²

- Containers, pallets and other types of containers and packages for repeated use;
- Assets for the purposes of the development of international relations in scientific, cultural, sporting, cinematographic and tourist fields;
- Products for international assistance;
- Commercial samples, not on sale, used in fairs and exhibitions.

Exports are applied to a VAT rate of 18% universal calculated on a combination of import price, rate and excise duties.¹⁵³

Exception are some foods, pharmaceutical products and medical supplies, goods for children and media printed for which VAT is 10%.¹⁵⁴

It must be taken into consideration that any export procedure provides for the adequate verification of the commercial partner.

Obviously an approach based on the risk represented by type of transaction, ethnic or geographical data and previous experiences must be used.

The first fundamental step is to verify that the goods are not subjected to prohibitions in the sanctioning regime.

As already elaborated previously, it is not possible to circumvent the constraints by bringing the goods to a third country, indeed it is required to always identify the actual owner of exports.

For example, some products used in the dental field can be used in missile production.

For this reason it is always necessary to check to whom and where you are sending the goods you want to export.

Consequently, the second fundamental element is the adequate verification of the customer or partner but also of the intermediaries.

¹⁵² From <https://www.ccis-expertise.com/en/gost>

¹⁵³ Ibid

¹⁵⁴ Ibid

The analysis of the bank that conveys the operation must in fact be carried out both from an objective and subjective point of view.

The subjective verification provides for an analysis of the customer's reliability in particular his reputation.

It is therefore necessary to inquire about the previous previous level and investigate the origin of the funds.

It has elements of subjectivity as an assessment and comparison of the data obtained is necessary to weigh potential risks or subsequently identify abnormal behaviors.

Furthermore, it is necessary to entrust the customer or operation a coefficient that represents the level of risk.

Here, subjective details related to the type of commercial activity enter, the place where you are operating as in the case of an export and the ethnic origin of the parts involved.

As regards the objective aspects, these include the verification of customer data such as passports or identity cards.

It is a fundamental step to identify the customer and make sure that he is providing right and verifiable data.

Next it is necessary to maintain a control regime on the movements carried out by customers.

Recall that for a bank as for any other intermediary, two diligence controls are an expense.

In fact, the time necessary to supervise the customer and his movements takes away the possibility of using that period of time in more productive operations.

These checks take place both periodically, with different frequency depending on the risk represented by the customer, and in real time.

If during the objective verification there are transactions or suspicious activities, these must be reported to the competent authorities as required by law.

Once the checks have been completed and ascertained that the transaction can take place safely and respectful of the sanctioning regime.

In itself, the construction of a model to export to Russia is not particularly more difficult than export to any other country.

Being a single country, the procedure is simplified: the portal of the European Commission allows to associate the product identification code and check whether it is prohibited or not.

The intermediary in fact, which organizes the operation and often manages the transaction, can create a model to approach these exports.

I tre livelli di verifica precedentemente citati, ossia il tipo di merce, il titolare effettivo e l'adeguata verifica dell'intermediario straniero sono una procedura da applicare in caso di esportazione e importazione.

Above all, starting from the assumption that the products in question are not prohibited, as we have previously seen the direct transport lines are still usable.

They are complex because access has been prohibited in the territory of the EU to Russian transport, both terrestrial and naval, but moving goods is not impossible.

Consequently, the main problem is found exclusively in payment as the adequate verification procedure can be standardized.

However, as amply treated previously, the big problem of payment arises, both to do it and to receive it.

In fact, a bank transfer has become impracticable since most of the large Russian banks are excluded from the Swift circuit.

3.2.3 Payment Process

In the case of export to Russia, the exclusion from the Swift circuit of its biggest banks involves significant difficulty.

The Swift circuit was introduced in 1973 and despite the enormous technological growth in the world, the same system remained substantially.

An alternative that has reached the limelight are the bees, an acronym for application programming interface, now mandatory after the introduction of the PSD2.

The Directive established a harmonized set of rules on payments across the whole European Economic Area: its main focus are credit transfers, mobile and online payments.

The Directive laid down rules about the information that payment services provides have to give to consumers and about the rights and obligations linked to the use of payment services.

API are a set of procedures whose goal is to solve a specific communication problem between different computers or different software components.

Open Banking is a financial innovation that has revolutionized the access and management of banking services.¹⁵⁵

In practice, open banking involves the safe sharing of customer financial information with third parties (TPP), allowing them to access through open API.¹⁵⁶

The banks, becoming platform for other services, benefit from this opening, and the sharing of data is good for business: this approach to open bees in fact greatly reduces design and development cycles.

This technology in itself could be developed in the next period but the exclusion from Swift is not linked to a technological but political motif.

If Russia was equipped with an API system capable of getting around the consequences of being excluded from Swift probably the western block would react by excluding it also from another circuit.

Being paid through crypto assets, however very rapid and efficient it would require the certainty that the service provider applies the two diligence relating to anti -recycling obligations.

¹⁵⁵ From <https://www.money.it/Open-Banking-cos-e-e-come-funziona>

¹⁵⁶ Ibid

For the moment, the reliability of the providers is insufficient and this method of payment would leave many doubts to the authorities.

Consequently, it is complicated to be paid directly and the only option, if you want to avoid the ordeal of fax or telephone checks, it is the use of an intermediary.

Therefore, the necessary passage is to find a third figure inside the operation in order to triangular the operation towards Russia.

Obviously, this intermediary must be assessed to verify its reliability from those who manage export or import according to the criteria mentioned a little while ago.

The intermediary must be sought in a country that does not apply the sanctioning regime of the western blockade and could be in the Arab Emirates or in China.

For example, a Chinese bank would be a perfect intermediary since China has AML supervision standards comparable to those of EU or the USA.

The simplification of the procedure, however, does not cancel the difficulties having to export to Russia for which it is an operation that not all intermediaries have the ability to carry out.

More precisely it is a type of activity that requires time since three levels of evaluation of the subjects involved are required.

It follows that not all banks consider this profitable operation since as mentioned above, the costs related to the two diligence would be too high.

This conclusion brings us back to the theme of the target of sanctions: if imports and exports to Russia were so important for the EU economy, what recessive effect are they having on the economy?

3.2.4 Impact on European Economy

In 2022 both exports and imports decreased compared to the levels preceding the invasion of Russia.

However, in the III quarter of 2022 the combination of drop in demand, stabilization of prices and sanctions has translated into a drastic decline in the value of imports from Russia on goods such as coal, oil and natural gas

According to the Sole 24 hours, it is a reduction respectively, from 45% in 2021 to 13% in the III quarter 2022, from 25% in 2021 to 14% in the III quarter 2022 and from 36% in 2021 to 18% in the III quarter 2022 .¹⁵⁷

A huge problem for Europe was the energy dependence of Russia, on which the leadership of the Federation probably hoped to leverage.

As for natural gas it is useful to highlight that, against the reduction of exposure to Russia by the EU, the one against the United States and the United Kingdom has almost doubled.¹⁵⁸

This certainly has had an important part in indexborating Russia both from an economic and diplomatic point of view.

However, the Member States will have to work to avoid going from one dependence to another since the energy sector can become a sword of Damocles.

As for the Italy-Russia exchange, the data show a decline in Italian exports to Russia by more than 23% from 2021 to 2022 (3), passing through just under 7 billion euros to 5 billion and 355 million of Euro.

To make the idea of the commercial impact, just think that only in 2019 Italy exported assets to Russia for almost 8 billion euros.

Conversely, for the reasons previously exposed, imports from Russia increased from 2021 to 2022 (4) by over 62% from approximately 16 billion euros to around 26 billion euros.

The net commercial balance remains negative for Italy and has gone from 9 billion euros in 2021 to over 20 billion euros in 2022, a balance driven by the volume and prices of natural gas, crude oil and products deriving from refining of oil.

¹⁵⁷ From <https://www.econopoly.ilsole24ore.com/2023/02/24/conseguenze-sanzioni-italia/>

¹⁵⁸ Ibid.

Italy has been particularly affected since Italian export has decreased by 23% from 2021 to 2022, from just under 7 billion euros to 5 billion and 355 million euros ¹⁵⁹

A dramatic vertical descent from the approximately 8 billion established in 2019; On the contrary, importing from Russia has grown by almost 10 billion euros.

It is therefore a negative commercial balance for Italy: the causes according to the Sole 24 Ore are to be attributed mainly by the volume and prices of natural gas, crude oil and products deriving from the refining of oil.¹⁶⁰

A conclusion on the gravity of this situation and the repercussions on the Italian and in general European economy is out of the claims of this paper.

However, a trend can also be identified considering the data on the sanctions developed in the second chapter.

Exports to Russia were however a small part of European exports and the war involved content effects.

Certainly the cost of energy has risen but not at dramatic levels: we are far from the proverbial "war economy" experienced during the two world conflicts.

The sanctions and against sanctions will cause a slowdown in growth but this will probably have no direct effects on the conflict.

The hopes that the war ending quickly are hanging on western weapons that have allowed the Ukrainian army to reap the Russian forces behind, even if a breakthrough of the front in the Donbass or in Crimea seems unlikely.

The other possibility is a change of regime in Russia: insistent voices circulating on the health conditions of Vladimir Putin but its departure would not automatically mean a change of course.

The attempted coup by the PMC Wagner and his leader Prigozhin showed that the being able to end up in the hands of someone who has the same political program, if not worse, of the current president.

In any case, the outcome of the conflict would not guarantee an end of the dangers for world peace as a Russian defeat could leave important aftermath.

To accelerate the conclusion of the conflict, a complete isolation of Russia could have significant effects but at the same time it would be a serious and dangerous step.

In general, a total war is not convenient for anyone and probably the choice of the EU is to maintain a status quo by Cold War.

¹⁵⁹ From <https://www.econopoly.ilsole24ore.com/2023/02/24/conseguenze-sanzioni-italia/>

¹⁶⁰ Ibid

This is a strategy previously applied in turn by China, Russia and America in various conflicts in which the rival block was busy.

Some of these conflicts, namely the Korean war, in Vietnam and Afghanistan remained in the common imagination and marked the history of the second post-war period.

Support for belligerent countries took place similar to that that the western block is applying during today's conflict.

It consists in economic support, both at the level of funds and sanctions, and above all in the supplies of weapons to the army or to paramilitary groups.

The maneuver aims to support the country that struggles to maintain its independence without exposing itself directly and hoping that the situation for Russia will become unsustainable on a military level as soon as possible.

Certainly an effect has been there and it has fallen on the shoulders of the companies that concentrated their exports towards Russia.

However, it is necessary to consider such loss, however significant for the individual entity, is negligible in comparison to the blood tax that Ukraine is paying to defend its sovereignty.

CONCLUSIONS

The separation process of Russia from the West seems to become irreversible, at least as long as Putin or his fellow man are in power.

The fracture is in fact both political and economic since the invasion has forced the EU countries to industry to reduce its energy dependence from Russia.

The same goes for the commercial exchanges from which some countries, as mentioned above all Italy, have been affected but are far from being brought to their knees.

Above all, the nationalist rhetoric of Putin has the main nemesis the "decadentism" of western countries, identified in the integration policies of migrants and in the complete acceptance of the LGBTQ+community.

The Russian people showed impatience towards war but it is unlikely to attend a rebellion also because control over the territory is widespread and on several levels.

First of all, the news in each country is filtered or conditioned by censorship, the few voices of dissent such as Novaya Gazeta are opposed both by the other media and by the secret services of the Federation.

The cases of Anna Politkovskaja, killed in circumstances not entirely clarified after her investigations on the brutality committed in Chechnya, and more recently Elena Milashina and the lawyer for human rights Aleksandr Nemov, are emblematic.

The two were in Chechnya to attend the trial against the mother of two activists for Cecceni human rights, the Yangulbaev brothers.¹⁶¹

Without free journalism and with internet access filtered by the state to inquire and distinguish the truth from lies it becomes very difficult for the population.

There is the precedent of Afghanistan, when the soldiers returned home began to speak with the families and lies of the government were unmasked.

However, this time the West is perceived as directly involved and as far as you can try to put yourself in the role of other people can become a problem too difficult to understand and accept.

In addition, there is a continuous and brutal repression of dissent, exacerbated and "justified" by the emergency situation.

¹⁶¹ From <https://www.vita.it/cosa-ci-dice-della-ceceni-e-della-russia-laggressione-a-elena-milashina/>

The geopolitical analyst Dario Fabbri proposes an analysis of the Russian people as "characterized by two traits: a great insecurity and an oversized idea of themselves."¹⁶²

While the idea of size is traced back to the delirium of power that can easily connect to nationalist ideals the other concept is more complex and innovative.

In fact, insecurity would be to be connected with the fact that Russia is a large plain without significant natural defenses capable of stemming an invader.

An unfortunate geography that, always according to the Fabbri analyst, has favored numerous invasions by the hordes of the Mongols in the Middle Ages and subsequently by the German Reich during the two world wars.

Ukraine aligned with the West would constitute two great threats for the Federation's establishment: hundreds of border kilometers to be supervised and the nightmare of direct contact with the social and cultural customs of Europe and America.

In any case, the invasion of Ukraine has highlighted the worrying elements regarding the future of the world.

First, large -scale wars are not a distant memory but a match is enough to make the tinderbox burn again.

Russia has enjoyed the tacit support from many very populous and powerful countries such as China and India, as well as having a substantial influence in Africa thanks to the work of the private military company Wagner.

In particular, the East is a maze of latent conflicts: on all of China's craving on Taiwan, India against Pakistan and the two cores.

In particular, the fact that these conflicts between large nations are back brings the gigantic risk of nuclear arsenals.

Existing nuclear weapons are divided into "strategic" and "tactics": strategic ones can demolish entire regions by erasing every form of life.

Tactical nuclear weapons are low intensity nuclear devices: they have a destructive power not on a large scale but limited to specific objectives, such as a bunker or a dam.

The destructive potential invests 59 square kilometers for tactics, 1,230 for strategic; The Fallout, that is, the toxic cloud that would get up from an explosion, would hit 2,800 square kilometers with tactics, 33,910 with strategic.¹⁶³

¹⁶² From <https://www.iltascabile.com/linguaggi/dario-fabbri-lincompreso/>

¹⁶³ From <https://tg24.sky.it/mondo/approfondimenti/armi-nucleari-tattiche-cosa-sono#06>

To have a more generic but easy to understand indication if one of these rained on the Colosseum, the losses between deaths and wounded would be around 300000.

A huge number but potentially not such as to create a chain reaction of all other countries if it was used on a military target.

For example, a case of difficult interpretation could be a state that identifies a large invasion force on its borders and affects it when it crosses the border.

Would the use of such weapons in a defensive scenario be considered acceptable if for example it should be made by Taiwan or South Korea?

You cannot know and we must hope that it never happens but the risk exists and every government is called to measure its moves with great attention to this latent danger.

A second problem independent of the outcome of the war in Ukraine is the future of Russia: Federico Rampini in his "long winter" fears the following possibility.

Russia could in fact become a form of rogue-states and become a refuge and action base to hit the West.

Two examples of how this could already happen are the cyber attacks on infrastructure and the flaws open in the North Stream 1 and 2 gas pipelines.

We know how much damage terrorism has been able to do with the support of not particularly developed countries.

The only thought of what could become if tacitly supported by the Federation scares also because the Wagner's operations in Africa: the authorities would easily deny such operations.

The evident division of public opinion within Western countries represents the third problem.

The charm of the strong man has clearly taken part of the population, which sees in Russian nationalism an answer to the evolution of customs and the way of thinking promoted in the United States and Europe.

Above all, the political class that before the war considered the Russian president as a capable and reliable figure fuels part of this charm.

With regard to countries such as Italy and Hungary there have been clear attempts by Russia to earn the trust and support in the political field.

We could cite the treatment of favor regarding gas supplies, opening not granted to Germany for example.

The dirty game of Russia and its consequent infiltration into European politics was already evident for some time but perhaps we did not want to look for fear of discovering the truth.

William Felix Browder is a British financier who had founded an investment portfolio called Hermitage Capital Management in Russia.

He was exposed to rampant corruption in the country had started to publicly oppose the oligarchs, an action that earned him the expulsion from the country in 2005.

Through the manufacture of tests and lies, the Federation managed to obtain a capture mandate for the financier at the Interpol.

Browder managed to avoid extradition after being arrested in Spain and thus escaped the danger of Russian prisons, which his Russian lawyer Sergej Magnitsky did not pot and paid with his life.

A detailed geopolitical analysis is out of the scope of this discussion however the existence of a network of Russian collaborators in Europe and USA seems unquestionable.

This leads us to a significant conclusion: Europe could find itself dealing with its past: Russian and potentially Chinese expansionism remember the colonial period a lot.

Beyond the historical aspect, the lap of money linked to war and politics can be very attractive.

Federico Rampini cites the episode of the Russian intervention in Georgia in 2008: the army, despite the fact that the Georgians had not been able to mount a suitable resistance, realized that new ships would serve to transport helicopters.

France had developed a model called Mistral class and the two countries had agreed for the sale of two ships produced in France, plus the projects to build two in Russia with a total cost of about one billion.

Then in 2014 the French government opposed the operation for a matter of principle as the ships clearly would be employed in Crimea, paying the penalty to Russia to cancel the operation.

However, it is obvious to ask himself how he did not imagine it before, given the wars in Chechnya and the intervention in Georgia.

Probably the billion euros promised by Russia, a part of which it would end up two contractors of the French defense, had initially silenced the doubts about the use of warships.

Here the real problem is grafted, the fulcrum of each question linked to anti -money laundering, the contrast to terrorism, the mafias and the dual use goods.

The illegal or war business entitled to the war involves enormous earnings and to mention the iconic phrase of the emperor Vespasian "Pecunia non olet".

The indifference in the face of how you earn money constitute a gigantic obstacle because the "opponent" is no longer an entity defined and separated by the state.

In fact, it becomes a parallel network within the country made of ordinary people and unfortunately often branched in institutions.

The episode of open corruption of the former vice -president of the European Parliament Eva Kaili and other MEPs was illuminating in this sense.

That case was linked to the Qatar who paid large sums to ensure that deputies protect the reputation of the Middle Eastern country.

Incriminate the deputies was relatively simple even since they were not very careful for the way they kept the money.

However, within this discussion we have seen how alternative and almost indispensable methods exist to manage sums of money through the Asset Crypto.

It may not be conspiracy fear that this modus operandi is applied by other countries to condition part of the European political class.

Therefore, the war in Ukraine is not only a conflict fought in one front thousands of kilometers away but also has an internal front.

The great challenge of the next few years for Europe and the rest of the western countries may have to deal with themselves and their past as well as external threats.

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ACKNOWLEDGEMENTS

Words cannot express my gratitude towards professor Mazzonetto for his invaluable advice and patience in the editing of this thesis.

I am also deeply grateful to my family who supported me during this entire journey, hoping I will deserve all their assistance in these academic years.

Furthermore, I would like to express my deepest appreciation to my friends, some of them fellow students, who have been a crucial part of this hard but marvelous period of my life.

Last but not least I must say thanks to Venice and Ca' Foscari University for this long path embedded in the beauty of the greatest city in the world.